



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

CASE OF COUEZ v. FRANCE

(94/1997/878/1090)

JUDGMENT

STRASBOURG

24 August 1998

In the case of Couez v. France¹,

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 A², as a Chamber composed of the following judges:

Mr F. GÖLCÜKLÜ, *President*,

Mr L.-E. PETTITI,

Mr A. SPIELMANN,

Mr N. VALTICOS,

Mr R. PEKKANEN,

Mr J. MAKARCZYK,

Mr K. JUNGWIERT,

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 21 April and 29 July 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 19 September 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 24271/94) against the French Republic lodged with the European Commission of Human Rights (“the Commission”) under Article 25 by a French national, Mr Guy Couez, on 8 July 1993.

The Government’s application referred to Article 48 of the Convention. 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 94/1997/878/1090. 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 sought leave to present his own case. The President of the Chamber refused leave and requested the applicant to appoint to represent him an advocate authorised to practise in any of the Contracting States and resident in the territory of one of them (Rule 30 § 1). As the applicant did not designate a representative within the time allowed him by the President, the Court assumed that he did not wish to take part in the proceedings.

3. On 25 September 1997 the President of the Court, Mr R. Ryssdal, decided, under Rule 21 § 7 and in the interests of the proper administration of justice, that a single Chamber should be constituted to consider both the instant case and the case of *Benkessiouer v. France*¹. The Chamber to be constituted for that purpose included *ex officio* Mr L.-E. Pettiti, the elected judge of French nationality (Article 43 of the Convention), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 § 4 (b)). On the same day, in the presence of the Registrar, the President of the Court drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr F. Matscher, Mr A. Spielmann, Mr N. Valticos, Mr R. Pekkanen, Mr J. Makarczyk and Mr V. Butkevych (Article 43 *in fine* of the Convention and Rule 21 § 5). Subsequently Mr Gölcüklü replaced Mr Bernhardt as President of the Chamber and Mr E. Levits, substitute judge, became a full member of the Chamber, and Mr K. Jungwiert, substitute judge, replaced Mr Matscher, who was 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 Bernhardt, acting through the Registrar, consulted the Agent of the Government, Mr Y. Charpentier, the applicant and the Delegate of the Commission, Mr J.-C. Soyer, on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's claims under Article 50 of the Convention on 17 March 1998 and the Government's memorial on 1 April 1998. On 20 April 1998 the Delegate of the Commission stated that he did not wish to submit observations on those documents.

5. On 24 February 1998 the Chamber decided to dispense with a hearing in the case, having satisfied itself that the conditions for this derogation from its usual procedure had been met (Rules 26 and 38).

1. Case no. 95/1997/879/1091.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. Mr Couez was born in 1941 and lives at Saint-Quentin (*département* of Aisne).

On 20 January 1989 he had a heart attack during the annual cross-country race held by the company of *CRS* (*Compagnies républicaines de sécurité* – mobile security police units) to which he belonged. After being on sick-leave from 20 to 23 January 1989 and from 25 January to 11 April 1989, he returned to work. On 8 February 1991 he applied for extended sick-leave and asked that his heart attack and the subsequent periods of sick-leave should be recognised as work-related so that he would be covered by the rules applicable to police officers injured in the execution of their duty.

7. On 3 May 1991 the inter-*département* medical board recommended that the application for extended sick-leave should be refused. On 14 May 1991 Mr Couez was notified of his authorities' refusal to grant him the leave. In a letter of 27 December 1991 the Prefect of the Nord-Pas-de-Calais region informed the applicant that the medical board had recommended that his sick-leave should not be regarded as having been work-related and that he should be declared permanently unfit for active police duties and be transferred to the administrative staff until his retirement at 60; he stated that if either Mr Couez or the Ministry of the Interior refused this transfer, the applicant would be retired on grounds of invalidity with immediate effect.

