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

CASE OF LE CALVEZ v. FRANCE

(73/1997/857/1066)

JUDGMENT

STRASBOURG

29 July 1998

In the case of Le Calvez v. France[1],

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A[2], as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,
Mr L.-E. PETTITI,
Mr A.N. LOIZOU,
Sir John FREELAND,
Mr A.B. BAKA,
Mr K. JUNGWIERT,
Mr U. LŌHMUS,
Mr E. LEVITS,
Mr V. BUTKEVYCH,

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

Having deliberated in private on 27 April and 29 June 1998,

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

PROCEDURE

1. The case was referred to the Court by the French Government ("the Government") on 11 July 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 25554/94) against the French Republic lodged with the European Commission of Human Rights ("the Commission") under Article 25 by a French national, Mr Jean-Marie Le Calvez, on 9 July 1994.

The Government's application referred to Articles 44 and 48 and to the declaration whereby France recognised the compulsory jurisdiction of the Court (Article 46). The object of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 § 1 of the Convention.

Notes by the Registrar

1. The case is numbered 73/1997/857/1066. 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 of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (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), and Mr R. Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 28 April 1997, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr C. Russo, Sir John Freeland, Mr L. Wildhaber, Mr G. Mifsud Bonnici, Mr K. Jungwiert, Mr U. Lõhmus and Mr V. Butkevych (Article 43 *in fine* of the Convention and Rule 21 § 5). Subsequently Mr R. Bernhardt, the Vice-President of the Court, replaced Mr Ryssdal, who had died on 18 February 1998 (Rule 21 § 6, second sub-paragraph). Later Mr E. Levits, Mr A.B. Baka and Mr A.N. Loizou, substitute judges, replaced Mr Russo, Mr Wildhaber and Mr Mifsud Bonnici, who were unable to take part in the further consideration of the case (Rules 22 § 1 and 24 § 1).

4. As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, had consulted the Agent of the Government, the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's and the Government's memorials on 13 February 1998.

5. In accordance with Mr Ryssdal's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 23 April 1998. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*
Mr Y. CHARPENTIER, Head of the Human Rights Section,
Legal Affairs Department, Ministry of
Foreign Affairs, *Agent*,
Mr H. ASCENSIO, member of the Human Rights Section,
Ministry of Foreign Affairs, *Adviser*;

(b) *for the Commission*
Mr D. ŠVÁBY, *Delegate*;

(c) *for the applicant*
Mr M. PUECHAVY, of the Paris Bar, *Counsel*.

The Court heard addresses by Mr Šváby, Mr Puechavy and Mr Charpentier.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background

6. On 22 August 1980 Mr Jean-Marie Le Calvez was recruited to the New Caledonian Civil Service as an agricultural technician. He became established on 12 October 1981.

1. First period of leave of absence (mise en disponibilité)

7. Further to a request made by the applicant on 7 April 1986, the High Commissioner of the Republic in New Caledonia ("the High Commissioner") decided on 3 July 1986 to grant him leave of absence for one year from 1 October 1986. That decision was taken in accordance with Article 95 of Decree no. 1065 of 22 August 1953 embodying the New Caledonian Civil Service Code (see paragraph 44 below). By a decision of 2 June 1987 the applicant was, at his own request, given a further two years' leave of absence from 1 October 1987, and that period was extended until January 1990.

2. Secondment

8. On 26 December 1989 the Minister of Agriculture and Forestry placed Mr Le Calvez, at the latter's request, on secondment (*détachement*) for a period of five years commencing on 1 February 1990. He was assigned first to the Agriculture and Forestry Office for the *département* of Côtes d'Armor and then, from 1 February 1991, at his own request, to the Regional Plant Protection Department at Brest.

9. After the Joint Administrative Committee of Agricultural Technicians issued an opinion on 28 May 1991 recommending that the applicant should not be retained in that department, the Minister of Agriculture informed him that he had decided to terminate his secondment to the corps of State technicians and to request his reinstatement as a technician in the New Caledonian agricultural service.

10. By an order of 2 July 1991 the Minister terminated the secondment with effect from 1 August 1991.

3. Second period of leave of absence

11. In a letter of the same day the High Commissioner invited the applicant either to rejoin his original department or to request leave of absence.

