



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

THIRD SECTION

CASE OF MICHAEL EDWARD COOKE v. AUSTRIA

(Application no. 25878/94)

JUDGMENT

STRASBOURG

8 February 2000

[This judgment is subject to editorial revision before its reproduction in final form in the official reports of selected judgments and decisions of the Court.]

In the case of MICHAEL EDWARD COOKE v. AUSTRIA,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr P. KŪRIS,
Mrs F. TULKENS,
Mr W. FUHRMANN,
Mr K. JUNGWIERT,
Mrs H.S. GREVE,
Mr K. TRAJA, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 25 January 2000 and 1 February 2000,

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 2 November 1998, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. It originated in an application (25878/94) against Austria lodged with the Commission under former Article 25 of the Convention by Mr. Michael Edward Cooke, a British national, on 12 August 1994. The applicant was granted leave in accordance with Rule 36 § 4 (a) of the Rules of Court to be represented by Mrs N. Mole, Director of the AIRE Centre, a non-governmental organisation providing advice on human rights issues, with its seat in London. The Government of Austria are represented by their Agent, Mr. F. Cede, Ambassador, Head of the International Law Department at the Federal Ministry of Foreign Affairs. The Agent of the Government of the United Kingdom, having been informed by the Registrar of their right to intervene (former Article 48 (b) of the Convention and former Rule 35 § 3 (b)), indicated that they did not intend to do so.

The Commission’s request referred to former Articles 44 and 48 and to the declaration whereby Austria had recognised the compulsory jurisdiction of the Court (former Article 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach of Article 6 §§ 1 and 3 (c).

2. On 14 January 1999 the Panel of the Grand Chamber decided, pursuant to Article 5 § 4 of Protocol No. 11 to the Convention and Rules 100 § 1 and 24 § 6 of the Rules of Court, that the applications would be examined by one of the Sections. It was, thereupon, assigned to the Third Section.

3. The Chamber constituted within the Section included *ex officio* Mr W. Fuhrmann, the judge elected in respect of Austria (Article 27 § 2 of the Convention and Rule 26 § 1 (a) of the Rules of Court) and Mr J.-P. Costa, Vice-President of the Section (Rules 12 and 26 § 1 (a)). The other members designated by the latter to complete the Chamber were Mr P. Kūris, Mrs F. Tulkens, Mr K. Junwiert, Mrs H.S. Greve and Mr. K. Traja.

4. In accordance with Rule 59 § 3 of the Rules of Court, the President of the Chamber invited the parties to submit a memorial on the issues in the case. The Registrar received the Government's memorial on 17 May 1999 and the applicant's memorial on 14 June 1999, the latter after an extension of the time-limit.

5. After consulting the Agent of the Government and the applicant, the Chamber decided not to hold a hearing in the case.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. In the early evening of 10 March 1993 the applicant was arrested at Alpbach, Austria, on suspicion of having killed, shortly before, his friend Ms. W. with whom he had gone to Austria on holiday.

7. On 17 November 1993 the applicant's trial commenced before a Court of Assizes (*Geschworenengericht*) of the Innsbruck Regional Court (*Landesgericht*), sitting with a jury. The applicant was assisted by his official defence counsel Mr. P. An interpreter was present. At the hearing, the court heard the applicant's statements, the testimony of several witnesses and the explanations of the psychiatric experts Professor P. and Dr. U. Several requests for the taking of further evidence, *inter alia* as to the victim's personality and behaviour in the past, the applicant's criminal responsibility and his state of mind following the offence, were dismissed.

8. At the end of the hearing, the court put five questions to the jury: a first main question related to the offence of murder, three subsidiary questions concerned the offences of unpremeditated homicide, intentionally inflicted grievous bodily harm resulting in death and grievous bodily harm resulting in death, respectively, and a fifth main question about the applicant's criminal responsibility. The court's directions to the jury covered the jury's duties and the general legal notions of intent and negligence. As regards the questions, the jury was *inter alia* directed that the offence of murder (*Mord*) consisted in the intentional killing of a human being and that premeditated homicide (*Totschlag*) was the intentional killing of a human

being in a comprehensible state of emotion (*in einer allgemein begreiflichen heftigen Gemütsbewegung*).

9. On 18 November 1993 the jury, by a unanimous verdict, found the applicant guilty of murder. The jury also unanimously found that the applicant was criminally responsible. According to the record of their deliberations, the jury relied in particular on the testimony of the hotel owner, as well as on the expert opinion of Professor P.

