



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

COURT (CHAMBER)

CASE OF LEVAGES PRESTATIONS SERVICES v. FRANCE

(Application no. 21920/93)

JUDGMENT

STRASBOURG

23 October 1996

In the case of Levages Prestations Services v. France¹,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A², as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,

Mr F. MATSCHER,

Mr L.-E. PETTITI,

Mr N. VALTICOS,

Mr R. PEKKANEN,

Sir John FREELAND,

Mr J. MAKARCZYK,

Mr D. GOTCHEV,

Mr K. JUNGWIERT,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 24 May and 23 September 1996,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 22 May 1995, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 21920/93) against the French Republic lodged with the Commission under Article 25 (art. 25) by Levages Prestations Services, a private company incorporated under French law, on 1 April 1993.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby France recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by

¹ The case is numbered 51/1995/557/643. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

² Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

the respondent State of its obligations under Article 6 para. 1 of the Convention (art. 6-1).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicant company stated that it wished to take part in the proceedings and designated the lawyer who would represent it (Rule 30).

3. The Chamber to be constituted included ex officio Mr L.-E. Pettiti, the elected judge of French nationality (Article 43 of the Convention) (art. 43), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 para. 4 (b)). On 8 June 1995, in the presence of the Registrar, the President of the Court, Mr R. Ryssdal, drew by lot the names of the other seven members, namely Mr F. Matscher, Mr N. Valticos, Mr S.K. Martens, Sir John Freeland, Mr J. Makarczyk, Mr D. Gotchev and Mr K. Jungwiert (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43). Subsequently, Mr R. Pekkanen, substitute judge, replaced Mr Martens, who was unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

4. As President of the Chamber (Rule 21 para. 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the French Government ("the Government"), the applicant company's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant company's memorial on 21 February 1996 and the Government's memorial on 4 March 1996. On 18 March 1996 the Secretary to the Commission indicated that the Delegate did not wish to reply in writing.

On 15 March 1996 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 22 May 1996. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr B. NEDELEC, magistrat, on secondment to the Legal Affairs
Department, Ministry of Foreign Affairs, *Agent*,
Miss C. MARCHI UHEL, magistrat, on secondment to the Legal
Affairs Department, Ministry of Foreign Affairs,
Mr G. BITTI, member of the Human Rights Office,
European and International Affairs Department,
Ministry of Justice, *Counsel*;

(b) for the Commission

Mr L. LOUCAIDES, *Delegate*;

(c) for the applicant company

Mr J.-A. BLANC, of the Conseil d'Etat and Court of
Cassation Bar, *Counsel*.

The Court heard addresses by Mr Loucaides, Mr Blanc and Mr Nedelec.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The Levages Prestations Services company carries on the business of leasing lifting gear and providing related services. In May 1983 it had recourse to an employment agency for temporary staff, with which it signed five contracts for the provision of manual labour. Subsequently, it refused to pay four of five invoices, initially because it disagreed with the number of hours charged and then on the ground that they were unsigned and did not bear the company stamp.

On 18 September 1984 the Paris Commercial Court ordered it to pay the agency the sum of 29,808.01 French francs (FRF) under the contracts.

7. The applicant company lodged a criminal complaint against a person or persons unknown for forgery of commercial instruments, and against the employment agency for aiding and abetting and for making use of forged instruments.

8. It appealed to the Paris Court of Appeal against the Commercial Court's judgment and made an application for the appeal to be stayed pending the outcome of the criminal proceedings instituted after it had lodged its complaint.

9. On 1 October 1986 the Court of Appeal made an interlocutory order staying the appeal. The relevant part of the judgment read as follows:

"... the [Levages Prestations Services] company produced the text of the complaint it had lodged with the senior investigating judge in Paris and evidence of payment on 28 October 1985 of the sum of 3,000 francs, being the amount of the deposit requested on 16 October 1985;

...

