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

CASE OF AHMED AND OTHERS v. THE UNITED KINGDOM

(65/1997/849/1056)

JUDGMENT

STRASBOURG

2 September 1998

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SUMMARY[1]

Judgment delivered by a Chamber

United Kingdom – restrictions on the involvement of senior local government officers in certain types of political activity (Local Government Officers (Political Restrictions) Regulations 1990)

I. ARTICLE 10 OF THE CONVENTION

A. Whether there had been an interference

Not disputed that applicants as public servants could rely on guarantees in Article 10 and that there had been an interference with their rights under that Article.

B. Whether the interference was justified

1. "*Prescribed by law*"

Regulations designed to lay down rules for a large number of local government officers restricting their participation in certain forms of political activity which could impair their impartiality – inevitable that conduct which might lead third parties to question an officer's impartiality cannot be defined with absolute precision – open to an officer to seek advice if uncertain as to whether a particular action might infringe Regulations – furthermore, scope and application of allegedly vague provisions had to be seen in light of vice which parent Act sought to avoid.

2. Legitimate aim

Interferences which resulted from application of Regulations to applicants pursued legitimate aim: to protect rights of others, council members and electorate, to effective political democracy at the local level.

3. "*Necessary in a democratic society*"

Reiteration of basic principles contained in Court's judgments on Article 10.

Regulations adopted in light of findings of official inquiry into impact of involvement of senior local government officers in political activities on their duty of political impartiality – findings pointed to specific instances of abuse of power by certain officers and potential for increased abuse in view of trend towards confrontational politics in local government – Court considers that Regulations addressed an identified pressing social need: to strengthen tradition of senior officers' political neutrality – addressing that need through adoption of Regulations restricting participation of senior officers in defined forms of political activity which might call into question their duty of political impartiality well within margin of appreciation of respondent State in this sector.

1. This summary by the registry does not bind the Court.

In view of Court, restrictions imposed on applicants not open to challenge on grounds of lack of proportionality – Regulations only applied to carefully defined categories of senior officers like applicants who perform duties in respect of which political impartiality *vis-à-vis* council members and public is paramount consideration – restrictions only concern speech or writing of a politically partisan nature or activities within political parties which would be likely to link senior officers in eyes of public with a particular party political line – recent government review of continuing need for restrictions concluded that their maintenance in force justified.

Conclusion: no violation (six votes to three).

II. ARTICLE 11 OF THE CONVENTION

Court's reasoning in support of its conclusion that no violation of Article 10 equally valid to support a finding of no violation of Article 11: restrictions on applicants' activities within political parties prescribed by law, pursued legitimate aim and constituted a proportionate response to a pressing need.

Conclusion: no violation (six votes to three).

III. ARTICLE 3 OF PROTOCOL No. 1

Aim of Regulations was to secure political impartiality of senior officers such as applicants – that aim also legitimate for purposes of restricting applicants' rights to stand for election – essence of rights under this Article not impaired – for example, restrictions only apply for as long as applicants occupy politically restricted posts.

Conclusion: no violation (unanimously).

COURT'S CASE-LAW REFERRED TO

26.9.1995, Vogt v. Germany; 30.1.1998, United Communist Party of Turkey and Others v. Turkey

In the case of Ahmed and Others v. the United Kingdom[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. SPIELMANN,
Mr J. DE MEYER,
Mr R. PEKKANEN,
Sir John FREELAND,
Mr D. GOTCHEV,
Mr P. KŪRIS,
Mr P. VAN DIJK,

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

Having deliberated in private on 27 April, 25 May and 28 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 European Commission of Human Rights ("the Commission") on 9 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. 22954/93) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission under Article 25 by Mr Mobin Ahmed, Mr Dennis Perrin, Mr Ray Bentley and Mr David John Brough, all British citizens, on 21 September 1993.

Notes by the Registrar

1. The case is numbered 65/1997/849/1056. 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.

The Commission's request referred to Articles 44 and 48 and to the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (Article 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 10 and 11 of the Convention and Article 3 of Protocol No. 1.

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

3. The Chamber to be constituted included *ex officio* Sir John Freeland, the elected judge of British nationality (Article 43 of the Convention), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 § 4 (b)). On 27 August 1997, 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 R. Macdonald, Mr C. Russo, Mr A. Spielmann, Mr J. De Meyer, Mr D. Gotchev, Mr P. Kūris and Mr P. van Dijk (Article 43 *in fine* of the Convention and Rule 21 § 5). Subsequently, Mr L.-E. Pettiti and Mr R. Pekkanen replaced Mr Macdonald and Mr Russo who were unable to take part in the further consideration of the case (Rule 22 § 1).

4. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the United Kingdom Government ("the Government"), the applicants' lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the orders made in consequence, the Registrar received the applicants' memorial on 22 December 1997 and the Government's memorial on 15 January 1998. A schedule to the applicants' memorial setting out details of their claims under Article 50 of the Convention was received at the registry on 22 January 1998. An amended schedule of claims was filed with the registry on 27 April 1998. The Government's responses to the applicants' claims were filed with the registry on 21 April and 18 May 1998. The applicants filed observations in reply on 29 May 1998.

5. On 2 September 1997 the President of the Chamber granted Liberty, a non-governmental organisation based in London, leave to submit written comments on the case (Rule 37 § 2). These were received on 12 January 1998 and subsequently communicated to the Agent of the Government, the representative of the applicants and the Delegate of the Commission for possible observations. No observations were submitted.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 22 April 1998. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*
Mr C. WHOMERSLEY, Foreign and Commonwealth Office, *Agent*,
Mr J. MORRIS QC, Attorney-General,
Mr J. EADIE, Barrister-at-Law, *Counsel*,
Mr I. MACLEOD, Legal Secretariat to the Law Officers,
Mr P. ROWSELL, Department of the Environment, Transport and the Regions,
Mr D. STEELE, Department of the Environment, Transport and the Regions, *Advisers*;

(b) *for the Commission*
Mr N. BRATZA, *Delegate*;

(c) *for the applicants*
Mr J. GOUDIE QC,
Mr A. LYNCH, Barrister-at-Law, *Counsel*,
Mr B. BANKS, *Solicitor*.

The Court heard addresses by Mr Bratza, Mr Goudie and Mr Morris.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The applicants

7. Mr Mobin Ahmed, Mr Dennis Perrin, Mr Ray Bentley and Mr David Brough are all British citizens, born in 1941, 1948, 1947 and 1932 respectively. They live in London, Yelverton, Edgware and Exeter respectively. At the relevant time they were each permanently employed in different capacities by various local authorities. Their precise status and functions are described in Section C below.

The background to their complaints to the Convention institutions is constituted by the enactment and implementation of legislative measures designed to limit the involvement of certain categories of local government officials, such as themselves, in political activities. The history of the enactment of the relevant measures as well as their purport and scope are

described in Section B below. The impact of the measures on the applicants, all persons considered holders of politically restricted posts within the meaning of the applicable legislation, is described in Section C below.

B. The adoption of the Local Government Officers (Political Restrictions) Regulations 1990

1. The political background to the adoption of the Regulations

8. Against the background of the increasing politicisation of local government and attendant problems in respect of the relationship between elected members and local government officers, the Secretaries of State for the Environment, for Scotland and for Wales, appointed on 5 February 1985 a committee ("the Widdicombe Committee") to inquire, *inter alia*, into the respective roles of elected members and officers of local government authorities and to make any necessary recommendations for strengthening the democratic process.