10. The Court sentenced the applicant to twenty years' imprisonment. In fixing the sentence, the Court considered as a mitigating circumstance the applicant's diminished responsibility (*verminderte Dispositionsfähigkeit*), although his offence had not been committed upon provocation and did not obviously contradict his previous behaviour. Moreover, he had not made a repentant confession (*reumütiges Geständnis*), and his statements regarding the offence had not essentially contributed to the establishment of the truth.

11. The applicant, assisted by his official defence counsel Mr. P., filed a plea of nullity (*Nichtigkeitsbeschwerde*) with the Supreme Court (*Oberster Gerichtshof*), challenging the order of questions put to the jury, the dismissal of his requests for the taking of further evidence, as well as the conclusiveness of the findings of the jury. He further lodged an appeal (*Berufung*) complaining about the severity of the sentence, referring to further mitigating circumstances such as his previous reputable life, his feelings of regret and repentance and his emotional state at the time of the offence.

12. The Public Prosecutor's Office (*Staatsanwaltschaft*) also appealed against the sentence, requesting that a life sentence be imposed. The Office considered that the fact that the applicant's responsibility had been diminished at the time of the offence could not be regarded as a mitigating factor. Rather it showed the applicant's particular dangerousness and aggressiveness towards women intending to terminate their relations with him.

13. On 26 January 1994 the Supreme Court issued a summons for the hearing on the plea of nullity and the appeals, indicating that, at the hearing on the plea of nullity, the applicant, being incarcerated, could only appear through his official defence counsel and that, at the hearing of the appeals, he would not be brought to court as the conditions of section 296 § 3 of the Code of Criminal Procedure were not satisfied.

14. On 3 February 1994 the Vienna Bar Association, upon the request of the senior partner of counsel Mr. P., appointed Mr. S. as the applicant's official defence counsel for the purposes of the proceedings before the Supreme Court. The applicant received the certificate of appointment on 10 February 1994. By letter of the same day, the applicant requested the Supreme Court to allow him to be represented by Mr. P. at the hearings and to attend them as an observer. On 16 February 1994 the Innsbruck Regional Court, upon instructions by the Supreme Court, informed the applicant, with

the assistance of an interpreter, that the conditions of section 296 § 3 of the Code of Criminal Procedure were not satisfied, and that his attendance as an observer was not possible.

15. On 17 February 1994 the Supreme Court held the hearing on the plea of nullity and the appeals in the absence of the applicant. He was represented by his new official defence counsel, Mr. S. The Supreme Court rejected the plea of nullity as well as both appeals.

16. The Supreme Court, in its judgment, found that the rejection by the trial court of the applicant's requests for the taking of evidence did not impair the rights of the defence. In particular, the Supreme Court confirmed in detail the reasoning of the trial court that the requests concerned in part irrelevant issues and in part issues which required expert evidence. Moreover, the applicant had failed to show the necessity of a second expert opinion as to his criminal responsibility. The Supreme Court also dismissed the applicant's argument that the order of questions put to the jury had been incorrect. The Supreme Court found that there could be no objection to the findings of the jury. The applicant's allegation of a discrepancy in the statements of one of the main witnesses was unfounded and, in any event, expert evidence had been taken on the relevant issue, namely his mental state at the time of the offence.

17. As regards the appeals, the Supreme Court noted that the applicant's own statements appeared to indicate that he quickly lost his self-control in his contacts with women. Nevertheless, there was no sufficient reason to exclude the mitigating circumstance that he had been previously of good conduct. The Supreme Court further, on the basis of the file, considered that there had been no provocation and that there were no indications of exceptional mental or emotional excitement. Except for the further mitigating circumstance, there was no other reason to amend the evaluation regarding the applicant's character or his mental state at the time of the offence, or his motive. Taking all the circumstances into account, the sentence imposed by the trial court appeared appropriate.

18. The decision was received at the Innsbruck Regional Court on 3 March 1994 and by the applicant's defence counsel, Mr. P., on 10 March 1994.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Plea of nullity

19. A first-instance court judgment given by a Court of Assizes, at a Regional Court can be challenged by a plea of nullity to the Supreme Court on the specific grounds enumerated in section 345 § 1 of the Code of Criminal Procedure. The Supreme Court's task is mainly to control the acts

of the bench and the presiding judge of the Court of Assizes examining, in particular, whether the trial has been conducted in a manner which complies with fundamental procedural principles, whether the right questions have been put and the right directions given to the jury. The Supreme Court may only verify whether the jury has provided unclear, incomplete or contradictory answers to the questions put to it. The Supreme Court supervises the correct application of the criminal law, but in so doing is bound by the jury's findings of fact.