A. The proceedings to challenge the authorities' refusal to regard the sick-leave as having been due to a work-related accident

8. On 20 January 1992 the applicant brought proceedings in the Amiens Administrative Court to challenge the Prefect's decision of 27 December 1991 to inform him that the medical board had refused to regard sick-leave on 8 April 1990 as having been due to a work-related accident. On 5 February 1992 he also applied for a stay of execution of that decision.

In the meantime, on 25 January 1992, Mr Couez had refused transfer to the administrative staff and on 3 February 1992 the Ministry of the Interior had declared him unfit for active police duties and had placed him on the ordinary sick list with retrospective effect from 8 August 1990.

9. In a judgment of 2 July 1992 the Amiens Administrative Court refused the application for a stay of execution of the decision of 27 December 1991.

On 10 July 1992 Mr Couez was sent on compulsory unpaid leave of absence (*disponibilité*) with effect from 8 August 1991, the date on which he had exhausted his entitlement to ordinary sick-leave. On 4 September 1992, in a fresh decision, he was maintained in the same position.

10. On 5 August 1992 the Prefect informed the applicant that a Dr B. had been designated to examine him with a view to his being retired on grounds of invalidity.

11. On 24 March 1993 Mr Couez applied to the Amiens Administrative Court for an interim ruling by its President in the proceedings he had brought on 20 January 1992 (see paragraph 8 above). In an order of 25 March 1993 the President of the Administrative Court refused the application.

12. On 24 January 1994 Mr Couez was retired on grounds of invalidity.

13. On 31 May 1995 the Administrative Court made an interlocutory order for a medical report on the applicant.

On 28 June 1996 it quashed the decisions of 10 July and 4 September 1992 in so far as they kept Mr Couez on compulsory unpaid leave of absence from 15 January 1992; it also set aside the decision of 24 January 1994 whereby he had been retired on grounds of invalidity (see paragraph 12 above); the court held that the applicant should have been retired on 25 January 1992, when he had refused the transfer proposal that had been made to him (see paragraph 8 above).

On 25 July 1995 Mr Couez had appealed against the interlocutory order of 31 May 1995, and that appeal was still pending in the Nancy Administrative Court of Appeal on the date of delivery of the present judgment.

14. According to the Government, the applicant submitted twenty-seven pleadings between 20 January 1992 (the date of the application to the Amiens Administrative Court) and 28 June 1996 (when that court gave judgment).

B. The proceedings to challenge the decision requiring unpaid leave of absence to be taken

15. On 18 March 1992 Mr Couez had also brought proceedings in the Amiens Administrative Court to challenge the decision of 10 July 1992 whereby he had been sent on compulsory unpaid leave of absence (see paragraph 9 above). He subsequently withdrew these proceedings, and on 31 May 1995 the Administrative Court delivered a judgment formally taking notice of the withdrawal.

On 31 July 1995 the applicant appealed against that judgment, and the appeal was still pending in the Nancy Administrative Court of Appeal on the date of delivery of the present judgment.

16. According to the Government, the applicant filed seven pleadings with the Amiens Administrative Court (between 18 March 1992 and 31 May 1995) and three in the Nancy Administrative Court of Appeal (between 31 July 1995 and 4 June 1996).

II. RELEVANT DOMESTIC LAW

17. The relevant sections of Law no. 84-16 of 11 January 1984 making provisions governing the civil service provide:

Section 34

“A civil servant in post shall be entitled to:

...

(2) sick-leave of up to one year in all during a period of twelve consecutive months in the event of duly certified illness making it impossible for the person concerned to carry out his duties. The civil servant shall then remain on full salary for a period of three months and shall be paid half his salary for the following nine months...

However, if the illness arises from one of the exceptional causes referred to in Article L. 27 of the Civilian and Military Retirement Pensions Code or from an accident that occurred in the performance of his duties or when performing them, the civil servant shall be paid his full salary until he is able to resume his duties or is retired. He shall further be entitled to reimbursement of medical fees and expenses directly entailed by the illness or accident.

(3) extended sick-leave of a maximum length of three years in cases in which it is established that the illness makes it impossible for the person concerned to carry out his duties, requires prolonged treatment and care, is disabling and has been confirmed as serious. The civil servant shall remain on full salary for one year and shall be paid half his salary for the following two years...”