That complaint concerns not only the identity of the person who signed some of the time sheets but also the number of hours invoiced;

Thus it is the actual documents on which [the employment agency] bases its claim that are alleged to be forgeries;

Pursuant to the rule that civil proceedings arising from a criminal offence must await the decision of the criminal court, the present proceedings must be stayed."

10. On 24 December 1987 the investigating judge ruled that there was no case to answer in respect of the two criminal complaints.

11. The appeal proceedings resumed in the Paris Court of Appeal, which upheld the Commercial Court's judgment on 28 September 1989.

In its judgment on the merits, following its interlocutory judgment of 1 October 1986, the Court of Appeal referred "for an account of the facts of the case and the claims of the parties to that judgment [of 1 October 1986] and the judgment of the court below ...". It ordered the applicant company, which had continued to argue that the documents were forgeries, to pay FRF 15,000 in damages for having entered an appeal that was designed to gain time and was vexatious to the agency.

12. On 1 December 1989 Levages Prestations Services appealed on points of law to the Court of Cassation against the judgment of 28 September 1989. On 27 April 1990 it filed its pleadings, in which it made no mention of either the criminal proceedings or the Paris Court of Appeal's interlocutory judgment. It annexed a copy of the Paris Commercial Court's judgment of 18 September 1984, of its pleadings of 10 March 1986 on appeal and of the Paris Court of Appeal's judgment of 28 September 1989, against which it was appealing.

In the proceedings in the Court of Cassation the applicant company was represented by a member of the Conseil d'Etat and Court of Cassation Bar, as required by law.

13. On 1 December 1992 the Court of Cassation (Commercial Division) held that the appeal was inadmissible in a judgment which read as follows:

"Having regard to the first paragraph of Article 979 of the New Code of Civil Procedure;

On 1 December 1989 the Levages Prestations Services company appealed on points of law against a judgment delivered on 28 September 1989 by the Paris Court of Appeal which expressly refers to a previous judgment of 1 October 1986 for an account of the facts of the case and the claims of the parties. That judgment of 1 October 1986 thus forms an integral part of the judgment under appeal, but no copy or execution copy of it has been produced. It follows that the appeal on points of law is inadmissible."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Civil procedure in general

14. The New Code of Civil Procedure ("NCCP") contains the following provisions of a general nature:

Article 2

"The parties shall conduct the proceedings in accordance with the responsibilities incumbent on them. They shall carry out the steps in the proceedings in accordance with the prescribed formal requirements and the time-limits."

Article 3

"The court shall ensure the proper conduct of the proceedings; it shall be empowered to lay down time-limits and order necessary measures."

Article 455

"The claims of the parties and the grounds on which they rely shall be set out succinctly in the judgment, which shall be reasoned."

The judgment shall set out the decision in the form of operative provisions.

Article 729

"On appeal or if a case is remitted by the Court of Cassation, the registrar shall forward the case file to the relevant court either within fifteen days of being requested so to do or within such other time as may be laid down in special provisions.

The registrar shall, if appropriate, make copies of the documents necessary for the proceedings to continue."

Article 968

"The case file of the court of first instance, which the registrar shall request as soon as an appeal to the Court of Appeal is entered, shall be added to the Court of Appeal's case file."

B. Civil Procedure in the Court of Cassation

15. The procedure for appeals to the Court of Cassation, a special form of appeal, is written and relatively straightforward. However, strict time-limits apply. Appeals on points of law, which are brought against a decision and not against a party, are in principle presented by members of the Conseil d'Etat and Court of Cassation Bar. Members of the Conseil d'Etat and Court of Cassation Bar enjoy a monopoly in representing parties in those courts and have a dual role as their representatives and as officers of the court. Thus, for example, they receive full particulars from the Court of Cassation as to the progress being made in the consideration of the case (such as the appointment of a reporting judge, the lodging of his report, the appointment of an advocate-general and the setting down of the appeal for

hearing) and it is then their responsibility to forward this information to their client.