12. On the previous day, that is to say 1 July 1991, the applicant had been declared unfit for work by a doctor and had sought sickness benefit from the Civil Service Insurance Scheme (*Mutualité Fonction Publique*), which sent him a letter on 7 October 1991 in the following terms:

> "... we confirm that we are unable to pay you sickness benefit for the period of absence from work due to illness that has been prescribed for you from 30 July 1991 to 26 October 1991. This is because you are an established civil servant. Sickness benefit for persons in that category is paid by the authorities..."

That same month the insurers sent a letter to the Ministry of Agriculture confirming that the applicant had been absent from work owing to illness since 1 July 1991. They pointed out that as his service with the Ministry had been terminated with effect from 1 August 1991, the applicant ought to be able to claim compensation, either through the civil service or through the social-security scheme for civil servants.

13. Earlier, on 9 August 1991, Mr Le Calvez had informed the relevant authorities that he did not wish to return to New Caledonia before the Rennes Administrative Court ruled on an application he had made to have the order of 2 July 1991 quashed (see paragraph 19 below).

14. As a result, the High Commissioner, in a decision of 16 September 1992, sent the applicant on leave of absence, initially for a period of one year from 1 August 1991 to 31 July 1992, which was renewed from year to year and ended on 20 March 1995.

15. On 30 October 1992 the Occupational Counselling and Rehabilitation Board (*COTOREP*) of the Employment Office for the *département* of Finistère refused the applicant disabled-worker status and accordingly ruled that he was fit for work.

16. On 21 December 1994 the High Commissioner wrote to the applicant in the following terms:

> "Please find enclosed two certified copies of the decision to keep you on leave of absence from 1 August 1994 to 20 March 1995 inclusive, at which point you will have used up all your entitlement to nine years' leave of absence under Article 96 of

Order no. 1065 of 22 August 1953. We have sent your application for reinstatement to the organisations likely to have a vacant budgetary post available that would allow you to be reinstated...”

B. Proceedings relating to the secondment

1. Stay of execution

17. On 31 July 1991 the applicant applied to the Rennes Administrative Court for a stay of execution of the order of 2 July 1991 terminating his secondment.

18. On 16 October 1991 the Administrative Court dismissed that application on the ground that the harm that would result from execution of the order was not such as to justify ordering a stay. The *Conseil d'Etat* upheld that decision on 7 October 1992.

2. Application for judicial review

19. The applicant had also applied to the Rennes Administrative Court on 31 July 1991 to quash the decision of 2 July 1991.

20. On 8 June 1994 the Administrative Court dismissed that application on the following grounds:

“...

Termination of the secondment

Firstly, section 137 *bis* of Law no. 84-821 of 6 September 1984, as inserted by section 38 of Law no. 85-1221 of 22 November 1985, provides: ‘Notwithstanding any provision to the contrary in the special rules governing civil servants subject to Law no. 84-16 of 11 January 1984 making provisions governing the civil service or in the special rules on local government staff and posts covered by Law no. 84-53 of 26 January 1984 making provisions relating to local government service, civil servants who are members of the New Caledonian Civil Service may be seconded to departments and posts in central or local government authorities of a level equivalent to those to which they belong and may be appointed to them permanently’. While these provisions allow civil servants from New Caledonia to be seconded and to be appointed to equivalent departments in central or local government service, they nevertheless do not derogate from the principle that secondment may be terminated...

Secondly, it is clear from the documents in the case file that, having been informed by letter of 11 June 1991 of the decision to terminate the secondment ..., the Government’s delegate in New Caledonia asked the applicant ... to say whether he wished to be given leave of absence or to be reinstated in his original department. It

follows that Mr Le Calvez cannot validly argue that his reinstatement was refused after the leave of absence that had allegedly prevented his reinstatement earlier or that his original department had not agreed to that measure.

Lastly, the documents in the case file do not show that the decision to terminate his secondment was taken for reasons other than the interests of the service or was the result of an error of judgment.

Refusal of appointment

Although the decision in issue terminating his secondment must be regarded as also constituting a decision not to appoint him, the applicant cannot validly maintain that the authorities were obliged to appoint him pursuant to section 137 *bis* of the Law of 6 September 1984, since those provisions, as explained above, create no obligation on the part of the original department.

…"

21. On 6 July 1994 the applicant appealed against that decision of the Rennes Administrative Court to the Nantes Administrative Court of Appeal.