9. On 9 May 1986, after receiving evidence from 138 local government authorities and over 500 other organisations and individuals, the Widdicombe Committee submitted its report. The Committee firmly endorsed the continuation of the tradition of politically impartial local government officers having regard in particular to the roles of senior officers as managers, advisers and arbitrators in the day-to-day functioning of local government. In his foreword to the final report the Chairman of the Committee wrote:

> "6. Although most of the problems we have perceived have been ones of uncertain relations, there have been some cases, albeit a few, where power has been abused."

In the Chairman's view, the recent sharpening of the political intensity of local politics was reflected in the relations between elected council members and local government officers and that the trend towards greater politicisation might be a source of future problems unless recommendations were made in order to provide a framework able to cope with it. With regard to the importance of the impartiality of local government officers, the Widdicombe Committee concluded that:

> "6.141. The overwhelming view in the evidence we have received has been that officers (subject to very limited and closely defined exceptions) should continue to serve the council as a whole. … There has been equally wide agreement that the public service tradition of a permanent corps of politically impartial officers should be retained. …

6.180. Public service in the United Kingdom is founded on a tradition of a permanent corps of politically neutral officers serving with equal commitment whatever party may be in political control. …

6.182. Local government in the United Kingdom has traditionally been based on the same public service tradition as central government, but this has been a matter of convention and practice. …

6.186. The issue of principle is therefore straightforward. There must continue to be a system of permanent and politically neutral officers appointed on the basis of merit. The issue which we need to consider is whether new machinery or rules are required to ensure this, and if so on what basis."

10. To ensure that senior officers continued to discharge their functions in a manner which was impartial from both a subjective and an objective point of view, the Widdicombe Committee in paragraph 6.217 of its report recommended that:

"(a) the legislation should be amended so that persons who are councillors or who are standing for election as councillors, or who have been councillors within the last year, may not be employed by another authority at the rank of principal officer or above;

(b) the Local Authorities' Conditions of Service Advisory Board should take steps to include in the terms and conditions of officers at the rank of principal officer and above a prohibition on political activity, including:

(i) standing for, and holding, public elected office;

(ii) holding office in a political party;

(iii) speaking or writing in public in a personal capacity in a way that might be regarded as engaging in party political debate; and

(iv) canvassing at elections;

(c) if the changes recommended at (b) are not made to officers' terms and conditions, legislation should be introduced to similar effect."

2. The adoption of the Regulations

11. Following the publication of the recommendations of the Widdicombe Committee, on 16 November 1989 the House of Commons passed the Local Government and Housing Act 1989 ("the Act"), which empowered the Secretary of State for the Environment to make regulations to restrict the political activities of certain categories of local government officers. The Act entered into force on 29 November 1989.

12. The Local Government Officers (Political Restrictions) Regulations 1990 ("the Regulations") were made under section 1(5) of the Act on 4 April 1990. They were laid before Parliament the following day and came into force on 1 May 1990. The Regulations applied to all persons holding a politically restricted post as defined in section 2(1) of the Act. This term covers three broad categories of local government officials: the most senior post-holders in local government (category one); officials remunerated in excess of a prescribed level and whose posts are listed for the purposes of the application of the Regulations (category two); and officials paid less than the prescribed level but who hold a listed post (category three). Each local authority was obliged to draw up a list of posts falling within the second and third categories (section 2(2)). A local government officer in the second and third categories could apply to an independent adjudicator to have his or her post removed from the list of posts to which the Regulations applied (section 3).

All local government officials employed in these categories at the time of the entry into force of the Regulations were deemed, according to regulation 3(1), to be subject to the measures.

A more detailed analysis of the contents of the Act and the Regulations is set out at paragraphs 26–33 below.

C. The effect of the Regulations on the applicants

1. Mr Ahmed

13. The first applicant, Mr Ahmed, was a solicitor employed by the London Borough of Hackney. Although his salary fell below the level prescribed in section 2(2)(a) of the Act (see paragraphs 12 above and especially 30 below), making him a category three officer, the Council pursuant to section 2(2)(c) of the Act included his post in the list of politically restricted posts because, in its opinion, his post involved giving advice on a regular basis to committees of the Council, namely the Housing Benefits Review Board, the Housing Development Sub-Committee and the Environmental Sub-Committee (see paragraph 30 below).

14. Mr Ahmed was adopted as Labour candidate for election to the London Borough of Enfield in 1990, but was obliged to withdraw his candidature as a result of the Regulations. On 7 March 1990 he applied for removal of his job description from the list of politically restricted posts

(see paragraphs 12 above and especially 32 below). The Council confirmed that Mr Ahmed had not attended committees during the previous twelve months, but stated that he would be involved in giving advice to committees in future, and would attend on a more regular basis. The Council did not provide therefore a certificate stating that he did not give advice regularly. The adjudicator replied to the Council on 30 March 1990 that Mr Ahmed's application for exemption could not therefore be granted.

2. Mr Perrin

15. Prior to his retirement, the second applicant, Mr Perrin, was Principal Valuer with the Devon County Council (a category three officer). He was responsible for leading, directing and developing the Council's area valuation staff. His post required him to give regular advice to the Council's committees, including strategy advice on key estate management issues, and to speak to the media. Accordingly his post was included in the list of politically restricted posts kept by the Council in accordance with section 2(2) of the Act (see paragraph 12 above and especially paragraph 31 below).

16. On 19 February 1990 Mr Perrin applied for exemption from political restrictions on the ground that although he advised the Council at meetings and spoke to the media, the advice was "factual valuation information regarding the acquisition, disposal and management of property". His application for exemption was refused on 20 March 1990. The adjudicator wrote:

> "I am satisfied that the duties of your post do fall within section 2(3) of the Act in that you do regularly attend committee meetings of the authority to give advice. Your authority do state that this advice does not extend to 'policy advice', but the Act itself makes no distinction between types of advice. I am not prepared, therefore, to grant an exemption under section 3(4) of the Act."

17. As a result of the Regulations, Mr Perrin had to give up his position as Vice-Chair and Property Officer of the Exeter Constituency Labour Party, and had to refrain from supporting and assisting Labour candidates in Exeter City Council elections, including his wife, who was a candidate in May 1990 and May 1991. He also reduced his involvement in trade union activities.

3. Mr Bentley

18. The third applicant, Mr Bentley, is a planning manager with Plymouth City Council. He resigned from his position as Chairman of Torridge and West Devon Constituency Labour Party because of the Regulations, and was also restricted in canvassing for his wife who stood as the only Labour Councillor for the West Devon Borough Council, and in giving radio interviews in his capacity as Chairman of the Plymouth Health Emergency, a body concerned with National Health policies.

19. The monitoring officer of the Council classified Mr Bentley's post as one that was politically sensitive (a category one post) and appropriately subject to political restrictions under section 2(3) of the Act (see paragraph 30 below). The reasons for the classification included that Mr Bentley was head of the Council's corporate policy unit, that he was responsible directly to the head of the Council's paid service, that his post was responsible for policy analysis and research, that he represented the Council on a transport steering group involving other authorities and organisations, and that, in the twelve months prior to 31 August 1990, he attended three meetings of the Council's Policy and Resources (Finance sub-) Committee and advised on four separate issues of public transport. The monitoring officer considered that Mr Bentley's post also fell within section 2(7)(a) and (b) of the Act, and was therefore politically restricted in any event (see paragraph 28 below).

20. Mr Bentley applied for exemption from political restrictions. On 19 November 1990 the adjudicator underlined that he regarded his duties as limited to considering applications concerning restrictions under section 2(2) of the Act. He stated that although the Council may have identified the post as being politically restricted, it was not

> "politically restricted because of that fact, but because it is explicitly covered by section 2(1)(c) of the Act. I therefore do not consider it necessary or desirable to address the question of whether this post meets the criteria for inclusion in the list of posts under section 2(2) or for exemption from that list, unless or until it is established that the post is not covered by section 2(1)(c)."