20. In certain cases the Supreme Court may reject a plea of nullity without a public hearing (section 285 (c) of the Code of Criminal Procedure). In all other cases - such as the present - there will be a public hearing which may also be combined with a public hearing on an appeal against sentence.

21. As regards the hearing on a plea of nullity, section 286 of the Code of Criminal Procedure provides:

“1. When the date of the public hearing is being fixed, the accused ... shall be summoned ...

2. If the accused is under arrest, the notice of the hearing given to him shall mention that he may only appear through counsel. ...”

22. Section 344 of the Code of Criminal Procedure applies, in principle, the above rules to nullity pleas arising out of jury trials.

However, if the hearing is a combined one on a plea of nullity and an appeal against sentence, an accused who is present for the latter purpose may also exercise his rights concerning the nullity plea.

B. Appeal against sentence

23. The sentence as such can be challenged by way of an appeal against sentence. It may concern both points of law (in particular whether mitigating or aggravating circumstances have been correctly taken into account) and factors relating to the assessment of the sentence. Where the substance of an appeal is examined, a public hearing must normally be held.

24. As regards the personal appearance of the accused at a public appeal hearing, section 296 § 3, second sentence, of the Code of Criminal Procedure provides:

“An accused who is detained shall always be summoned and an accused who is detained shall also be brought before the court if he has made a request to this effect in his appeal or counter-statement, or otherwise if his personal presence appears necessary in the interests of justice.”

PROCEEDINGS BEFORE THE COMMISSION

25. The applicant applied to the Commission on 12 August 1994. He alleged, *inter alia*, a violation of Article 6 §§ 1 and 3 (c) of the Convention on the ground that, in criminal proceedings against him, he was not present at the hearing before the Supreme Court.

26. The Commission declared the application (No. 25878/94) partly admissible on 10 April 1997. In its report of 20 May 1998 (former Article 31 of the Convention), it expressed by a majority the opinion that there had been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

FINAL SUBMISSIONS TO THE COURT

27. The Government requested the Court to reject the application as being inadmissible for non-exhaustion of domestic remedies. In the alternative, they requested the Court to find that there has been no violation of Article 6 §§ 1 and 3 (c) of the Convention.

28. The applicant asked the Court to dismiss the Government's preliminary objection and to find a violation of Article 6 §§ 1 and 3 (c) on the ground that he was not present at the hearing before the Supreme Court. Further, invoking former Article 25 § 1 and Article 34 of the Convention, he alleged that he had been hindered in the effective exercise of his right of individual petition.

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

29. The Government claimed, as they had before the Commission, that the applicant's complaint under Article 6 §§ 1 and 3 of the Convention was inadmissible for non-exhaustion of domestic remedies by virtue of Article 35 §§ 1 and 4 of the Convention.

The Government, referring to section 296 § 3 of the Code of Criminal Procedure, pointed out that the applicant, represented by official defence counsel, could have ensured his presence at the hearing of the appeals and the plea of nullity by making a request to this effect in his appeal or counter-statement. However, as he failed to instruct his defence counsel that he wished to attend the hearing, the latter did not make any such request. The applicant's request of 10 February 1994 "to be present as an observer", apart from being made out of time, was not a proper application to be

brought before the Supreme Court. Despite the fact that the applicant was, on 16 February 1994, duly informed that attendance as an observer was not possible, he failed to make an explicit request to be brought before the Supreme Court the next day.

30. The applicant contested the Government's view. He argued that it was for the Government to establish not only that he made no request to be present at the hearing before the Supreme Court (which he maintained he did on 10 February 1994), but also to show that his presence was not necessary in the interests of justice. He emphasised that, in the circumstances of the case, the Convention imposed a positive duty to ensure his presence at the appeal hearing, as did section 296 § 3 of the Code of Criminal Procedure.

31. The Court observes that the parties' arguments are closely linked to the well-foundedness of the applicant's complaint under Article 6 §§ 1 and 3 (c). The plea should therefore be joined to the merits (see the *Kremzow v. Austria* judgment of 21 September 1993, Series A no. 268-B, p. 40-41, §§ 41-42).