Section 51

“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 34 above. A civil servant on leave of absence who successively refuses three posts offered to him with a view to his reinstatement may be dismissed after consultation of the joint administrative committee."

Section 65

"A civil servant who has become disabled as a result of a work-related accident entailing permanent disablement of at least 10% or an occupational disease may claim a temporary disablement allowance payable in addition to his salary and the amount of which shall be set as a fraction of the minimum salary ... corresponding to the percentage of disablement.

The eligibility requirements and the arrangements for granting, assessing, paying and reviewing temporary disablement allowances shall be laid down in a decree issued after consultation of the *Conseil d'Etat* which shall also specify the occupational diseases."

PROCEEDINGS BEFORE THE COMMISSION

18. Mr Couez applied to the Commission on 8 July 1993. 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.

19. The Commission (Second Chamber) declared the application (no. 24271/94) admissible on 27 November 1996. In its report of 21 May 1997 (Article 31), it expressed the unanimous opinion that there had been a violation of Article 6 § 1. The full text of its opinion is reproduced as an annex to this judgment¹.

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

20. In their memorial the Government asked the Court to dismiss Mr Couez's application.

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.

AS TO THE LAW

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

21. Mr Couez complained of the length of the various proceedings he had brought in the administrative courts. He relied on Article 6 § 1 of the Convention, which provides:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

A. Applicability of Article 6 § 1

22. The Government’s primary submission was that Article 6 § 1 did not apply to the instant case. They argued that the *Huber v. France* judgment of 19 February 1998 (*Reports of Judgments and Decisions* 1998-I) was applicable by analogy, as the two cases related to the career and termination of service of a civil servant and originated in extended sick-leave. While the consequences for Mr Couez of the administrative authorities’ decisions were also partly pecuniary, that factor did not suffice to make the proceedings in issue “civil” ones (see the *Huber* judgment cited above, pp. 115–16, § 37). The consequences flowed from the initial decision to refuse Mr Couez extended sick-leave and to regard his ordinary sick-leave as having been due to a work-related accident; those decisions, however, primarily concerned the development of the career of a civil servant, who contributed to the performance of one of the State’s fundamental inherent functions, the maintenance of public order. Furthermore, the relevant legislation in this instance (see paragraph 17 above) conferred unilateral discretionary powers on the State and these were based on the public service and not, as in the case of private-law employees, on contract and agreement.

23. The Commission submitted that in the proceedings relating to the authorities’ refusal to regard Mr Couez’s accident as being work-related the applicant had been claiming a purely economic right linked to his occupation. The entitlement to extended sick-leave had to be regarded as a “civil right” within the meaning of Article 6 § 1, which therefore applied in the case.

24. 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 v. France* judgment of 17 March 1997, *Reports* 1997-II, 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).

25. Unlike the position in the *Neigel* and *Huber* cases, where what was in issue was essentially the applicants’ reinstatement in the public service, Mr Couez’s claims at first sight concerned his “career” and the “termination of [his] service” (see paragraphs 6 and 7 above); however, their outcome – whether in his favour or not – was bound to have a decisive effect on his economic rights, since if the Amiens Administrative Court had quashed the authorities’ refusal to regard his sick-leave as having been due to a work-related accident, the rules on civil servants injured in the execution of their duty would have been applied to him and also he would not have been sent on compulsory unpaid leave of absence.

More specifically, recognition by a competent authority that his accident had occurred in the performance of his duties would have enabled him to be paid his full salary until he was fit to return to work or until he was retired and to be reimbursed the medical fees and expenses directly entailed by the accident. In the event of disablement due to such an accident, he could have claimed a temporary disablement allowance payable in addition to his salary. Lastly, being granted extended sick-leave would have entitled him to payment of his full salary for one year and half his salary for a further two years (see paragraph 17 above).