4. Mr Brough

21. The fourth applicant, Mr Brough, is employed by the Hillingdon Borough Council as the head of its Committee Services Department (a category one post). The provision of services to the Council's committees necessarily involves the Committee Services Department in frequent contact

with and giving advice to the elected members of the Council. Mr Brough was the officer responsible for those activities.

22. As a consequence of the Regulations, Mr Brough can no longer act as Parliamentary Chairman of his party in Harrow East and is prevented from speaking at public meetings on issues such as housing and the health service. Mr Brough did not apply for exemption from the scope of the Regulations.

D. Judicial review proceedings challenging the validity of the Regulations

23. The applicants and NALGO (the predecessor of UNISON, the trade union of which the applicants are members and which represents public-sector workers) applied for and were granted leave to apply for judicial review of the Regulations. The application was dismissed on 20 December 1991. The judge, Mr Justice Hutchison, considered that he was bound by the recent decision of the House of Lords in the case of *R. v. Secretary of State for the Home Department, ex parte Brind and Others* regarding the status of Article 10 of the Convention in domestic law. In connection with the test of "Wednesbury" unreasonableness, the judge referred to an affidavit submitted by Mr Simcock, a senior civil servant at the Department of the Environment, in which Mr Simcock explained how the Widdicombe Committee (see paragraph 8 above) had been set up in 1985 to inquire into local authority practices and procedures with particular reference to the respective roles of elected members and officers. Mr Simcock also described the consultation process between the publication of the Widdicombe Report and the making of the Regulations, in which NALGO was involved, and how the Regulations were in some respects less restrictive than the Widdicombe Committee's proposals. Referring to senior officers, the Widdicombe Committee had said:

> "... It is part of their job to advise councillors, and to adjudicate on matters of propriety, and in so doing they must command the respect and trust of all political parties. There might well be some senior officers who are politically active but who are nevertheless totally able to detach themselves from such activity in carrying out their duties as neutral officers. Nevertheless we believe there will always be a very significant risk that they are viewed with suspicion by councillors of other parties, and that as a consequence the performance of their duties towards the council as a whole will be impaired."

The judge continued:

> "... I preface my summary by pointing out that some of [the applicants' complaints] reflect the applicants' root and branch opposition to the whole concept of restricting the political activities of local government employees. It is said that:

(a) There was no pressing social need for the Regulations – local government employees have in the past provided impartial advice and there is public confidence in their ability to do so.

(b) The definition of [persons holding politically restricted posts] is unduly wide – a much more restricted category would have served the government's purpose.

(c) The restrictions are expressed in broad, subjective and uncertain terms – a vice particularly objectionable where, as here, they seek to restrict fundamental human rights. Thus, in the Schedule references to apparent intention (paragraphs 6 and 7) and to publication in circumstances likely to create an impression (paragraphs 9 and 10) are objectionable, as is paragraph 4 of the Regulations themselves.

(d) The consequence of the vice mentioned in the previous paragraph is that employees are likely to be treated inconsistently by different employers, by reason of there being room for undue latitude in interpreting the restrictions.

(e) The Regulations go too far in prohibiting conduct undertaken with apparent intention, etc., or likely to create the impression of support, etc. They should, at most, have proscribed actual political activities.

(f) The width of the language used means that many non-party political activities, including trade unions and charitable activities, are prohibited.

(g) The terms are imposed on existing employees, who entered into their contracts of employment on a different basis.

(h) The restrictions may have an adverse effect on recruitment and lead to resignations by skilled staff.

Some of these points will have to be considered individually when I come to deal with further arguments advanced by the applicants under quite different heads, but in the context of Wednesbury unreasonableness I propose only to say that they do not in my judgment come near to establishing a case of perversity. I have already briefly referred to the genesis of the Act and the Regulations in the Widdicombe Report, and to the consultative processes that followed it. Paragraph 51 of the Report contained the recommendation that:

> '... terms and conditions of [persons holding politically restricted posts] [should include] a prohibition on political activity, including ... (iii) speaking or writing in public in a personal capacity in a way that might be regarded as engaging in party political debate;'

The Government's Command Paper in July 1988 (in which, as already mentioned, the view was expressed that the categories of [persons holding politically restricted posts] should be more restricted than the Report proposed) spelt out the essential aim that:

> 'it was important that the post-holder should be seen to be politically impartial but that otherwise, local government employees should not be subject to restrictions on their political activity.'
>
> Of the specific arguments mentioned in (a) to (h) above, those in (a), (b), (e), (g) and (h) are, it seems to me, essentially arguments against the whole concept of restricting such activities, and in the circumstances cannot found an attack on Wednesbury grounds. The arguments summarised in (c) and (d) are to the effect that the Regulations are uncertain and incapable of consistent and fair application. As a Wednesbury argument, this contention could not avail the applicants – at least unless the Regulations were void for uncertainty (this would be a distinct ground for challenge) which plainly they are not. Finally, the argument mentioned in (f) is in my view misconceived: the Regulations do not prohibit the kind of activities there mentioned. I shall have more to say on this subject when I deal with the applicants' specific arguments on *vires* and legitimate expectation, to the first of which I now turn."

In conclusion, the judge found that the Regulations did not go beyond the policy and purpose of the Act, and rejected an argument that the applicants had a "legitimate expectation" that the Government would not interfere with trade union activities on the basis of an assurance from the then minister for local government matters.

24. An appeal to the Court of Appeal was dismissed on 26 November 1992. Lord Justice Neill found that the provisions of Article 10 of the Convention did not assist NALGO and the applicants, confirmed that it was not open to the courts below the House of Lords to depart from the traditional Wednesbury grounds in reviewing the decision of a minister who has exercised a discretion vested in him by Parliament, and found that the Regulations were not "Wednesbury unreasonable" or *ultra vires*. He also agreed with the first-instance judge as to legitimate expectation. The other judges, Lords Justices Russell and Rose, agreed. Leave to appeal to the House of Lords was refused.

25. The House of Lords refused leave to appeal to it on 24 March 1993.

II. RELEVANT DOMESTIC LAW

A. The Local Government and Housing Act 1989

1. Statutory amendment of pre-existing contracts

26. Section 1(5) of the Act provides:

> "The terms of appointment or conditions of employment of every person holding a politically restricted post under a local authority (including persons appointed to such posts before the coming into force of this section) shall be deemed to incorporate such requirements for restricting his political activities as may be prescribed for the purposes of this subsection by regulations made by the Secretary of State."

27. The term "persons holding a politically restricted post" is defined by section 2(1) of the Act. It consists of three broad categories of local government officer (excluding headmasters and teachers, who are exempt from the operation of the Regulations by reason of section 2(10) of the Act).

2. The categories of officers affected

28. The first category consists of officers who hold certain posts specified in section 2(1)(a) to (f) of the Act, namely the head of the authority's paid service (section 2(1)(a)); the chief officers (section 2(1)(b) and (c)); the deputy chief officers (section 2(1)(d)); the monitoring officer (section 2(1)(e)); and assistants for political groups (section 2(1)(f)).

There are an estimated 12,000 officers in this category according to the Government's memorial.