Unlike members of the ordinary Bar, members of the Conseil d'Etat and Court of Cassation Bar enjoy the status of *officiers ministériels* (State-appointed officers); their number is irrevocably kept at sixty, pursuant to an ordinance of 10 September 1947. They are appointed by the Government after a reasoned opinion has been submitted by the Council of the Conseil d'Etat and Court of Cassation Bar, the President of the Court of Cassation and the Vice-President of the Conseil d'Etat.

Representation by a member of the Conseil d'Etat and Court of Cassation Bar is usually compulsory and any party receiving legal aid is entitled to counsel of his own choosing. However, in certain types of litigation (such as cases concerning parental authority, industrial relations, immigration and political or occupational elections) the parties are exempted by law from having to retain a member of the Conseil d'Etat and Court of Cassation Bar and the procedure is simpler and less formal.

1. Procedure where representation is compulsory

16. The procedure is set out in Articles 974 to 982 NCCP and is the one usually followed in appeals to the Court of Cassation.

(a) Notice of appeal

17. The notice of appeal, by which the proceedings are commenced, is lodged with and registered by the Court of Cassation registry. It is signed by counsel and contains, in particular, details of the decision appealed against. The registrar forwards it to the respondent "immediately" (Article 977, first paragraph) and must at the same time "request the registry of the court which gave the impugned decision to forward the case file to him" (Article 977, second paragraph).

(b) Pleadings

18. The appellant must lodge his pleading and serve it on the respondent within five months, failing which he will be debarred from proceeding with the appeal. That pleading must contain the points of law on which he relies in his appeal, failing which the appeal will automatically be declared inadmissible without its being necessary for the Court of Cassation to inform the parties beforehand (Court of Cassation, First Civil Division, 28 April 1981, Bulletin civil (Bull. civ.) I, no. 134; 19 May 1981, Bull. civ. I, no. 166).

(c) Production of the decision appealed against and of the documents

19. Lastly, the pleading must be accompanied by the decisions and documents referred to in Article 979 NCCP, which provides:

"The appellant must file at the registry a copy of the decision appealed against served either on a party or on a lawyer (*avoué* or *avocat*) or an execution copy of that decision, together with a copy of any decision upheld or reversed in the decision appealed against, within the time allowed for lodging the pleading, failing which the appeal will automatically be declared inadmissible.

The appellant must also annex any documents relied on in support of the appeal."

More generally, in accordance with long-established case-law, the appellant must supply any document that it is necessary to read for the purposes of understanding and justifying a ground of appeal put forward, failing which that ground may be declared inadmissible (Court of Cassation judgments of 29 November 1852, *Dalloz* 1853, 1, 301; 6 December 1871, *Dalloz* 1872, 1, 192; and 16 December 1891, *Dalloz* 1892, 1, 67).

The production required in the first paragraph of Article 979 if the appeal is not to be automatically declared inadmissible has given rise to a considerable amount of litigation, and the courts have clarified the scope of this formal requirement.

20. As early as 1962 (Court of Cassation, Third Civil Division, 12 February 1962, *Barbezat and Others v. Swietek*, *Bulletin des arrêts de la Cour de cassation* no. 93) the Court of Cassation held that the obligation to annex a copy of the decision appealed against "has to be understood as applying not only to the decision appealed against, but also to decisions that are its necessary complement".

It added subsequently that the filing of the judgment at first instance required by Article 979 was essential because that judgment formed a single unit with the decision on appeal:

"It follows from Articles 954 and 955 of the NCCP that the judgment at first instance forms a single unit with the judgment of the court of appeal as regards both its reasoning and the statement of the parties' claims and arguments; production of the judgment at first instance is accordingly a formal requirement that is mandatory as a matter of public policy. Any failure to comply with it, which must be raised by the Court of Cassation of its own motion since the Court is under an obligation to verify that appeals to it have been properly made, will result in the appeal on points of law being declared inadmissible.