The Court therefore finds that the dispute between the applicant and the authorities did not put in issue the authorities’ special rights; if Mr Couez had succeeded in his claim, the State would have been obliged to apply those arrangements to him in accordance with the legislation in force (see, *mutatis mutandis*, the *Francesco Lombardo* judgment cited above, p. 27, § 17).

The Court consequently concludes that the applicant’s claims were civil ones within the meaning of Article 6 § 1, which therefore applies in the case.

B. Compliance with Article 6 § 1

26. The Court must accordingly determine whether a “reasonable time” was exceeded. The Commission and the applicant said that it had been and the Government that it had not.

27. The Court notes that the first set of proceedings, concerning the authorities’ refusal to regard the applicant’s sick-leave as having been due to a work-related accident, began on 20 January 1992 with the application to the Amiens Administrative Court (see paragraph 8 above) and ended on 28 June 1996, when that court gave judgment (see paragraph 13 above). It therefore lasted four years, five months and eight days. The applicant’s appeal against the interlocutory order of 31 May 1995 is still pending in the Nancy Administrative Court of Appeal (see paragraph 13 above).

The second set of proceedings, relating to the unpaid leave of absence, began on 18 March 1992, the date of the application to the Amiens Administrative Court, and is still pending in the Nancy Administrative Court of Appeal (see paragraph 15 above).

28. The reasonableness of the length of proceedings must be assessed in the light of the 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 and *mutatis mutandis*, the Ceteroni v. Italy judgment of 15 November 1996, *Reports* 1996-V, p. 1756, § 22).

29. The Government submitted that the delays complained of were due to the conduct of Mr Couez, who filed twenty-seven pleadings in connection with the first set of proceedings, thereby entailing a particularly heavy workload for the reporting judge in the way of supervision and communication of documents.

30. Like the Commission, the Court notes a period of inactivity attributable to the judicial authorities in connection with the first set of proceedings, namely between 2 July 1992, when the application for a stay of execution of the decision of 27 December 1991 was refused (see paragraph 9 above), and 25 March 1993, when the application for an interim order was refused (see paragraph 11 above). Furthermore, from that date until delivery of the Administrative Court’s judgment of 28 June 1996, the only preparatory measure taken by that court, apart from communicating the parties’ pleadings, was the interlocutory order of 31 May 1995 for a medical report (see paragraph 13 above).

A “reasonable time” was consequently exceeded and there has therefore been a violation of Article 6 § 1.

II. APPLICATION OF ARTICLE 50 OF THE CONVENTION

31. 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

32. For his “numerous pecuniary, non-pecuniary and bodily losses and on account of the attacks on [his] honour” Mr Couez sought 3,000,000 French francs (FRF) in damages, payment of sums due in back pay with interest since the suspension of the payment of his salary, reimbursement of costs incurred on lawyers, payment of sickness claims, reimbursement of expenditure on telephone calls, correspondence and travel and, above all, payment of his retirement pension as a policeman with effect from his fifty-fifth birthday, with interest. He also sought recognition that he had been the victim of a work-related accident, cancellation of the assessment made by his commanding officer, appointment as a sergeant and, lastly, award of the sports medal and medal for courage and devotion to duty.

33. The Government submitted that the applicant was confusing the damage he considered he had sustained on account of the dispute between him and the administrative authorities with that caused by the length of the proceedings. If a violation of Article 6 § 1 was found, it would in itself constitute sufficient just satisfaction.

34. The Delegate of the Commission did not express a view.

35. As regards pecuniary damage, the Court discerns no causal link between the violation of Article 6 § 1 and the damage sustained by Mr Couez. As to non-pecuniary damage, the excessive length of the main proceedings may reasonably be supposed to have caused the applicant anxiety and tension. Making its assessment on an equitable basis, the Court awards him FRF 30,000 under this head.

36. As to the applicant’s other claims, the Court is not empowered to rule on them (see, among other authorities, the *Higgins and Others v. France* judgment of 19 February 1998, *Reports* 1998-I, p. 62, § 50).