The chief officers are the heads of the various departments within the local authority's administration. They consist of "statutory" and "non-statutory" chief officers. These terms are defined in section 2(6) and (7) of the Act respectively. The "statutory" chief officers are the chief education officer, the chief officer of the fire brigade, the director of social services or director of social work, and the chief financial officer. A "non-statutory" chief officer is defined as, *inter alia*, a person for whom the head of the authority's paid service is responsible (section 2(7)(a)), or a person who, largely or exclusively, reports directly to or is directly accountable to the head of the authority's paid service (section 2(7)(b)). A "deputy" chief officer is a person who, as regards all or most of the duties of his or her post, is required to report directly or is directly accountable to one or more of the statutory or non-statutory chief officers (section 2(8)). By

section 2(9), purely secretarial or clerical staff are not non-statutory chief officers or deputy chief officers.

29. The second category consists of those local government officers whose annual rate of remuneration exceeds the level specified in section 2(2)(a) and (b) of the Act ("the prescribed level", which is currently 25,746 pounds sterling per annum or pro rata for part-time posts) and whose posts have not been exempted from the operation of the Regulations.

The Government estimate that there are approximately 28,000 officers whose salary exceeded the prescribed level. However, in their view, the number of officers who were actually subject to the Regulations is considerably less than 28,000 since a significant number had either been granted an exemption or would have been entitled to one had they applied.

30. The third category (defined by section 2(2) (c) of the Act) consists of those local government officers whose annual rate of remuneration is less than the prescribed level but whose duties consist in or involve one or both of the duties identified in section 2(3), namely:

> "(a) giving advice on a regular basis to the authority themselves, to any committee or sub-committee of the authority or to any joint committee on which the authority are represented;
>
> (b) speaking on behalf of the authority on a regular basis to journalists or broadcasters."

According to the Government's memorial, there are an estimated 7,000 officers in this category.

3. The list requirement

31. Each authority is obliged to prepare a list of persons falling within the second and third categories (section 2(2)). Any officer whose post is included on this list is entitled to be removed from the list on the grounds that his or her duties do not include duties of the kind set out in section 2(3).

4. The independent adjudicator and exemptions

32. Section 3 of the Act provides for the appointment of a person to consider applications for exemption from political restriction. If the person appointed (who is called the adjudicator) finds that the duties of a listed post (that is, those posts falling within the second and third categories) do not fall within section 2(3), he or she is required to direct that the post is not to be regarded as a politically restricted post. The authority must then remove the post from the list maintained under section 2(2).

According to the Government, as at January 1997, 1,374 applications had been made for exemption of which 1,176 have been granted.

B. The Schedule to the 1990 Regulations

33. The Schedule (Part I) to the Regulations prohibits the participation of persons holding politically restricted posts (including persons appointed to such posts before the coming into force of the Regulations) in elections for the House of Commons, the European Parliament or any local authority either as a candidate (paragraph 1), an election agent (paragraph 3) or a canvasser (paragraph 5). It does not prohibit membership of a political party, but does prohibit the holding of an office within a political party if that would involve participating in the general management of that party or one of its branches (paragraph 4(a)) or representing the party in dealing with others (paragraph 4(b)).

Speaking to the public or to a section of the public or publishing any written or artistic work with "the apparent intention of affecting public support for a political party" is also prohibited by paragraphs 6 and 7 of Part II of the Schedule. Under paragraph 8, nothing in paragraphs 6 and 7 shall be construed as precluding the appointee to a politically restricted post from engaging in the activities mentioned in those two paragraphs to such an extent as is necessary for the proper performance of his duties.

In accordance with regulation 4 when determining whether a person has breached the terms and conditions set out in paragraphs 6 and 7 regard shall be had to:

> "(a) whether the appointee referred to a political party or to persons identified with a political party, or whether anything said by him or the relevant work promotes or opposes a point of view identifiable as the view of one political party and not of another; and
>
> (b) where the appointee spoke or the work was published as part of a campaign, the effect which the campaign appears to be designed to achieve."

C. Recent developments

34. The Government informed the Court in their memorial that a review was then being conducted of the detail of the legislation governing political restrictions on local government officers. The aim of the review was to ensure that the detail of the restrictions imposed was essential for the maintenance of political impartiality of senior local government officials. At the hearing the Government informed the Court that the review had

shown that the maintenance in force of the restrictions set out in the Regulations continued to be justified.

PROCEEDINGS BEFORE THE COMMISSION

35. Mr Ahmed, Mr Perrin, Mr Bentley, Mr Brough and UNISON, a trade union representing public-sector workers, applied to the Commission on 21 September 1993. They alleged that the Local Government Officers (Political Restrictions) Regulations 1990 operate to their detriment in a way which denies their rights to freedom of expression (Article 10 of the Convention) and of assembly (Article 11), and their rights to participate fully in the electoral process (Article 3 of Protocol No.1).

36. The Commission declared the application (no. 22954/93) admissible on 12 September 1995, with the exception of the complaint brought by UNISON. In its report of 29 May 1997 (Article 31), it expressed the opinion that there had been a violation of Article 10 of the Convention (thirteen votes to four); that it was not necessary to consider whether there had been a violation of Article 11 of the Convention (thirteen votes to four); and that there had been no violation of Article 3 of Protocol No.1 (unanimously). The full text of the Commission's opinion and of the three separate opinions contained in the report is reproduced as an annex to this judgment[1].

FINAL SUBMISSIONS TO THE COURT

37. The applicants in their memorial and at the hearing requested the Court to find that the facts of the case disclose a breach of their rights under Articles 10 and 11 of the Convention and Article 3 of Protocol No. 1 and to award them just satisfaction under Article 50 of the Convention.

38. The Government in reply requested the Court in their memorial and at the hearing to decide and declare that the facts disclose no breach of the applicants' rights under any of the Articles invoked.

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 10 OF THE CONVENTION

39. The applicants maintained that the introduction and application of the Local Government Officers (Political Restrictions) Regulations (see paragraphs 26–33 above) constituted an unjustified interference with their rights to freedom of expression, having regard to the impact which the impugned measures had on the pursuit by them of normal political activities. They relied on Article 10 of the Convention, which provides:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

40. The Commission agreed with the applicants' arguments. The Government did not dispute that the applicants could rely on the guarantees contained in Article 10; nor did they deny that the application of the Regulations interfered with the exercise of their rights under that Article. They contended however that the interferences which resulted from the application of the Regulations to the applicants were justified under the second paragraph of Article 10.

A. As to the applicability of Article 10 and the existence of an interference

41. The Court notes that the guarantees contained in Article 10 of the Convention extend to the applicants irrespective of their status as public servants employed by local government authorities (see, *mutatis mutandis*, the Vogt v. Germany judgment of 26 September 1995, Series A no. 323, p. 22, § 43; and see paragraph 56 below). This has not been disputed by those appearing before the Court. Nor has it been disputed that the Regulations interfered with the exercise by the applicants of their rights to freedom of expression by curtailing in various ways their involvement in

certain forms of political activities. The Court for its part also considers that there have been interferences with the applicants' rights to freedom of expression and it accepts in this respect the Commission's summary of the situation which resulted for each of the applicants by virtue of the fact that the nature of his duties brought him within the ambit of the parent legislation and hence the implementing Regulations: Mr Ahmed was unable to stand for elected office; Mr Perrin and Mr Bentley had to resign their respective positions and could no longer canvas for their wives in local elections; Mr Brough could no longer act as Parliamentary Chairman of his political party. All of these activities involved the exercise by the applicants of their rights to freedom of expression in various ways and in particular their rights to impart information and ideas to third parties in the political context.

B. As to whether the interferences were justified

42. The Court observes that the above-mentioned interferences give rise to a breach of Article 10 unless it can be shown that they were "prescribed by law", pursued one or more legitimate aim or aims as defined in paragraph 2 and were "necessary in a democratic society" to attain them.