II. ALLEGED VIOLATION OF ARTICLE 6

32. The applicant alleged a breach of Article 6 §§ 1 and 3 (c) of the Convention on the ground that he was not present at the hearing of the plea of nullity and the appeals before the Supreme Court. Article 6 §§ 1 and 3, so far as relevant, provide:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by [a] ... tribunal ...

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; ...”

33. The applicant submitted in particular, that a new defence counsel had been appointed shortly before with whom he had had no communication before the hearing in the Supreme Court. What was at stake for him was an increase of his sentence to life imprisonment and the issues to be decided by the Supreme Court involved an assessment of his character and state of mind at the time of the offence as well as his motive. The applicant concludes that his case was very similar to the *Kremzow* case and that, therefore, the Supreme Court was, notwithstanding his alleged failure to request his presence, under a positive duty to summon him to the hearing of the appeals as his presence was required in the interests of justice.

34. The Government reiterated that the applicant failed to request his attendance at the hearing in his appeal or counter-statement, in accordance with section 296 § 3 of the Code of Criminal Procedure, or at a later stage of the proceedings. They argued that a positive duty on the State to bring a detained defendant before the appellate court irrespective of his wishes cannot be inferred from Article 6. They also contended that, even if life imprisonment was at stake, the Supreme Court did not have to determine any new aspects which had not been considered by the trial court.

35. The Court recalls that a person charged with a criminal offence should, as a general principle based on the notion of a fair trial, be entitled to be present at the first-instance hearing. However, the personal attendance of the defendant does not necessarily take on the same significance for an appeal hearing. Indeed, even where an appellate court has full jurisdiction to review the case on questions both of fact and law, Article 6 does not always entail rights to a public hearing and to be present in person. Regard must be had in assessing this question to, *inter alia*, the special features of the proceedings involved and the manner in which the defence's interests are presented and protected before the appellate court, particularly in the light of the issues to be decided by it and their importance for the applicant (*Belziuk v. Poland* judgment of 25 March 1998, *Reports of Judgments and Decisions* 1998-II, p. 570, § 37, with reference to the *Ekbatani v. Sweden* judgment of 26 May 1988, Series A no. 134, p. 12, § 25, the *Helmers v. Sweden* judgment of 29 October 1991, Series A no. 212-A, p. 15, §§ 31-32, and the aforementioned *Kremzow v. Austria* judgment, p. 43, §§ 58-59).

36. In the instant case, the hearing before the Supreme Court involved both a plea of nullity and appeals against sentence. The Court will examine the issue in respect of each of these proceedings in turn.

A. Attendance at the hearing of the plea of nullity

37. The Court observes that under Austrian law the Supreme Court in dealing with nullity proceedings is primarily concerned with questions of law that arise in regard to the conduct of the trial and other matters. The presence of the accused, who is legally represented, is not generally required either by paragraph 1 or 3 (c) of Article 6 (see the aforementioned *Kremzow* judgment, p. 44, § 63).

38. In the present case, the applicant's plea of nullity related to procedural and legal matters, such as the order of questions put to the jury, the dismissal of his requests for the taking of further evidence as well as the conclusiveness of the findings of the jury. The applicant was represented by official defence counsel. It is true that a new official defence counsel, for the purposes of the Supreme Court hearing, was appointed for the applicant only shortly before the date of the hearing. However, the Court notes that this was done in co-ordination with Mr. P., the applicant's main official

defence counsel, who informed the applicant accordingly. In these circumstances, the applicant's general apprehensions are not sufficient to cast doubt on the effectiveness of his representation at the hearing of the pleas of nullity before the Supreme Court. Accordingly, there were no special circumstances warranting the applicant's personal presence (see the *Stanford v. United Kingdom* judgment of 23 February 1994, Series A no. 282-A, p. 11, §§ 27-28).

Accordingly, as far as the plea of nullity was concerned, the applicant's absence from the Supreme Court hearing was not in breach of Article 6.

39. In the light of this conclusion, it is not necessary to deal with the question whether the applicant ought formally to have requested leave to attend the hearing of his appeal, and thereby ensured his presence at the hearing of his plea of nullity.

B. Attendance at the hearing of the appeals against sentence

40. The Court notes that in this procedure, the Supreme Court was called upon to examine whether the applicant's sentence of twenty years' imprisonment was to be reduced or to be increased to life imprisonment. While the applicant, in his appeal, had made reference to mitigating circumstances, such as his previous good conduct, his feelings of regret and repentance or his emotional state at the time of the offence, the Public Prosecutor had requested life imprisonment on the basis of the applicant's character, namely his particular dangerousness and aggressiveness.