Since the appellant failed to produce a copy of the judgment at first instance as required, the appeal on points of law is inadmissible." (Court of Cassation, Third Civil Division, 19 November 1986, *Desmoulins v. Delambre*, *Bull. civ.* no. 161)

The Court of Cassation has further held, firstly, that where conflicting decisions have been given, the appellant must produce the impugned decision of the court of appeal and a copy of the decisions which conflict with each other (*requêtes*, 14 February 1837, *Jurisprudence générale Cassation*, no. 869); secondly, that in the event of an appeal on points of law against a judgment of a court of appeal dismissing a third-party application to set aside a judgment, the appellant must produce a copy of the judgment which gave rise to the application by the third party (Court of Cassation,

Civil Division, 6 April 1987, Bull. civ. II, no. 83); and, thirdly, that in the event of an appeal on points of law against a decision given on appeal from a judgment of a court of first instance upholding part of a judgment in default on an application to set that judgment aside, the appellant must produce, in addition to the court of appeal's decision, the default judgment and the ruling on the application to set it aside, so as to enable the Court of Cassation to have a complete understanding of the impugned decision (Court of Cassation, Commercial Division, 12 February 1962, Bull. civ. III, no. 93).

21. The issue of inadmissibility was often raised where a copy of the judgment at first instance was included in the case file of the proceedings that was sent by the registry of the court which had delivered the judgment. The Third Civil Division of the Court of Cassation held on this point that it could raise the mandatory objection of inadmissibility without informing the parties beforehand (19 November 1986, Consorts Ceresa, Bull. civ. no. 162). For the legal writers who approved this decision, it was not for the Court of Cassation to warn parties, who were represented by counsel, of the risk that this appeal would be declared inadmissible if they did not produce the documents in time. The Court of Cassation's only obligation in law is to "inform the parties of any grounds of appeal on points of law which could be raised by the Court of its own motion and invite them to make observations within a time it shall set" (Article 1015 NCCP).

2. Procedure where representation is not compulsory

22. Regulated by Articles 983 to 995 NCCP, proceedings in which representation is not compulsory are unusual, although many special exemptions are granted. Formalities are kept to a strict minimum.

(a) Notice of appeal

23. Notice of appeal may be given merely orally. Notice is given to the court which delivered the decision appealed against, but may also be given in accordance with the procedural rules applying to appeals for which representation is compulsory and be lodged with the Court of Cassation. The registrar registers the appeal and issues a receipt that reproduces the content of those Articles of the NCCP in which the appellant's obligations are set out. He informs the respondent in a notice containing the text of the Articles relating to the respondent's obligations.

(b) Sending of the case file to the Court of Cassation's registry

24. Article 988 NCCP provides:

"The registrar shall send the case file to the Court of Cassation's registry without delay together with:

- (i) a copy of the notice of appeal;

- (ii) a copy of the receipt for the notice of appeal;
- (iii) a copy of the decision appealed against; and
- (iv) a copy of the judgment at first instance and any pleadings filed at first instance or on appeal.

He shall immediately send to the Court of Cassation's registry any document which he receives subsequently."

If the court finds that a document is missing, it stays the proceedings and orders "reconstitution of the case file at the registry of the local court concerned for the purposes of curing the procedural defect" (Court of Cassation, Second Civil Division, 18 January 1957, Bull. civ. II, no. 63).

(c) Production of the decision appealed against

25. The requirement laid down in Article 979 NCCP for proceedings in which legal representation is compulsory - namely, that a copy of the impugned decision must be produced within the time allowed for lodging the pleading - does not apply to proceedings in which the parties do not have to be represented (Court of Cassation, Social Division, 27 January 1993, Bull. civ. V, no. 27) and an appeal will not be invalidated by a failure to comply with the formal requirements for giving notice of appeal.

(d) The penalty for failing to comply with the rules

26. An appeal on points of law may be declared inadmissible where a failure to carry out a formal requirement prevents the appeal proceeding (for instance, a failure to identify the respondent or the decision being appealed against). The court will of its own motion declare an appeal inadmissible where the appellant has not stated the grounds of his appeal, at least in summary form, in his notice of appeal and fails to state them within three months of lodging it.