1. "*Prescribed by law*"

43. The applicants submitted that the Regulations were imprecise in their wording, making it impossible to foresee with reasonable certainty the consequences which a given action may entail for them. They criticised in particular what they claimed was the vague or purely subjective wording of paragraphs 6 ("section of the public") and 7 ("apparent intention") of the Schedule to the Regulations (see paragraph 33 above) as well as the potential for inconsistent application of the restrictions by local authority employers. In their view, such expressions made it extremely difficult to predict whether the views which they espoused in speech or in writing might be interpreted by their employers or by an individual member of the public as tending to affect public support for a particular party. Further, the lack of certainty in predicting how the Regulations might apply in concrete situations had also to be seen as a deterrent to the exercise of the right to freedom of expression since local government officers would inevitably be fearful of acting in a manner which might transgress the Regulations and of incurring penalties as a result.

44. The Government denied that the expressions used in paragraphs 6 and 7 of the Schedule to the Regulations were ambiguous or highly subjective. Their meaning and scope could readily be assessed either from

the plain meaning of the words or on the basis of an objective assessment, having regard in particular to the guidance offered by regulation 4 to the interpretation of those paragraphs (see paragraph 33 above). If doubt existed as to the interpretation and application of the paragraphs or of any other provisions in the Regulations and accompanying Schedule in a specific context, advice could be sought.

45. The Commission noted that the Regulations were framed in rather broad terms and that paragraphs 6 and 7 of the Schedule thereto introduced elements of vagueness and uncertainty. Nevertheless, it agreed with the Government that since the Regulations were intended to lay down rules of general application and to cover a large number of local government officers and contexts it was inevitable that the measures were couched in relatively broad terms. Read as a whole and having regard in particular to the terms of regulation 4, the Regulations satisfied in the Commission's opinion the test of foreseeability for the purposes of the "prescribed by law" requirement of paragraph 2 of Article 10.

46. The Court notes that the impugned Regulations were designed to lay down a framework of rules restricting the participation of a substantial number of local government officers within the categories defined in the parent legislation in certain kinds of political activities which might impair the duty of impartiality which they owed to their local authorities. It is inevitable that conduct which may call into question an officer's impartiality in the eyes of third parties cannot be defined with absolute precision. For this reason, paragraphs 6 and 7 of the Schedule to the Regulations define types of conduct which have the potential to undermine an officer's impartiality. Even accepting that it may be difficult on occasions for an officer to assess whether a given action may or may not fall foul of the Regulations, it is nevertheless open to him or her to seek advice beforehand either from the employer or from the union or other source. It must also be stressed that the scope and application of paragraphs 6 and 7 of the Schedule, like the Regulations as a whole, have to be considered in the light of the vice which the parent legislation sought to avoid. To that end, regulation 4 (see paragraph 33 above) must be considered a helpful aid to gauging the acceptability of a particular course of action from the standpoint of paragraphs 6 and 7 of the Schedule to the Regulations.

47. As to the applicants' contention that the decision to entrust the interpretation and implementation of the Regulations to each local government employer only serves to promote inconsistencies in the application of the restrictions, the Court notes that the applicants have not adduced any evidence to show that this has been the case. In any event, an officer who has been disciplined for having breached the Regulations could

appeal to an industrial tribunal whose decisions over time would undoubtedly help to promote a harmonised approach to the interpretation of the Regulations.

48. Having regard to these considerations, the Court finds that the interferences were "prescribed by law".

2. Legitimate aim

49. The applicants repudiated the Government's view that the interference with their rights could be justified on account of the need to protect the rights of others to effective political democracy. While that aim had been considered legitimate by the Court in its Vogt judgment (cited above), it could not be invoked in the instant case given that the applicants' involvement in normal political activities did not represent any threat to the constitutional or democratic order of the respondent State. The Government's reliance on this aim ignored the background against which the measures challenged in the Vogt case had been adopted and the reasons which led the Court to conclude that those measures pursued a legitimate aim in the particular context of post-war Germany.

50. The Government defended their view that the Regulations were essential to the proper functioning of the democratic system of local government in the United Kingdom. They stressed that, in line with the conclusions and recommendations of the Widdicombe Committee (see paragraphs 9 and 10 above), the restrictions contained in the Regulations were intended to strengthen the tradition of political neutrality on the part of specific categories of local government officers by prohibiting them from participating in forms of political activity which could compromise the duty of loyalty and impartiality which they owed to the democratically elected members of local authorities.

51. The Commission did not take any final position on whether the restrictions imposed by the Regulations pursued a legitimate aim and if so which one. It was prepared to assume for the purposes of its examination of the merits of the applicants' complaints that the Regulations were designed to preserve the existence of an effective political democracy and that that aim was compatible with the aim of protecting the rights of others within the meaning of paragraph 2 of Article 10.

52. The Court does not accept the applicants' argument that the protection of effective democracy can only be invoked as a justification for limitations on the rights guaranteed under Article 10 in circumstances where there is a threat to the stability of the constitutional or political order. To limit this notion to that context would be to overlook both the interests served by democratic institutions such as local authorities and the need to make provision to secure their proper functioning where this is considered necessary to safeguard those interests. The Court recalls in this respect that democracy is a fundamental feature of the European public order. That is

apparent from the Preamble to the Convention, which establishes a very clear connection between the Convention and democracy by stating that the maintenance and further realisation of human rights and fundamental freedoms are best ensured on the one hand by an effective political democracy and on the other by a common understanding and observance of human rights (see, *mutatis mutandis*, the United Communist Party of Turkey and Others v. Turkey judgment of 30 January 1998, *Reports of Judgments and Decisions* 1998-I, pp. 21–22, § 45). For the Court this notion of effective political democracy is just as applicable to the local level as it is to the national level bearing in mind the extent of decision-making entrusted to local authorities and the proximity of the local electorate to the policies which their local politicians adopt. It also notes in this respect that the Preamble to the Council of Europe's European Charter of Local Self-Government (European Treaty Series no. 122) proclaims that "local authorities are one of the main foundations of any democratic regime".

53. The Court observes that the local government system of the respondent State has long rested on a bond of trust between elected members and a permanent corps of local government officers who both advise them on policy and assume responsibility for the implementation of the policies adopted. That relationship of trust stems from the right of council members to expect that they are being assisted in their functions by officers who are politically neutral and whose loyalty is to the council as a whole. Members of the public also have a right to expect that the members whom they voted into office will discharge their mandate in accordance with the commitments they made during an electoral campaign and that the pursuit of that mandate will not founder on the political opposition of their members' own advisers; it is also to be noted that members of the public are equally entitled to expect that in their own dealings with local government departments they will be advised by politically neutral officers who are detached from the political fray.

The aim pursued by the Regulations was to underpin that tradition and to ensure that the effectiveness of the system of local political democracy was not diminished through the corrosion of the political neutrality of certain categories of officers.

54. For the above reasons, the Court concludes that the interferences which resulted from the application of the Regulations to the applicants pursued a legitimate aim within the meaning of paragraph 2 of Article 10,

namely to protect the rights of others, council members and the electorate alike, to effective political democracy at the local level.

3. "Necessary in a democratic society"

(a) General principles

55. The Court recalls that in its above-mentioned Vogt judgment (pp. 25–26, § 52) it articulated as follows the basic principles laid down in its judgments concerning Article 10:

(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb; such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society". Freedom of expression, as enshrined in Article 10, is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any exceptions must be convincingly established.

(ii) The adjective "necessary", within the meaning of Article 10 § 2 implies the existence of a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with a European supervision, embracing both the law and the decisions applying it, even those given by independent courts. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10.

(iii) The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully or in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it is "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts.