B. Default interest

37. 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 seven votes to two 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, 30,000 (thirty thousand) French francs for non-pecuniary damage;
 - (b) that simple interest at an annual rate of 3.36% shall be payable 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 24 August 1998.

Signed: Feyyaz GÖLCÜKLÜ
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 53 § 2 of Rules of Court A, the following separate opinions are annexed to this judgment:

- (a) concurring opinion of Mr Pekkanen;
- (b) dissenting opinion of Mr Pettiti joined by Mr Gölcüklü.

Initialled: F. G.
Initialled: H. P.

CONCURRING OPINION OF JUDGE PEKKANEN

1. I voted in favour of the view that Article 6 § 1 of the Convention was applicable in this case, for the reasons set out in my dissenting opinions in the cases of *Spurio*, *Gallo*, *Zilaghe*, *Laghi*, *Viero*, *Orlandini*, *Ryllo*, *Soldani*, *Fusco*, *Di Luca* and *Saluzzi*, *Pizzi*, *Scarfò*, *Argento* and *Trombetta v. Italy* (see the Court's judgments of 2 September 1997, *Reports of Judgments and Decisions* 1997-V) and in the case of *Huber v. France* (judgment of 19 February 1998, *Reports* 1998-I).

2. As I had the opportunity to state in those cases, the term "civil servant" has been used by the Court in a manner which suggests that it covers all the administrative officials in State or local-authority service who are not employed under a contract governed by private law. A civil servant is, according to the Court's case-law, protected by Article 6 § 1 only if the dispute concerns, not his or her recruitment, career or termination of service, but, for instance, a purely economic entitlement. In addition, it is a requisite for the applicability of Article 6 § 1 that the discretionary powers of the administrative authority in question should not be in issue. In my opinion, that approach gives rise to drawbacks on two counts.

Firstly, it covers all civil servants without distinction, irrespective of their position in the hierarchy or the type of duties performed. However, States have an understandable and an acceptable interest in deciding such issues, without being subject to judicial control, only in respect of senior officials who exercise public authority.

Secondly, this approach had the result that the civil servants of several member States were unequally protected by the Convention inasmuch as those who were governed by public law were partly deprived of the safeguards in Article 6 while some of their colleagues, employed under private law, enjoyed them, notwithstanding the similarity of their duties.

3. In my opinion, a distinction should be drawn between those civil servants who exercise public authority and those who do not. Such a distinction has been recognised by the Court of Justice of the European Communities (see, for example and *mutatis mutandis*, case no. 473/93, *Commission v. Luxembourg*, judgment of 2 July 1996). In the instant case the applicant was a police officer who was confronted with the authorities' refusal to regard his sick-leave as having been due to a work-related accident and who eventually had recourse to the courts, as he was entitled to do under French law. Depriving him of the procedural safeguards enshrined in Article 6 solely on the basis that he was a civil servant would scarcely have been compatible with any conception of fairness and would have been discriminatory *vis-à-vis* all other potential litigants to whom the same courts are required to afford those safeguards.

DISSENTING OPINION OF JUDGE PETTITI
JOINED BY JUDGE GÖLCÜKLÜ

(*Translation*)

I voted with the minority in favour of the view that Article 6 of the Convention did not apply. The Couez case raised once again the problem of the substantive scope of the European Convention.

In its case-law the Court has clearly stated that the civil service and contentious matters rising under the rules governing the civil service are not within the ambit of the Convention.

The member States are free to adopt a civil service code, the oldest model for which is that of French public law.

As an exception, the Court accepts that Article 6 is applicable where what is in issue is economic matters that are wholly severable from disputes concerning the rules, career criteria and special arrangements etc. and are not merely incidental to the main question before the Court concerning the rules of service (see the *Neigel v. France* judgment of 17 March 1997, *Reports of Judgments and Decisions* 1997-II, and the *Huber v. France* judgment of 19 February 1998, *Reports* 1998-I).

Another exception is the one concerning exercise of freedom of belief or expression (see the *Vogt v. Germany* judgment of 26 September 1995, Series A no. 323).