22. The Minister of Agriculture lodged a pleading on 15 November 1994, to which the applicant replied on 1 December 1994.

23. In a judgment of 14 May 1998 the Nantes Administrative Court of Appeal affirmed the judgment of the court below.

C. Application to quash the decision to transfer the applicant to Brest

24. Meanwhile, in an application registered at the Rennes Administrative Court registry on 31 May 1991, the applicant had informed that court that he "consider[ed] himself to be the victim of moral, intellectual and professional defamation and would like legal advice".

25. On 8 June 1994 the Administrative Court gave the following judgment:

"In his application Mr Le Calvez seeks an order quashing the decision of 28 December 1990 to transfer him to Brest.

That decision was taken following a request by Mr Le Calvez on 10 December 1990. Furthermore, the only grounds put forward by the applicant relate to the unlawfulness of the decision of 2 July 1991 terminating his secondment and are ineffective [against] the decision of 28 December 1990.

It follows from the foregoing that the application must be dismissed."

D. Proceedings for payment of benefit and compensation

1. In the Rennes Administrative Court

26. In the meantime, on 30 June 1992, the applicant had sent the High Commissioner a letter – to which he received no reply – requesting "information on his administrative position" and payment of sickness benefit and compensation for loss of salary with effect from 1 August 1991. He argued that he had been obliged by ill health to be absent from work since August 1991 and was entitled to sickness benefit under the Social Security Code.

27. On 15 July 1992 Mr Le Calvez lodged an application with the Rennes Administrative Court to quash the High Commissioner's implicit refusal to pay him sickness benefit and compensation for loss of salary.

28. On 1 April 1994 the applicant was granted legal aid.

29. The High Commissioner lodged a defence, which was registered at the court registry on 11 July 1994 and served on the applicant's lawyer on 12 September. In his defence the High Commissioner submitted:

> "...
>
> Since July 1991 Mr Le Calvez has regularly sent the territory's administrative authorities notifications of extensions of absence from work due to illness (almost fifty have been received to date). With a letter of 3 January 1994 he sent his department a medical certificate in which Dr Roswag certified that he would not be able to return to his post in New Caledonia for health reasons...
>
> At the end of his period of secondment Mr Le Calvez chose, for personal reasons, not to return to New Caledonia. The territory's administrative authorities have regularised his position by sending him on leave of absence, in accordance with the provisions of the Local Government Service Code, with effect from 1 August 1991.
>
> Civil servants who are on leave of absence do not normally receive any salary and are no longer entitled to benefit under the social-security scheme for civil servants. Accordingly, Mr Le Calvez cannot claim any remuneration or any benefit.
>
> ..."

30. On 16 January 1995 the Ombudsman, to whom the case had been referred, advised that he had been informed by the New Caledonian authorities that they had no vacant post for the applicant. As to the question

of paying sickness benefit to the applicant during his illness, he wrote:

> "... I have been informed that he was not entitled to paid sick-leave as the Ministry of Agriculture did not have to remunerate Mr Le Calvez after 1 August 1991. The New Caledonian authorities, who had been obliged to send him on compulsory leave of absence, could not pay him a salary either. For my part, I have to record that a friendly settlement, taking into account the considerations of fairness that I put to those to whom I have spoken, has been prevented by a strict application of the relevant regulations."

31. The applicant's lawyer lodged a pleading on 26 January 1995.

32. On 1 March 1995 the Rennes Administrative Court dismissed the application on the following grounds:

> "Mr Le Calvez, an agricultural technician in the agricultural service of the New Caledonian Civil Service, was seconded to the Ministry of Agriculture and Forestry for a five-year period commencing on 1 February 1990. By a decision of 2 July 1991 the Minister of Agriculture and Forestry terminated his secondment with effect from 1 August 1991. In a letter of 2 July 1991 the Government's delegate, the High Commissioner of the Republic for New Caledonia, invited Mr Le Calvez to inform him within eight days whether he wished to be given leave of absence or to be reinstated in his original department. As he did not return to New Caledonia, it was decided on 16 September 1992 to send him on one year's leave of absence as from 1 August 1991 to 31 July 1992 inclusive, a period which was extended by decisions of 23 February and 21 October 1993. Mr Le Calvez's application must be regarded as being for an order quashing the implied refusal of the Government's delegate, the High Commissioner of the Republic for New Caledonia, to pay him sickness benefit and compensation for loss of salary for the period commencing on 1 August 1991.
>
> Although from July 1991 onwards Mr Le Calvez sent the New Caledonian administrative authorities a succession of notifications of absence of work due to illness, the documents in the case file do not show that he was given sick-leave or that he had been given leave of absence for health reasons. In the circumstances Mr Le Calvez cannot validly rely on Articles L. 721-1 and D. 712-12 of the Social Security Code or on Articles 70 and 71 of the Local Government Service Code and is not entitled to claim any compensation in respect of salary or any benefit under the social-security scheme for civil servants."