56. In the same judgment the Court declared that these principles apply also to civil servants. Although it is legitimate for a State to impose on civil

servants, on account of their status, a duty of discretion, civil servants are individuals and, as such, qualify for the protection of Article 10 of the Convention (p. 26, § 53)

(b) Application of the above principles to the instant case

57. The applicants contended that there was no pressing social need for the restrictions imposed by the Regulations. In their view the Widdicombe Committee had concluded that there was no serious evidence of the political impartiality of senior local government officers having been compromised as a result of their engagement in political activities. Accordingly, there was no need to introduce statutory restrictions to curb activities which had never been seen to constitute a problem.

They further submitted that even if it were possible to concede that there was a pressing social need at stake, the restrictions amounted to a disproportionate interference with their rights under Article 10 in view of the fact that they applied to a large number of officers and precluded involvement in a wide range of activities and not solely political ones. They repeated in this context their criticism of the way in which paragraphs 6 and 7 of the Schedule were framed (see paragraph 43 above) and how they may be at risk of sanction for expressing views on trade union concerns as well as on social, economic, and other controversial issues, including local ones, which may be considered by a member of the public as endorsement of a party political line on a particular topic.

The applicants maintained that the categories of posts covered by the Regulations were too broadly conceived and absorbed large numbers of local government employees including officers like Mr Perrin who provide local authority committees with purely professional or technical advice having no political content whatsoever. For this reason the Government's insistence on the fact that the restrictions were imposed using tasks-based criteria could not be sustained. Further, the severity of the restrictions was not mitigated by the role of the adjudicator (see paragraph 32 above). In the first place, category one officers such as Mr Bentley and Mr Brough were not entitled to exemption. Secondly, whether or not the adjudicator exempted an officer in the second and third categories was to a large extent determined by the opinion of the local authority employer who has put the officer's post on the list of politically restricted posts, as was shown by Mr Ahmed's experience (see paragraph 14 above).

58. For these reasons in particular, the applicants requested the Court to find, like the Commission, a breach of Article 10 of the Convention.

59. The Government disagreed with the applicants' views on the effects of the Regulations. They contended that the restrictions were entirely in line with the conclusions of the Widdicombe Committee which had backed the need to strengthen the political neutrality of senior officers in the light of specific instances of abuses by officers of their positions and the risks to the preservation of that neutrality attendant on the increased divisions in local government affairs along party political lines (see paragraphs 9 and 10 above). Against that background, the introduction of the Regulations had to be considered a proportionate response to a real need which had been properly identified and addressed in accordance with the respondent State's margin of appreciation in this sector.

The Government stressed that the proportionality of the restrictions had to be assessed in the light of the following considerations: firstly, they only applied to at most 2% of an estimated 2,300,000 officers; secondly, the categories of officers subject to the restrictions were clearly defined in accordance with the duties which they performed and where both the fact and appearance of political impartiality were of paramount importance; thirdly, the duties-based approach meant that the restrictions were applied as narrowly as possible and exemptions given on as wide a basis as possible. The Government did not deny that the political impartiality of the applicants had never been called into question as a result of their participation in political activities. However, they reiterated that the applicants' actual and objective impartiality were critical to the performance of the duties assigned to them and this fact in itself justified the imposition of restrictions.

60. The Commission agreed with the applicants that the Regulations imposed far-reaching, inflexible and disproportionate restrictions on senior officers such as the applicants, even allowing for the duties and responsibilities which they owed to their respective local authorities and the margin of appreciation of the respondent State in the sector at issue. In the Commission's view, there had never been any suggestion that the applicants' professionalism and impartiality had been compromised by their pursuit of political activities. However, the Regulations never allowed for exemption on that account since they were introduced across-the-board to all those officers in the categories caught by the Regulations by means of unilateral amendment of their contracts.

61. The Court's task is to ascertain in view of the above-mentioned principles (see paragraphs 55 and 56 above) whether the restrictions imposed on the applicants corresponded to a "pressing social need" and

whether they were "proportionate" to the aim of protecting the rights of others to effective political democracy at the local level (see paragraph 54 above). In so doing it must also have regard to the fact that whenever the right to freedom of expression of public servants such as the applicants is in issue the "duties and responsibilities" referred to in Article 10 § 2 assume a special significance, which justifies leaving to the authorities of the respondent State a certain margin of appreciation in determining whether the impugned interference is proportionate to the aim as stated (see, *mutatis mutandis*, the above-mentioned Vogt judgment, p. 26, § 53).

62. It is to be observed at the outset that the Widdicombe Committee reported back to the government at the time that it had found specific instances of abuse of power by certain local government officers. The Committee was concerned both about the impact which the increase in confrontational politics in local government affairs would have on the maintenance of the long-standing tradition of political neutrality of senior officers whose advice and guidance were relied on by the members elected to local councils as well as about the increased potential for more widespread abuse by senior officers of their key positions in a changed political context. Those concerns emerged from the Committee's detailed analysis of the state of local government at the time and its wide-ranging rounds of consultations with interested parties (see paragraph 23 above). There was a consensus among those consulted on the need for action to strengthen the tradition of political neutrality either through legislation or modification of the terms and conditions of officers' contracts of employment (see paragraphs 8–10 above).

In the Court's view, the Widdicombe Committee had identified a pressing social need for action in this area. The adoption of the Regulations restricting the participation of certain categories of local government officers, distinguished by the sensitivity of their duties, in forms of political activity can be considered a valid response by the legislature to addressing that need and one which was within the respondent State's margin of appreciation. It is to be observed in this regard that the organisation of local democracy and the arrangements for securing the functioning, funding and accountability of local authorities are matters which can vary from State to State having regard to national traditions. Such is no doubt also the case with respect to the regulation of the political activities of local government officers where these are perceived to present a risk to the effective operation of local democracy, especially so where, as in the respondent State, the system is historically based on the role of a permanent corps of politically neutral advisers, managers and arbitrators above factional politics and loyal to the council as a whole.

63. As to whether the aim of the legislature in enacting the Regulations was pursued with minimum impairment of the applicants' rights under Article 10 the Court notes that the measures were directed at the need to preserve the impartiality of carefully defined categories of officers whose duties involve the provision of advice to a local authority council or to its operational committees or who represent the council in dealings with the media. In the Court's view, the parent legislation has attempted to define the officers affected by the restrictions in as focused a manner as possible and to allow through the exemption procedure optimum opportunity for an officer in either the second or third categories to seek exemption from the restrictions which, by the nature of the duties performed, are presumed to attach to the post-holder (cf. the above-mentioned Vogt judgment, p. 28, § 59). It is to be observed also that the functions-based approach retained in the Regulations resulted in fewer officers being subject to restrictions than would have been the case had the measures been modelled on the Widdicombe Committee's proposal to apply them to principal officers and above as a general class and irrespective of the duties performed (see paragraph 10 above).

It is also to be recalled that the requirement of political neutrality owed by the officers such as the applicants to the council members extends also to the members of the local electorate given that they have cast their votes to enable the political complexion of the council to reflect their view of what policies are best suited to their area (see paragraph 53 above). Hence, it is equally in their interests that officers with influence in the day-to-day running of local government business do not engage in activities which may be wrongly interpreted not only by council members but also by the public as impairing that process. For this reason, the restrictions imposed by the Schedule to the Regulations can reasonably constitute a justified response to the maintenance of the impartiality of officers such as the applicants.