In the instant case, however, there was a dispute over the refusal to grant Mr Couez extended sick-leave and regard as being due to a work-related accident his sick-leave of 8 April 1990, his transfer to the administrative staff, his compulsory leave of absence and his retirement on grounds of invalidity with the legal and financial consequences resulting from the rules of service.

Those questions were connected with career development up to “termination of service”. The dispute was not an essentially economic one.

The nature of the dispute was determined by the decision in domestic law to refuse to grant extended sick-leave and to regard absences from work because of illness as being due to a work-related accident (which gave rise to the dispute). Those issues could only be decided by interpreting and applying the Civil Service Code and following administrative case-law. The case considered by the Court in the *Cazenave de la Roche v. France* judgment of 9 June 1998, *Reports* 1998-III, was quite different.

The State’s special rights in this field are the *quid pro quo* of the considerable advantages enjoyed by civil servants in comparison with private-sector employees (in particular, job security, limited liability, and retirement arrangements). Mr Couez was a civil servant who contributed to the performance of the State’s functions. Since it was held that his absence from work because of illness was not due to a work-related accident, he

could not claim all the welfare benefits that went with that work. His unfitness for active police duties made it necessary to transfer him and send him on leave of absence and subsequently led to the decision to retire him on grounds of invalidity, a logical consequence of the rules. In its judgment of 31 May 1995 the Administrative Court quashed the decisions of 10 July 1992 and 4 September 1992 in so far as they kept Mr Couez on compulsory leave of absence from 25 January 1992 and the decision of 24 January 1992 whereby he had been retired on grounds of invalidity.

All these elements of the dispute and the case are directly problems of applying the rules of service and cannot be equated with economic issues comparable to those in private-sector disputes or separable from the national courts' assessment of the merits as regards the application of the (national) Civil Service Code.

The argument in paragraph 25 that, unlike the position in the Neigel and Huber cases, reinstatement was not in issue in the instant case does not seem to me to be relevant.

The non-applicability of Article 6 to the Civil Service Code is not restricted to questions of access or reinstatement but also covers legal issues specific to the civil service such as work-related accidents and rules on leave of absence and retirement, which are directly career factors within the civil service.

Speculating on the allowances which the applicant could have claimed if it had been recognised that he had sustained a work-related accident (see paragraph 25 of the judgment) is not a valid reason for departing from the Neigel and Huber case-law, or else it amounts to determining the merits of the case in the place of the national courts, although administrative procedure satisfies the rules on the protection of litigants.

It is obvious that disputes of this kind necessarily have pecuniary or incidentally economic consequences if the plaintiff's claim is refused, but the same is true of civil disputes that are not serious and they do not suffice to satisfy the criteria of "civil rights and obligations".

In my view, the judgment errs in noting in paragraph 25 differences between the Neigel, Huber and Couez cases, as what was in issue in all three was the application of the rules and their effects on career and career misfortunes.

To hold that recognition of a work-related accident would have enabled the applicant to be paid his full salary is an inappropriate argument since the problem was precisely that of judging, in the context of the rules and the administrative jurisdiction, whether or not there had been a work-related accident.

If the authority competent in domestic law decides that there has not been a work-related accident, it remains open to the person concerned to bring proceedings in a civil court under the ordinary law.

Contrary to what is stated in paragraph 25, the dispute did indeed put in issue the authorities' special rights, but the latter are not discretionary in French law: they are the corollary of privileges granted to civil servants by the Civil Service Code.

Since the Chamber did not refer the case to the Grand Chamber, the settled case-law cited in paragraph 24 must, in my view, be considered as still representing the prevailing trend of the European Court of Human Rights' case-law.

The general principles governing the Civil Service Code and the European Convention were analysed in detail in the *Le Calvez v. France* judgment of 29 July 1998, *Reports* 1998-V.

Reference should be made to that as complementing this opinion.

Certainly it might be desirable for European law on the subject to be unified in the future, but such a reform is for the member States to achieve by signing and ratifying a Protocol to the Convention.