2. In the Nantes Administrative Court of Appeal

33. On 14 March 1995 the applicant appealed against that judgment to the Nantes Administrative Court of Appeal.

34. The Minister for Overseas Departments and Territories lodged a pleading on 11 April 1995 in which he indicated that the High Commissioner of the Republic for New Caledonia was the person who had responsibility for the matters before the court.

35. On 25 April 1995 the applicant wrote to the President of the Nantes Administrative Court of Appeal asking for his two pending cases to be joined (see paragraphs 21 and 33 above). He explained that all his job applications had been unsuccessful and that it was not possible for him to be reinstated in his original department as there was no vacant budgetary post in New Caledonia. He added that if he was granted financial assistance, he would be able to go to New Caledonia in order to find out what the possibilities of reinstatement or redeployment were.

36. On 17 July 1995 the Administrative Court of Appeal registered the High Commissioner's defence, in which he submitted:

> "... while Mr Le Calvez's application includes some factual submissions, for the most part irrelevant to the present case, it does not on the other hand contain any legal submissions...
>
> At the end of his period of secondment Mr Le Calvez chose, for personal reasons, not to return to New Caledonia. The territory's administrative authorities regularised his position by sending him on leave of absence, in accordance with the provisions of the Local Government Service Code, with effect from 1 August 1991. Civil servants who are on leave of absence do not normally receive any salary and are no longer entitled to benefit under the social-security scheme for civil servants. Accordingly, Mr Le Calvez cannot claim any remuneration or any benefit. His application for an order quashing the authorities' refusal to pay him sickness benefit is therefore unfounded.
>
> …"

37. The applicant lodged a pleading on 14 August 1995.

38. In a letter of 21 December 1995 – to which he received no reply – he enquired about the progress of the proceedings before the Administrative Court of Appeal. In a letter of 22 February 1996 he again asked the President of the Administrative Court of Appeal whether it would be possible to join the two cases referred to above (see paragraph 35) and expressed concern at the length of time that the consideration of his cases was taking. The court registrar replied on 11 March 1996 that the cases were not ready for trial as the lawyer who had been assigned to represent Mr Le Calvez under the legal-aid scheme had not yet filed a pleading.

39. According to the Government, that lawyer has since been disbarred.

40. On 11 June 1996 the applicant again enquired of the President of the Administrative Court of Appeal as to the progress of the proceedings. On 17 December 1997 his new lawyer lodged a pleading.

41. On 21 January 1998 the Nantes Administrative Court of Appeal informed the applicant that a hearing would be held in the two cases in question (see paragraph 35 above) in April 1998.

42. In a judgment of 14 May 1998 the Nantes Administrative Court of Appeal affirmed the judgment of the court below. It held that because the applicant was on leave of absence, he was not, by Article 99 of the New

Caledonian Civil Service Code (see paragraph 44 below), entitled to the welfare benefits claimed. Furthermore, the court added that the provisions of the Social Security Code relied on by the applicant in support of his claims, namely Articles L. 712-1 and D. 712-11 (see paragraph 46 below), did not apply in his position either, as they concerned civil servants in post.

43. On 20 May 1998 the applicant appealed on points of law to the *Conseil d'Etat.*

II. RELEVANT DOMESTIC LAW

A. Principles governing leave of absence for local government civil servants

44. The provisions of Decree no. 1065 of 22 August 1953 issued by the High Commissioner and embodying the New Caledonian Civil Service Code that are applicable in the case read as follows:

Article 91

"A civil servant is on leave of absence if he is no longer in his original department or service and ceases in that position to enjoy his promotion and pension rights."

Article 92

"Leave of absence shall be decided on by the head of the territory, either of his own motion or at the request of the person concerned..."