It is also to be noted that paragraphs 6 and 7 of the Schedule to the Regulations were not designed to silence all comment on political matters, whether controversial or not. The Court reiterates in this respect that the vice which they are intended to avoid is comment of a partisan nature which judged reasonably can be considered as espousing or opposing a party political view (see paragraph 33 above). The same conclusion can be drawn in respect of the restrictions which are imposed on the activities of officers

by reason of their membership of political parties. As with speech and writing of a partisan nature, paragraph 4 of Part I of the Schedule (see paragraph 33 above) is directed at precluding participation in only those types of activity which, on account of their visibility, would be likely to link a politically restricted post-holder in the eyes of the public or council members with a particular party political line. There is no restriction on the applicants' rights to join a political party or to engage in activities within that party other than the limited restrictions identified by paragraph 4 of the Schedule.

For the Court, the reasons advanced by the respondent State to justify the restrictions contained in Parts I and II of the Schedule may be considered both relevant and sufficient. Further, those restrictions apply in such a way as to make an appropriate distinction between the duties and responsibilities which the applicants owed to their local authorities and the pursuit by them of their own personal activities (cf. the above-mentioned Vogt judgment, p. 28, § 59). The Court also notes in this context that the current government since coming to office have conducted a review of the restrictions introduced when they were in opposition. That review has shown that the maintenance in force of the restrictions continues to be justified (see paragraph 34 above).

64. Nor does the Court consider that the decision to apply the restrictions by means of modification of existing contracts or other legal relationships is fatal to their proportionality. In its view, the authorities of the respondent State cannot be accused of having infringed freedom of expression for avoiding a process of bargaining between the officers concerned and their employers over the introduction of the restrictions; nor can they be criticised for not confining the application of the restrictions to future appointees to politically restricted posts. In neither case would the goal of uniform application of the restrictions to all officers entrusted with similar duties be attained.

65. Having regard to the need which the Regulations sought to address and to the margin of appreciation which the respondent State enjoys in this area, the restrictions imposed on the applicants cannot be said to be a disproportionate interference with their rights under Article 10 of the Convention.

The Court concludes therefore that there has been no violation of Article 10 of the Convention by reason of the existence of the legislation and its impact on the applicants' rights under that Article in the circumstances of this case.

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

66. The applicants submitted that the restrictions imposed by the Regulations on their holding of office and being active in political parties of which they are members seriously impeded the exercise of their rights to freedom of association in violation of Article 11 of the Convention, which provides:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

67. The applicants maintained that the right guaranteed to an individual under Article 11 to join a political party must be taken to include the right to be active in an organisational and administrative capacity in that party and to be an officer-holder. However the restrictions contained in the impugned Regulations precluded this (see paragraph 33 above). They relied on the same reasons which they had adduced under their Article 10 complaints to contest the validity of the Regulations from the standpoint of Article 11.

68. The Government replied essentially that the reasons which they had advanced to justify the restrictions on the applicants' Article 10 rights were an equally valid response to the applicants' allegations under Article 11.

69. The Commission considered that the applicants' complaints under Article 10 lay at the heart of their case. Having found a violation of that Article, it concluded that it was unnecessary to examine separately the merits of their complaints under Article 11.

70. The Court notes that it has found the interferences with the applicants' rights under Article 10 to be justified from the standpoint of the requirements of the second paragraph of that Article. Notwithstanding its autonomous role and particular sphere of application, Article 11 must in the present case also be considered in the light of Article 10 having regard to the fact that the freedom to hold opinions and to receive and impart information and ideas is one of the objectives of freedom of assembly and association as enshrined in Article 11 (see, *mutatis mutandis*, the above-mentioned Vogt judgment, p. 30, § 64).

In the Court's view, the conclusions which it reached regarding the foreseeability of the impugned measures, the legitimacy of the aim pursued by them and their necessity hold true for the purposes of the requirements of the second paragraph of Article 11. It would also reiterate that paragraph 4 of the Schedule to the Regulations (see paragraphs 33 and 63 above) is limited to restricting the extent of the applicants' participation in an administrative and representative capacity in a political party of which they are members. The Regulations do not restrict the applicants' right to join any political party of their choosing.

71. The Court finds accordingly that there has been no violation of the applicants' rights under Article 11 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No. 1

72. The applicants further alleged that the Regulations amounted to a breach of Article 3 of Protocol No. 1, which provides:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

73. The applicants referred in particular to the impact which the restrictions contained in paragraphs 1 to 3 and 5 to 7 of the Schedule to the Regulations had on their rights to stand for election at local, national and European levels and to take part in electoral campaigns (see paragraph 33 above). In their view, these restrictions were such as to impair the very essence of the free expression of the opinion of the people in the choice of legislature by limiting without justification the electorate's choice of candidates.

74. The Commission, with whom the Government agreed, found that there had been no violation of the above-mentioned Article. It considered that in view of the limitations inherent in Article 3 of Protocol No. 1 and the aim pursued by the restrictions it could not be said that the essence of the applicants' rights to stand for election had been impaired or that the respondent State had exceeded its margin of appreciation in imposing such restrictions. In particular there was nothing to prevent any of the applicants from resigning his position so as to stand as a candidate in an election.

75. The Court recalls that Article 3 of Protocol No. 1 implies subjective rights to vote and to stand for election. As important as those rights are, they are not, however, absolute. Since Article 3 recognises them without setting them forth in express terms, let alone defining them, there is room for implied limitations. In their internal legal orders the Contracting States

make the rights to vote and to stand for election subject to conditions which are not in principle precluded under Article 3. The Court considers that the restrictions imposed on the applicants' right to contest seats at elections must be seen in the context of the aim pursued by the legislature in enacting the Regulations, namely, to secure their political impartiality. That aim must be considered legitimate for the purposes of restricting the exercise of the applicants' subjective right to stand for election under Article 3 of Protocol No. 1; nor can it be maintained that the restrictions limit the very essence of their rights under that provision having regard to the fact that they only operate for as long as the applicants occupy politically restricted posts; furthermore, any of the applicants wishing to run for elected office is at liberty to resign from his post.

76. Without taking a stand on whether local authority elections or elections to the European Parliament are covered by Article 3 of Protocol No. 1, as was also disputed by the Government, the Court concludes that there has been no breach of that provision in this case.

FOR THESE REASONS, THE COURT

1. *Holds* by six votes to three that there has been no violation of Article 10 of the Convention;

2. *Holds* by six votes to three that there has been no violation of Article 11 of the Convention;

3. *Holds* unanimously that there has been no violation of Article 3 of Protocol No. 1.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 2 September 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 following separate opinions are annexed to this judgment:

(a) concurring opinion of Mr De Meyer;

(b) joint dissenting opinion of Mr Spielmann, Mr Pekkanen and Mr van Dijk.

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

CONCURRING OPINION OF JUDGE DE MEYER

(*Translation*)

It is not only legitimate, but also necessary, especially in a democratic society, to ensure as far as possible the loyalty of officers in public service towards the authority to which they are accountable and at the same time the freedom of the electorate in its choice of representatives.

The people are entitled to count on the objectiveness, impartiality and political neutrality of their servants, those being essential requirements of a position of trust. They are likewise entitled not to be exposed to a risk that their servants may, during elections or in other circumstances, benefit personally or politically from their position.

Members of staff in the public service must not therefore be allowed to be members of assemblies elected by the people or to stand as candidates for such assemblies, or permitted to take part in any manner whatsoever in the activity of the parties. Common sense dictates that such interests are incompatible with the public service.

People who wish to work in public service must renounce "politics", that being a restriction on their freedom of expression, freedom of association and electoral rights that is inherent in their position[1].