Filing a pleading is optional in proceedings in which representation is not compulsory. If, as a result of an error not attributable to the appellant, a pleading lodged within the prescribed time was not included in the court file with the result that the appeal was declared inadmissible, that decision must be set aside and the appeal declared admissible (Court of Cassation, Social Division, 25 March 1985, Bull. civ. V, no. 205). In general, the Court of Cassation is less strict in cases in which representation is not compulsory, where the grounds of appeal may be stated in summary form.

PROCEEDINGS BEFORE THE COMMISSION

27. Levages Prestations Services made its application to the Commission on 1 April 1993. Relying on Article 6 para. 1 of the Convention (art. 6-1), it alleged that its right to a fair hearing had been infringed when the Court of Cassation of its own motion ruled that the company's appeal on points of law was inadmissible.

28. The Commission declared the application (no. 21920/93) admissible on 12 October 1994. In its report of 5 April 1995 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a violation of Article 6 para. 1 (art. 6-1). The full text of the Commission's opinion is reproduced as an annex to this judgment³.

FINAL SUBMISSIONS TO THE COURT

29. In their memorial the Government asked the Court to "dismiss the Levages Prestations Services company's application".

30. The applicant company asked the Court to find that there had been a violation of Article 6 para. 1 of the Convention (art. 6-1).

AS TO THE LAW

ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 OF THE CONVENTION (art. 6-1)

31. The applicant company complained that it had not had a fair hearing within the meaning of Article 6 para. 1 of the Convention (art. 6-1), because its appeal on points of law had been declared inadmissible by the Court of Cassation of its own motion. The relevant part of Article 6 para. 1 (art. 6-1) provides:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

³ Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1996-V), but a copy of the Commission's report is obtainable from the registry.

A. Applicability of Article 6 para. 1 (art. 6-1)

32. As before the Commission, the Government's primary submission was that the application was incompatible *ratione materiae* with the provisions of the Convention as the Court of Cassation had not ruled on the merits, but only on a question of interpretation of Article 979 of the New Code of Civil Procedure ("NCCP"); it had therefore not formally determined a dispute (contestatation) over civil rights and obligations.

33. The applicant company, relying on the *de Geouffre de la Pradelle v. France* judgment (16 December 1992, Series A no. 253-B), argued that Article 6 para. 1 (art. 6-1) applied as in that judgment the Court had held that the Conseil d'Etat had determined a dispute over civil rights and obligations although it had declared an appeal inadmissible on procedural grounds.

34. The Commission expressed the opinion that the proceedings concerned had come within the scope of Article 6 para. 1 (art. 6-1) as they had concerned rights to receive payment and had been brought with a view to determining a dispute over civil rights and obligations.

35. The Court takes as agreed a point which was not the subject of argument, namely that the proceedings in the civil courts of first instance and appeal concerned a dispute over civil rights and obligations.

36. In its judgment of 17 January 1970 in the case of *Delcourt v. Belgium* the Court, in reaching the decision that Article 6 para. 1 (art. 6-1) was applicable, noted that "[a] judgment of the Court of Cassation ... may rebound in different degrees on the position of the person concerned" (Series A no. 11, pp. 13-14, para. 25). It has reiterated that view on several occasions (see, as the most recent authorities, the *Lobo Machado v. Portugal* judgment of 20 February 1996, Reports of Judgments and Decisions 1996-I, p. 206, para. 30, and the *Vermeulen v. Belgium* judgment of 20 February 1996, Reports 1996-I, pp. 233-34, para. 32). The present case is no different, because the outcome of the appeal could have had a bearing on Levages Prestations Services' debt.

Consequently, Article 6 para. 1 (art. 6-1) is applicable.

B. Compliance with Article 6 para. 1 (art. 6-1)

37. The applicant company submitted that the Court of Cassation, in requiring the Court of Appeal's interlocutory judgment of 1 October 1986 to be produced in support of the appeal on points of law, had applied Article 979 NCCP in a questionable and unforeseeable way. There had been no appeal against that judgment, which was of no assistance in understanding the dispute and should, in accordance with Article 977 NCCP, have been in the Court of Cassation's case file. In any event, the Court of Cassation should have asked the applicant company to produce it

before declaring the appeal inadmissible in a decision that established a precedent.