Article 93

"A civil servant may be compelled to take leave of absence only if he has exhausted his right to convalescence leave or extended sick-leave and is unable to resume his duties at the end of the last period. Where compulsory leave of absence follows a period of sick-leave, the civil servant shall for a period of six months receive half the salary he received when in post and all his family supplements."

Article 94

"Compulsory leave of absence shall not exceed one year. It may be extended twice for the same length of time.

..."

Article 95

"Leave of absence may be granted at a civil servant's request only in cases of accident or serious illness of a spouse or child or, exceptionally, after one year's service, for personal reasons or for research or studies of indisputable general interest."

Article 96

"Leave of absence at the civil servant's request shall not exceed three years in duration. However, it may be extended twice for the same length of time."

Article 99

"A civil servant who is on leave of absence at his own request shall not be entitled to any remuneration..."

Article 100

"A civil servant who is on leave of absence at his own request must apply for reinstatement at least two months before the expiration of the current period of leave. Reinstatement as of right is by way of appointment to one of the first three posts falling vacant where the leave of absence has not exceeded three years in duration."

45. Leave of absence is also governed by section 72 of Law no. 84-53 of 26 January 1984 making provisions relating to local government service, which provides:

"A civil servant is on leave of absence if he is no longer in his original department or service and ceases in that position to enjoy his promotion and pension rights.

Leave of absence is either granted at the civil servant's request or is compulsory at the end of the leave referred to in subsections (2), (3) and (4) of section 57 (sick-leave of one year, extended sick-leave of three years and additional extended leave on health grounds (*congé de longue durée*)). A civil servant on leave of absence who successively refuses three posts offered to him within the geographical area covered by his corps, post or service with a view to his reinstatement may be dismissed after consultation of the joint administrative committee. In other cases, if the leave of absence has not exceeded three years, one of the first three posts falling vacant in the original authority or establishment must be offered to the civil servant.

…"

B. Social Security Code

46. Articles D. 712-11 and L. 712-1 of the Social Security Code provide:

Article D. 712-11

"In the event of illness or maternity, civil servants shall receive social-security benefits in kind on the conditions and at the rates in force at the health-insurance offices to which they are affiliated…"

Article L. 712-1

"Civil servants in post to whom the Civil Service Code applies ... and their families shall be entitled in the event of illness, maternity, invalidity or death to benefits at least equal to those payable under the social-security system."

PROCEEDINGS BEFORE THE COMMISSION

47. Mr Le Calvez applied to the Commission on 9 July 1994. He alleged a violation of Article 6 § 1 of the Convention, on account of the length of the proceedings he had brought in the administrative courts, and also of Article 6 § 3 of the Convention.

48. On 27 June 1996 the Commission (Second Chamber) declared the application (no. 25554/94) admissible in so far as it related to the length of the proceedings for payment of benefit and compensation. In its report of 26 February 1997 (Article 31), it expressed the unanimous opinion that there had been a violation of Article 6 § 1. The full text of the Commission's opinion is reproduced as an annex to this judgment[1].

FINAL SUBMISSIONS TO THE COURT

49. In their memorial the Government asked the Court to dismiss the application because it was incompatible *ratione materiae* with Article 6 § 1 of the Convention and, in the alternative, because it was ill-founded.

1. *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* 1998), but a copy of the Commission's report is obtainable from the registry.

50. The applicant invited the Court to hold that there had been a violation of Article 6 § 1 in that his civil rights had not been determined within a reasonable time as required by that provision.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

51. Mr Le Calvez complained of the length of the proceedings he had brought on 30 June 1992 for payment of benefit and compensation. He relied on Article 6 § 1 of the Convention, the relevant part of which provides:

> "In the determination of his civil rights and obligations …, everyone is entitled to a … hearing within a reasonable time by [a] … tribunal…"

52. The Commission accepted the applicant's submissions but the Government considered Article 6 § 1 to be inapplicable to the proceedings in question.

A. Applicability of Article 6 § 1

53. Mr Le Calvez submitted that the proceedings he had brought in the Rennes Administrative Court and subsequently in the Nantes Administrative Court of Appeal had had a purely economic object as they had been independent of all those he had brought earlier, which had been connected with his occupation.