41. The Supreme Court, having regard to the applicant's own submissions as contained in the file, considered that, although he apparently quickly lost his self-control in his contacts with women, there was insufficient reason to exclude the mitigating circumstance of his previous good conduct. The Supreme Court further, on the basis of the file, considered that there had been no provocation and that there were no indications of exceptional mental or emotional excitement. Except for the further mitigating circumstance, there was no other reason to amend the evaluation regarding the applicant's character or his state of mind at the time of the offence, or his motive. Taking all the circumstances into account, the Supreme Court confirmed the sentence imposed by the trial court.

42. The Court, having regard to the nature of the main issue before the Supreme Court, namely a new assessment of the applicant's personality and character, including his state of mind at the time of the offence, his motive and his dangerousness and aggressiveness in general, and taking into account the gravity of what was at stake for the applicant - a possible increase in sentence to life imprisonment - does not consider that his case could have been properly examined without gaining a personal impression of the applicant. It was, therefore, essential to the fairness of the

proceedings that he be present at the hearing of the appeals and afforded the opportunity to participate, together with his defence counsel.

43. It is true that the applicant's official defence counsel had not requested that the applicant be summoned to the hearing of the appeals, either in his appeal or counter-statement, as required by section 296 § 3 of the Code of Criminal Procedure. However, in the Kremzow case, which moreover concerned a former judge familiar with the relevant legal provisions, the failure to make such a request was not considered decisive, as section 296 § 3 also provides that, in the absence of a request, the court should nevertheless have the appellant brought before it "if his personal presence appears necessary in the interests of justice" (aforementioned Kremzow judgment, p. 45, § 68). In this context the late appointment of a new defence counsel for the purposes of the hearing in the Supreme Court and the applicant's wish to be present, as expressed in his letter of 10 February 1994, obliged the Supreme Court to display particular diligence.

Having regard to all the circumstances of the case, and in particular the gravity of what was at stake for the applicant, the Court finds that the respondent State was under a positive duty to ensure the applicant's presence in order to enable him "to defend himself in person" as required by Article 6 § 3 (c).

44. It follows that there has not been a failure to exhaust domestic remedies in this regard (see paragraph 31 above).

In conclusion, the Court finds a breach of Article 6 § 1 in conjunction with Article 6 § 3 (c) of the Convention.

III. ALLEGED VIOLATION OF FORMER ARTICLE 25 § 1 AND ARTICLE 34 OF THE CONVENTION

45. The applicant alleged that the State had hindered the effective exercise of his right of individual petition throughout the proceedings before the Commission and the Court.

He claimed in particular that the Government, when preparing their observations on the admissibility and merits of the case in the proceedings before the Commission, invited his former defence counsel, Mr P., to disclose details of confidential lawyer-client conversations concerning his appeal to the Supreme Court. In support of this allegation he produced a letter of 28 February 1996 addressed to the Tyrolian Bar Association by Mr P., in which the latter states that to his recollection the applicant had not requested to be present at the hearing before the Supreme Court.

The applicant further alleged that the prison authorities monitored his communication with the Court, in that they overheard telephone conversations with the lawyer representing him in the proceedings before the Court and opened correspondence from his representative, as well as correspondence from the British Embassy also containing letters from his

representative. He submitted a copy of his complaint to the Governor of the Garsten prison on 9 December 1998, in which he alleges that a letter of 7 December 1998, sent by the British Embassy containing correspondence from his representative, had been opened, and a copy of his complaint of 7 April 1999 in which he complains more generally that correspondence from his representative has repeatedly been opened. He submitted that he has not received any reply to these complaints.

The applicant invokes former Article 25 § 1 and Article 34 of the Convention, as well as Article 3 of the European Agreement relating to Persons Participating in Proceedings before the European Commission and Court of Human Rights.

Former Article 25 § 1 of the Convention read as follows:

“The Commission may receive petitions addressed to the Secretary General of the Council of Europe from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in [the] Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognises the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right.”