The use of the singular in the wording of Article 979 led appellants to consider "the decision appealed against" to be a single document and not a combination of several documents; the alternative would be a source of uncertainty for the appellant and could lead to arbitrariness on the part of the court.

38. The Commission, which agreed with the applicant company's submissions, expressed the view that the Court of Cassation's decision was not foreseeable and that production of an interlocutory judgment was not required either by the language of Article 979 NCCP or under case-law. Furthermore, the main findings of fact were set out in the judgment at first instance and the registrar of the Court of Cassation was required by Article 977 to request the case file from the registry of the court that had delivered the decision being appealed against.

39. The Government disagreed. The appeal on points of law had been declared inadmissible solely because of the failure to comply with the rules of civil procedure. The applicant company had confused the notion of "decision" in the first paragraph of Article 979 NCCP with that of "documents" in the second paragraph, which concerned all documents of assistance in the case that it was necessary to read in order to understand and justify the ground of appeal.

In the present case the impugned decision comprised two complementary and indissociable parts; the first - the interlocutory judgment of 1 October 1986 relating to the facts, the procedure and the parties' claims - formed a single unit with the second, the judgment of 28 September 1989, which dealt with the legal arguments and included the legal analysis.

Far from establishing a new precedent, the decision of 1 December 1992 was entirely consistent with the Court of Cassation's settled case-law, which was reported and fully accessible to the applicant company's lawyer, who was, moreover, a member of the Conseil d'Etat and Court of Cassation Bar.

Under no circumstances could the Court of Cassation invite an appellant to rectify a defect in his appeal, still less correct any procedural omissions of the parties, short of simply disregarding the plain language of Article 979 NCCP by removing all possibility of declaring an appeal inadmissible on that ground, and of altering its own function.

Lastly, the obligation imposed by Article 1015 NCCP only related to examining a possible ground for quashing the decision appealed against and not to the inadmissibility of an appeal on points of law on account of a procedural defect.

In the instant case the Court of Cassation was precluded from considering the grounds of appeal because the appeal was, the Government submitted, vitiated by an incurable procedural defect and the court's obligation to remain impartial prevented it from advising the parties. It was

for the parties, especially when assisted by a member of the Conseil d'Etat and Court of Cassation Bar, to be diligent and vigilant when bringing appeals, particularly in the Court of Cassation. The court was under no obligation to warn them when they had made an error.

40. The Court reiterates that the "right to a tribunal", of which the right of access is one aspect (see the *Golder v. the United Kingdom* judgment of 21 February 1975, Series A no. 18, p. 18, para. 36), is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard (see the *Ashingdane v. the United Kingdom* judgment of 28 May 1985, Series A no. 93, pp. 24-25, para. 57). However, these limitations must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired; lastly, such limitations will not be compatible with Article 6 para. 1 (art. 6-1) if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among other authorities, the following judgments: *Fayed v. the United Kingdom*, 21 September 1994, Series A no. 294-B, pp. 49-50, para. 65; *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, Series A no. 316-B, pp. 78-79, para. 59; and *Bellet v. France*, 4 December 1995, Series A no. 333-B, p. 41, para. 31).

41. The Court notes that the applicant company's appeal on points of law was declared inadmissible on the basis of Article 979 NCCP for failure to produce the documents referred to in that Article. *Levages Prestations Services* had not annexed to its appeal the interlocutory judgment of 1 October 1986 to which the Court of Appeal had referred "for an account of the facts of the case and the claims of the parties" (see paragraphs 11 and 13 above); nor had it mentioned that judgment in its pleading (see paragraph 12 above).

42. In order to satisfy itself that the very essence of the applicant company's "right to a tribunal" was not impaired by the declaration that the appeal was inadmissible, the Court will firstly examine whether the procedure to be followed for an appeal on points of law, in particular with respect to the production of documents, could be regarded as foreseeable from the point of view of a litigant and whether, therefore, the penalty for failing to follow that procedure did not infringe the proportionality principle.