54. The Government's main submission was that Article 6 § 1 did not apply to the instant case as the dispute before the administrative courts had not concerned civil rights and obligations. The action for payment of benefit and compensation had, they said, been closely bound up with the applicant's earlier applications relating to his career and could not be separated from his position – that of being on leave of absence – under the rules governing the civil service. The monetary claim was merely a corollary of the main issue, namely the previous determination of the applicant's status under the rules. That status had, moreover, been decisive in the dismissal of his application by the Rennes Administrative Court on 1 March 1995, the court having held that Mr Le Calvez had not been sent on leave of absence for health reasons and that he accordingly could not claim benefit or compensation. Relying on the Neigel v. France judgment of 17 March 1997 (*Reports of Judgments and Decisions* 1997-II), in which the Court had held that Article 6 § 1 did not

apply in circumstances the Government maintained were similar to those of the instant case, the Government argued that the application was incompatible *ratione materiae* with that provision.

55. The Commission submitted that in the proceedings for payment of benefit and compensation the applicant had been claiming a purely economic right and therefore a "civil" one within the meaning of Article 6 § 1.

56. The Court reiterates that according to the principles laid down in its case-law, it must first ascertain whether there was a "*contestation*" (dispute) over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, lastly, the outcome of the proceedings must be directly decisive for the right in question (see the Acquaviva v. France judgment of 21 November 1995, Series A no. 333-A, p. 14, § 46, and the Balmer-Schafroth and Others v. Switzerland judgment of 26 August 1997, *Reports* 1997-IV, p. 1357, § 32).

In the light of those principles, the Court notes that the applicant claimed to be entitled to benefit and compensation and that his original department refused the claim. His subsequent application to the administrative courts was dismissed on the ground that he had not satisfied the essential statutory condition of eligibility for such benefit and compensation, namely being in post in the civil service. A "*contestation*" consequently arose between Mr Le Calvez and his original department.

The Court must next ascertain whether the applicant's arguments were sufficiently tenable; it does not have to decide whether they were well-founded in terms of the French legislation (see, *mutatis mutandis*, the Neves e Silva v. Portugal judgment of 27 April 1989, Series A no. 153-A, p. 14, § 37) or whether another legal basis would have afforded better prospects of success (see, *mutatis mutandis*, the Editions Périscope v. France judgment of 26 March 1992, Series A no. 234-B, p. 65, § 38). The Rennes Administrative Court and subsequently the Nantes Administrative Court of Appeal held the application to be admissible; they did, it is true, find that the applicant had not satisfied the eligibility condition laid down by the domestic legislation for payment of the benefit and compensation sought, but in so doing they determined the dispute. Furthermore, the outcome of the proceedings in the administrative courts – to seek an order to quash the High Commissioner's implicit refusal of Mr Le Calvez's application for payment of benefit and compensation – was directly decisive for the applicant's right to be paid sickness benefit while he was absent from work owing to illness. There was consequently a "*contestation*" over a "right" within the meaning of Article 6 § 1. It must therefore be examined whether the right was a "civil" one.

57. The Court draws attention to its settled case-law, according to which disputes relating to the recruitment, careers and termination of service of civil servants are as a general rule outside the scope of Article 6 § 1 (see, among other authorities, the Neigel judgment cited above, p. 410, § 43). That provision is nevertheless applicable where the claim in issue relates to a "purely economic" right – such as payment of salary (see the De Santa v. Italy, Lapalorcia v. Italy and Abenavoli v. Italy judgments of 2 September 1997, *Reports* 1997-V, p. 1663, § 18, p. 1677, § 21, and p. 1690, § 16, respectively) or pension (see the Francesco Lombardo v. Italy judgment of 26 November 1992, Series A no. 249-B, pp. 26–27, § 17, and the Massa v. Italy judgment of 24 August 1993, Series A no. 265-B, p. 20, § 26) – or an "essentially economic" one (see the Nicodemo v. Italy judgment of 2 September 1997, *Reports* 1997-V, p. 1703, § 18).

58. In the instant case the Court notes that the applicant's reinstatement in his original department was not possible (see paragraph 30 above). It points out, in particular, that the department in question was not under any obligation in this respect and that the issue of the applicant's possible right to reinstatement in his original or another department lies outside the scope of Article 6 § 1 on account of the administrative authorities' discretion in the matter and of its nature as being connected with the development of the applicant's career in the strict sense.