1. The Court's slightly too detailed reasoning in the instant case is unsatisfactory, particularly in two respects. Firstly, the Court found it necessary to refer once more to the States' "margin of appreciation"; that seems in particular to imply that it considers equally acceptable a system permitting the situations prohibited by the system the applicants complained of. Such relativism is rather worrying, even though it can be explained by the excessive permissiveness of many States with regard to such situations. Secondly, the Court appears to attach too much importance to the fact that only a limited number of people were affected by the measures in issue, which suggests that a more general prohibition would have been less acceptable. It is regrettable that the Court did not more clearly acknowledge the merit of the principle applied in the present case by the United Kingdom.

JOINT DISSENTING OPINION OF JUDGES SPIELMANN, PEKKANEN AND VAN DIJK

1. To our regret we are not able to join the majority in their conclusion that Article 10 has not been violated in the present case. We agree that the interference with the applicants' right to freedom of expression was prescribed by law. We can also accept, be it with some hesitation, that the United Kingdom authorities, by enacting and implementing the impugned Regulations, pursued a legitimate aim, namely the protection of the rights of others, although we would highlight the risk of that notion being stretched so far as to lose almost all distinct meaning if it is held to cover "rights" such as that to effective political democracy at the local level.

We cannot persuade ourselves, however, that the interference was "necessary in a democratic society", given, on the one hand, the scope of its effects and, on the other hand, the aims pursued.

2. The starting-point for the weighing of the different aspects and elements of the case has to be – as is also recalled in the judgment (paragraph 55) – that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and each individual's self-fulfilment, and that, consequently, precisely to strengthen democratic society, the necessity to limit that freedom "must be convincingly established" (see the Vogt v. Germany judgment of 26 September 1995, Series A no. 323, p. 25 § 52).

This holds good even more so in the case of restrictions on freedom of expression which have a preventive character: "the dangers inherent in prior restraints are such that they call for the most careful scrutiny on the part of the Court" (see the *Observer and Guardian* v. the United Kingdom judgment of 26 November 1991, Series A no. 216, p. 30, § 60).

3. The above principles also apply in relation to civil servants; "as a general rule the guarantees of the Convention extend to civil servants" (see the Glasenapp v. Germany judgment of 28 August 1986, Series A no. 104, p. 26, § 49; the aforementioned Vogt judgment, p. 26, § 53). There is no reason, and indeed no room, for an inherent limitation in respect of the civil service. Article 10 does, of course, refer in its second paragraph to "duties and responsibilities", but that does not mean that this provision contains an implied limitation for certain individuals or groups; it is primarily up to those exercising their right to freedom of expression to fulfil those duties and responsibilities. Only if they fail to do so in one or more concrete cases, or if there is the imminent danger of such a failure, would there be grounds for introducing legislative or administrative measures to ensure the proper

fulfilment of these duties and responsibilities; but even then only to the extent "necessary in a democratic society". We cannot read in the second paragraph of Article 10 any specific ground of limitation for civil servants nor can we see any justification for such a specific ground if applied in a general, categorical way. In that respect there is a clear difference between, on the one hand, Article 10 and, on the other hand, Article 11 of the Convention; only the latter Article provides expressly for the possibility to restrict the right concerned for members of the administration of the State.

4. Was the interference of the applicants' right of freedom of expression "necessary in a democratic society"? To answer this question we will successively address the two component aspects: was there a pressing social need for the interference, and was the scope of the interference proportionate to the aim pursued?

5. Was there a pressing social need for the Regulations in issue and for their application to the applicants?

According to the Widdicombe Committee there was a need for regulation. The Committee referred to a tradition of a corps of politically neutral officers and to an increased risk of senior officers' abusing their positions for political reasons. At the same time, however, the Committee indicated that no serious problems had arisen in the past and that there had been no cases of disciplinary action being taken. Nor had there been any complaints from citizens or local administrations.

The mere fact that the Committee noticed a change of atmosphere in recent years in the direction of stronger party affiliation of civil servants, especially at the local government level, does not in itself mean that the same standard of political neutrality in public service could not be maintained without recourse to such restrictive regulations as those in issue. In particular, it has not convincingly been argued by the Government why civil servants would not, as a rule, be responsible enough to decide for themselves the sort of political action their position permits and does not permit, subject to *ex post facto* disciplinary supervision. In that respect, it seems relevant for the assessment of the necessity in a democratic society test that in other member States of the Council of Europe, which claim to be strong democracies as well, a regulation with similar far-going restrictions to the freedom of expression of civil servants has not been considered necessary. There, the primary responsibility and discretion is placed on the civil servants themselves, with possibilities for corrective but not preventive restraint.

We are inclined to agree with the Canadian Supreme Court, quoted by Liberty in its submission to the Court, which held that public servants cannot be silent members of society and that as a general rule all members of society should be permitted to participate in public discussion of public issues.

Therefore, in view of the fact that (1) the United Kingdom has a long history without such comprehensive and far-reaching restrictions, which apparently had not given rise to any major problems; (2) this was recognised by the Widdicombe Committee, which also reported that there had been no need to use the instrument of disciplinary measures; and (3) other democratic societies appear to function without such general and far-reaching restrictions, we come to the conclusion that the existence of a pressing social need for the introduction of such general limitations such as those in issue, and more particularly their application to the applicants, has not sufficiently been demonstrated by the British Government. Indeed, strengthening democracy at the expense of freedom of expression may be justified in extreme circumstances only, since logically such a measure would seem to be counterproductive.

6. Even if there is a pressing social need for the interference concerned, the latter must be proportionate to the legitimate aim pursued. Are the Regulations themselves and the way in which they have been applied proportionate to the aim of strengthening democracy?

The Regulations are said to affect only 2% of civil servants. However, that still is a considerable number; in a qualitative sense also the civil servants concerned represent an important segment of the local civil service. For them, the situations in which they have to abstain from political activities, according to the Schedule, are potentially very broad; in fact, almost all political opinions and activities may in some way or another be associated with a political party. This means that the civil servants concerned may feel under what could be called permanent self-censorship in order not to endanger their positions.

In addition, the following aspects weigh in their favour:

(a) the Regulations do not make a clear distinction between service and private life (see the above-mentioned Vogt judgment, p. 28, § 59); what the majority states in that respect in paragraph 63 of the judgment would not seem to be well-founded;

(b) possibilities for exemptions exist only for officers of the second and third categories, and even then only to a limited extent;

(c) the Regulations prohibit the civil servants concerned from standing for Parliament or for the European Parliament unless they first give up their positions in the local administration, and we have not found any indication that leave of absence is granted until the outcome of the elections is known. This particular interference can hardly be deemed instrumental in strengthening democracy, since a healthy democracy has need of the best and most experienced parliamentarians;

(d) there has been no suggestion that the applicants fell short of their responsibilities and duties as civil servants, or have shown any lack of impartiality; and

(e) the authorities could have used other, less restrictive ways and means to act against abuses of positions or against threats to the impartiality of civil servants.

This leads us to the conclusion that the proportionality requirement has not been met either.

7. For all the above-stated reasons we are of the opinion that the interference complained of was not necessary in a democratic society and, consequently, was not justified under the second paragraph of Article 10.

In our opinion, this conclusion compels itself in the present case in an even more forceful way than in the Vogt case, where the Court found a violation of Article 10. In the latter case the restraint imposed on the applicant was not of a preventive but of a corrective character; moreover specific political activities were involved which affiliated the applicant to a political party having as its aim the undermining of the constitutional system of the State concerned.

8. Since we conclude that Article 10 has been violated in the present case, we agree with the majority of the Commission that the complaint under Article 11 did not give rise to any separate issue.

9. With respect to Article 3 of Protocol No. 1, we share the unanimous opinion that the rights to vote and to stand for elections laid down therein are not absolute rights, and that the restrictions contained in the Regulations as applied to the applicants did not limit the very essence of these rights.