It was replaced by Article 34 of the Convention which reads as follows:

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

46. The Court has jurisdiction to examine the applicant's complaints which relate to incidents which occurred partly before the Commission's decision on admissibility of 10 April 1997 and partly after the taking of that decision. In this respect the Court recalls that the timing of an applicant's complaint under former Article 25 (now Article 34) of the Convention does not give rise to any issue of admissibility under the Convention (*Ergi v. Turkey* judgment of 28 July 1998, *Reports* 1998-IV, p. 1783-84, §§ 104-105, where the alleged violation of former Article 25 was based on facts which occurred after the Commission's admissibility decision). Moreover, insofar as the applicant's allegations are based on facts which occurred prior to the Commission's admissibility decision, the Court observes that the applicant made a complaint under former Article 25 of the Convention in his observations of 10 July 1996. Thus, notwithstanding the fact that the Commission has not examined the issue, the Court has jurisdiction to do so (see *mutatis mutandis* aforementioned *Kremzow* judgment, p. 40, § 40).

47. As to the merits of the complaints, the Court finds that the Government's approaching the applicant's former defence counsel, Mr. P,

who no longer represented the applicant in the proceedings before the Commission, may be undesirable but cannot be regarded as pressure on the applicant to withdraw or modify his complaint, or as a contact designed to dissuade or discourage the applicant from pursuing a Convention remedy (see as a recent authority the *Tanrikulu v. Turkey* judgment of 8 July 1999, § 130, to be published in the Court's official series; *Akdivar and Others v. Turkey* judgment of 16 September 1996, *Reports* 1996-IV, p. 1219, § 105).

48. As to the alleged monitoring of the applicant's communications with the Court, the Court notes firstly that the applicant has not adduced any proof as regards the alleged overhearing of his telephone conversations; nor has he submitted any direct proof of the alleged opening of letters by the prison administration and, except for one letter, he has not specified which letters had purportedly been opened. Moreover, he has not complained that he was prevented from making telephone calls or from receiving such calls from his representative; nor has he complained about any delay in or tampering with his correspondence. There is nothing to show that the applicant was in any way frustrated in the exercise of his right of petition (*Campell v. the United Kingdom*, Comm. Report 12.7.90, Series A no. 233, p. 41, § 41; see also *a contrario*, *Petra v. Romania* judgment of 23 September 1998, *Reports* 1998-VII, p. 2854-55, §§ 41-44).

49. In sum, the facts of the present case do not disclose that the applicant has been hindered in the effective exercise of his right of individual petition under former Article 25 of the Convention and under Article 34 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

51. The applicant claimed 1,000 pounds sterling (GBP) as compensation for non-pecuniary damages resulting from distress caused by the respondent Government.

52. The Government did not comment on this claim.

53. In the circumstances of the case, the impossibility to attend the hearing of the appeals before the Supreme Court must certainly have distressed the applicant. Making an assessment on an equitable basis, the

Court awards the applicant GBP 1,000 for non-pecuniary damage (*mutatis mutandis* aforementioned Helmers judgment, p. 18, § 42).

B. Costs and expenses

54. The applicant also claimed that he had incurred the following costs and expenses in the proceedings before the Convention organs: GBP 19,035 in the stage prior to the Commission's admissibility decision of which he only claimed an unspecified part, as the application was only declared partially admissible, GBP 11,244.75 in the stage following the Commission's admissibility decision including the proceedings before the Court, and GBP 1,369 as travel and subsistence costs for his counsel's visit to Garsten prison.

55. The Government have not commented on these claims.

56. The Court making an assessment on an equitable basis, awards the applicant the sum of GBP 12,000, less the amount already paid by way of legal aid under the respective legal aid schemes of the Commission and Court.

C. Default interest

57. According to the information available to the Court, the statutory rate of interest applicable in the United Kingdom at the date of adoption of the present judgment is 7.5% per annum.

FOR THESE REASONS THE COURT UNANIMOUSLY

1. *Joins* the Government's preliminary objections to the merits;
2. *Holds* that it is not necessary to decide the Government's preliminary objections in respect of the applicant's complaint that he was not present at the hearing of his plea of nullity;
3. *Dismisses* the Government's preliminary objections in respect of the applicant's complaint that he was not present at the hearing of his appeal;
4. *Holds* that there has been a violation of Article 6 § 1 taken in conjunction with Article 6 § 3 (c) of the Convention;

5. *Holds* that there has been no violation of former Article 25 § 1 Convention and of Article 34 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, the following amounts:
 - (i) 1,000 (thousand) pounds sterling for non-pecuniary damage;
 - (ii) 12,000 (twelve-thousand) pounds sterling, less the amounts paid by way of legal aid for costs and expenses;
 - (b) that simple interest at an annual rate of 7.5% shall be payable from the expiry of the above-mentioned three months until settlement;
7. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English and notified in writing on 8 February 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. Dollé
Registrar

J.-P. Costa
President