On the other hand, the issue at the heart of the proceedings for payment of benefit and compensation differed from that in the other proceedings in that it was economic in nature. Admittedly, the claim in question was closely bound up with Mr Le Calvez's being on leave of absence inasmuch as that status is subject to rules and entails a number of consequences, in particular the loss of certain benefits characteristic of the French civil service. Nevertheless, the applicant, whose means of subsistence were affected and who had been absent from work owing to illness since August 1991, was entitled to seek a ruling from the courts on his claim for benefit and compensation. The outcome of his application – whether in his favour or not – was bound to have an effect on his economic rights. Furthermore, the Court notes that the dispute between the applicant and the authorities in no way called in question the authorities' discretionary powers. It consequently concludes that the applicant's claim was a civil one for the purposes of Article 6 § 1, which therefore applies in the case.

B. Compliance with Article 6 § 1

59. It remains to be determined whether a "reasonable time" was exceeded. The applicant and the Commission maintained that it had been, whereas the Government said it had not.

60. The period to be taken into consideration did not begin, as the Government stated, with the application of 15 July 1992 to the Rennes

Administrative Court, but on 30 June 1992 with the submission of the preliminary claim to the High Commissioner (see, among other authorities and *mutatis mutandis*, the X v. France judgment of 31 March 1992, Series A no. 234-C, p. 90, § 31). The proceedings have not yet ended, as they are still pending in the *Conseil d'Etat* (see paragraph 43 above). To date they have lasted six years.

61. The reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities (see, among many other authorities, the Duclos v. France judgment of 17 December 1996, *Reports* 1996-VI, p. 2180, § 55).

62. In the Government's submission, the length of the proceedings in the Administrative Court had not been excessive as other proceedings brought by the applicant had been pending before that court. Furthermore, the proceedings in the Nantes Administrative Court of Appeal had been appreciably prolonged on account of difficulties attributable not to that court but to the negligence of the lawyer assigned under the legal-aid scheme, who had never produced a pleading.

63. Like the Commission, the Court notes that while the applicant's conduct was not irreproachable, several delays are to be laid at the door of the authorities: firstly, there was the one between 15 July 1992, the date of the application to the Administrative Court (see paragraph 27 above), and 11 July 1994, when the High Commissioner's pleading was filed (see paragraph 29 above); thereafter, a period of nearly eight months elapsed between the latter date and the delivery of the Administrative Court's judgment on 1 March 1995, although that court took no preparatory measures other than communicating the applicant's pleading (see paragraph 31 above); lastly, it took three years to try on appeal a case which, notwithstanding the applicant's request for joinder (see paragraph 35 above) and the delay in filing his pleading in the Administrative Court of Appeal (see paragraph 40 above), was simple and for which no preparatory measures proved necessary. In view of all these delays, the Court considers that the "reasonable time" requirement of Article 6 § 1 was not satisfied. There has accordingly been a violation of that provision.

II. APPLICATION OF ARTICLE 50 OF THE CONVENTION

64. Article 50 of the Convention provides:

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the … Convention, and if the internal law of the said Party

allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

65. Mr Le Calvez sought 50,000 French francs (FRF) in respect of pecuniary damage and FRF 250,000 in respect of non-pecuniary damage.

66. In the Government's submission, that claim was not serious as Mr Le Calvez could not be unaware that his leave of absence would deprive him of his entitlement to social-security benefits. At all events, a finding of a violation would constitute in itself sufficient reparation for any damage sustained.

67. The Delegate of the Commission wished to leave it to the Court's discretion to assess a sum in respect of non-pecuniary damage.

68. The Court considers that no causal link between the length of the proceedings in issue and the alleged pecuniary damage has been made out and accordingly dismisses that part of the applicant's claim. On the other hand, the excessive length of the proceedings may reasonably be supposed to have caused the applicant some anxiety and thus non-pecuniary damage. Making its assessment on an equitable basis, the Court awards the applicant FRF 15,000.

B. Costs and expenses

69. The applicant claimed FRF 20,000 for costs and expenses incurred in the domestic courts and before the Convention institutions.

70. The Government and the Delegate of the Commission did not express a view.

71. Having regard to the lack of particulars and vouchers as to the costs incurred, the Court considers that an award of only half the sum sought would be reasonable, that is to say FRF 10,000.