Article 979 NCCP expressly requires only the production of the decision appealed against, but that expression, under the Court of Cassation's case-law, "has to be understood as applying not only to the decision appealed against, but also to decisions that are its necessary complement" (see paragraphs 19 and 20 above). There can be no doubt that this case-law,

which is old and readily accessible, was available to a member of the Conseil d'Etat and Court of Cassation Bar.

The applicant company's counsel was thus in a position to ascertain what steps he had to take to bring an appeal on points of law, both from the wording of Article 979 NCCP and, if necessary, with the aid of the case-law, which was sufficiently clear and coherent (see, the de Geouffre de la Pradelle judgment previously cited, p. 43, para. 34).

43. It remains for the Court to determine whether, in the light of the circumstances of the instant case, the Court of Cassation's declaration of its own motion, that the appeal was inadmissible for failure to produce a decision - even though it was foreseeable - did not impair Levages Prestations Services' right of access to a court, in particular by reason of its nature or consequences.

44. In this regard the Court reiterates that Article 6 of the Convention (art. 6) does not compel the Contracting States to set up courts of appeal or of cassation (see the Delcourt judgment previously cited, pp. 14-15, paras. 25-26). Where such courts do exist, the guarantees of Article 6 (art. 6) must be complied with, for instance in that it guarantees to litigants an effective right of access to the courts for the determination of their "civil rights and obligations" (see the Airey v. Ireland judgment of 9 October 1979, Series A no. 32, p. 15, para. 26).

45. However, the manner in which Article 6 para. 1 (art. 6-1) applies to courts of appeal or of cassation must clearly depend on the special features of the proceedings concerned and account must be taken of the entirety of the proceedings conducted in the domestic legal order and the court of cassation's role in them (see, in particular, the following judgments: Delcourt, previously cited, pp. 14-15, paras. 25-26; Monnell and Morris v. the United Kingdom, 2 March 1987, Series A no. 115, p. 22, para. 56; and Helmers v. Sweden, 29 October 1991, Series A no. 212-A, p. 15, para. 31); the conditions of admissibility of an appeal on points of law may be stricter than for an ordinary appeal.

46. Lastly, in its case-law on Article 6 (art. 6) the Court has accepted that the requirements inherent in the concept of "fair hearing" are not necessarily the same in cases concerning the determination of civil rights and obligations as in cases concerning the determination of a criminal charge: "the Contracting States have greater latitude when dealing with civil cases concerning civil rights and obligations than they have when dealing with criminal cases" (see the Dombó Beheer B.V. v. the Netherlands judgment of 27 October 1993, Series A no. 274, p. 19, para. 32).

47. The Court notes that in civil cases the procedure for gaining access to the Court of Cassation varies according to whether exemption from legal representation is available for the type of proceedings concerned or not (see paragraphs 15 to 25 above). If it is, Article 988 NCCP lays down that the appellate court's registry must send the case file and a copy of the decision

appealed against to the Court of Cassation's registry without delay. On the other hand, in proceedings for which legal representation by a member of the Conseil d'Etat and Court of Cassation Bar is compulsory, the rules are stricter for the parties - who are represented - and the court registries have fewer obligations; Article 977 NCCP requires only that the registrar of the Court of Cassation request the case file and, under the Court of Cassation's case-law, the court has no obligation to inform the parties of any failure to comply with the rules of procedure.

48. Given the special nature of the Court of Cassation's role, which is limited to reviewing whether the law has been correctly applied, the Court is able to accept that the procedure followed in the Court of Cassation may be more formal, especially as in proceedings with compulsory representation the parties will be represented by a member of the Conseil d'Etat and Court of Cassation Bar (see, *mutatis mutandis*, the *Melin v. France* judgment of 22 June 1993, Series A no. 261-A, p. 12, para. 24). Moreover, the appeal to the Court of Cassation was made in the instant case after the applicant company's claims had been heard by both a commercial court and a court of appeal, each of which had full jurisdiction.