C. Default interest

72. According to the information available to the Court, the statutory rate of interest applicable in France at the date of adoption of the present judgment is 3.36% per annum.

FOR THESE REASONS, THE COURT

1. *Holds* by eight votes to one that Article 6 § 1 of the Convention applies in the case and that there has been a violation of it;

2. *Holds* unanimously
(a) that the respondent State is to pay the applicant, within three months, 15,000 (fifteen thousand) French francs for non-pecuniary damage and 10,000 (ten thousand) French francs in respect of costs and expenses;
(b) that simple interest at an annual rate of 3.36% shall be payable on those sums from the expiry of the above-mentioned three months until settlement;

3. *Dismisses* unanimously the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 29 July 1998.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 53 § 2 of Rules of Court A, the dissenting opinion of Mr Pettiti is annexed to this judgment.

Initialled: R. B.
Initialled: H. P.

DISSENTING OPINION OF JUDGE PETTITI

(*Translation*)

I voted in favour of finding that there had been no violation as I am of the view that the decision is not, as regards the applicability of Article 6, in line with the Court's settled case-law, in particular Neigel and Huber and, in the contrary direction, Cazenave de la Roche.

The question of principle was in fact identical. It was a matter of identifying the nature and object of the issue before the national administrative courts.

Such an analysis would lead to the same finding as in the Neigel and Huber cases, namely that what was at issue was the rules governing the civil service and not a separate, ancillary economic question.

The application of the rules on the civil service in the Le Calvez case was the consequence of the legislation itself and not merely of an interpretation by the national courts.

The problem of the possible incompatibility of a national court decision with the Convention does not arise, therefore.

This analysis is borne out by the Nantes Administrative Court of Appeal's judgment, delivered on 14 May 1998, after the public hearing before the European Court.

Under the service rules which he had accepted, Mr Le Calvez knew that the maximum period of leave of absence was nine years and that at the end of that period he was no longer covered by the rules as his secondment had come to an end. It was of his own free will that he had applied for leave of absence and that he did not seek reinstatement in good time, while on 9 August 1991 he refused to return to his post or a similar post in New Caledonia. Mr Le Calvez left the civil service deliberately.

It followed *ipso facto* that he lost the privileges and entitlements to benefits and compensation afforded by the Civil Service Code. Mr Le Calvez's application for sickness benefit was unjustified, since he had been warned on 28 May 1991 that his secondment would come to an end on 1 August 1991.

Furthermore, the Rennes Administrative Court rightly refused to set aside the order terminating his secondment. The same court also refused to grant a stay of execution.

The authorities were not under an obligation to give him a post even if they had had the necessary budgetary means.

Mr Le Calvez submitted fifty notifications of absence from work due to illness, all of which were held by the national tribunal of fact to be unjustified.

The European Court cannot substitute its own assessment of the facts and interpretation of national law for those of the national court.

Mr Le Calvez's position is comparable to that of a private-sector employee on a fixed-term contract. If the contract was for two months, he could not ask for a third month's salary or benefits. In such a case there would not even be a serious *contestation* (dispute).

The Administrative Court of Appeal's decision amply confirms that the case turned essentially on the question whether Mr Le Calvez could claim rights under the rules governing the civil service.

On that question of principle the Administrative Court of Appeal confirms that Mr Le Calvez had lost the advantage of the benefits granted by the civil service in accordance with the rules to which he was subject.

Consequently, his application did not even amount to a serious dispute over civil rights and obligations as required by Article 6 according to the Court's case-law.

Mr Le Calvez was in a situation comparable to that of a person who, never having been a civil servant, claims damages and salary or benefits from an administrative authority of which he has not been an established member.

Claiming sums to which one is not entitled is not sufficient in law to make the claim primarily an economic one. The original claim was connected with the rules. The domestic courts' dismissal of it does not fall within the scope of the European Convention on Human Rights.

Bringing civil-service disputes within the ambit of Article 6 of the Convention might certainly be desirable, but that is a matter for the States and a Protocol.

As regards unreasonable duration, in particular, and even without a Protocol, Article 6 might possibly be applicable if the applicant had argued that the unreasonable length of the proceedings had effectively amounted to a refusal of access to the court. But Mr Le Calvez's application did not deal with that point.

That being so, and in the context of jurisdiction *ratione materiae*, Article 6 was not, in my view, applicable.