49. In conclusion, regard being had to all the proceedings in the domestic courts, Levages Prestations Services' right of access to a court as guaranteed by Article 6 para. 1 of the Convention (art. 6-1) was not infringed by reason of the conditions which it had to satisfy for its appeal on points of law to be admissible.

50. Consequently, there has been no violation of that provision (art. 6-1).

FOR THESE REASONS, THE COURT

1. Holds unanimously that Article 6 para. 1 of the Convention (art. 6-1) applies in the instant case;
2. Holds by six votes to three that there has been no breach of it (art. 6-1).

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 October 1996.

Rudolf BERNHARDT
President

Herbert PETZOLD
Registrar

In accordance with Article 51 para. 2 of the Convention (art. 51-2) and Rule 53 para. 2 of Rules of Court A, the joint dissenting opinion of Mr Valticos, Mr Pekkanen and Sir John Freeland is annexed to this judgment.

R. B.
H. P.

JOINT DISSENTING OPINION OF JUDGES VALTICOS,
PEKKANEN AND Sir John FREELAND

1. In this case an appeal to the Court of Cassation on a point of law which had been lodged by the applicant company on 1 December 1989 was declared inadmissible on 1 December 1992, with reference to Article 979 NCCP, on the ground that neither an ordinary copy nor an office copy of an interlocutory judgment given by the Paris Court of Appeal at an earlier stage of the proceedings had been filed. It is to be assumed that, by virtue of the requirements of Article 977 NCCP, a copy of that judgment would, in any event, have formed part of the case file forwarded to the registrar of the Court of Cassation from the registry of the Court of Appeal, so that its absence from the material annexed with the pleadings lodged by the applicant company would have been readily apparent. No prior intimation of the omission to file such a copy or of the potential consequences was given by the Court of Cassation or its registry to the applicant company or its counsel, nor was any request made for the omission to be repaired.

2. We are not wholly satisfied that on the basis of the terms of Article 979 NCCP and the case-law of the Court of Cassation it should have been foreseeable by the applicant company's counsel, even though he was a member of the specialised Conseil d'Etat and Court of Cassation Bar, that the interlocutory judgment in question was of a kind which was required to be produced with the appeal to that court and that failure to produce it would lead to the appeal's being declared inadmissible. Even, however, if this should have been foreseeable, the question remains whether the limitation on the right of access to a court represented by Article 979 NCCP and the way in which that Article was applied in the present case restricts that right to an impermissible extent, having regard to the requirements of Article 6 para. 1 of the Convention (art. 6-1) as interpreted by the Court.

3. We of course accept that, as is well recognised in the case-law of the Court, where courts of appeal or of cassation are set up by Contracting States those States enjoy a wide latitude as regards the conditions for access to those courts, particularly in cases (like the present) concerning civil rights and obligations, provided always that the very essence of the right of access is not impaired. We also accept that, as the Court has been informed, the rules of French civil procedure governing access to the Court of Cassation are traditionally, and well understood by practitioners to be, of a formalistic character.

4. It has nevertheless to be asked whether there was a reasonable relationship of proportionality between the limitation applied in this case and the aim sought to be achieved (which we take to be the clearly legitimate aim of ensuring that the Court of Cassation has available to it all the material necessary to enable it to adjudicate properly upon an appeal).

For a court of final jurisdiction to be in a position to declare, of its own motion and three years to the day after the appeal was lodged, that an appeal on a point of law is inadmissible because a party has failed to produce a document which is required to be among those available in any event in that court's own registry, and which could also be obtained by a simple request to that party, in our view goes beyond reasonable proportionality. Rules of procedure and their observance are, of course, generally necessary for the administration of justice; but the dismissal of an appeal on so minor a matter of form, and the consequent removal of the possibility of an adjudication on the merits, without the appellant's having been given an opportunity to remedy an omission which could so easily have been repaired, seems to us to be excessive.

5. For these reasons we would have found that there had been a violation of Article 6 para. 1 of the Convention (art. 6-1).