



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

**CASE OF ZIELINSKI AND PRADAL AND GONZALEZ AND
OTHERS v. FRANCE**

(Joined applications nos. 24846/94 and 34165/96 to 34173/96)

JUDGMENT

STRASBOURG

28 October 1999

In the case of Zielinski and Pradal and Gonzalez and Others v. France,

The European Court of Human Rights, sitting, in accordance with Article 27 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), as amended by Protocol No. 11¹, and the relevant provisions of the Rules of Court², as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,

Mr L. FERRARI BRAVO,

Mr L. CAFLISCH,

Mr J. MAKARCZYK,

Mr W. FUHRMANN,

Mr K. JUNGWIERT,

Mr M. FISCHBACH,

Mr B. ZUPANČIČ,

Mrs N. VAJIĆ,

Mr J. HEDIGAN,

Mrs W. THOMASSEN,

Mrs M. TSATSA-NIKOLOVSKA,

Mr T. PANȚÎRU,

Mr E. LEVITS,

Mr K. TRAJA,

Mrs S. BOTOCHAROVA,

Mr A. BACQUET, *ad hoc judge*,

and also of Mrs M. DE BOER-BUQUICCHIO, *Deputy Registrar*,

Having deliberated in private on 26 May and 29 September 1999,

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

PROCEDURE

1. The Zielinski and Pradal v. France case was referred to the Court, as established under former Article 19 of the Convention³, by the European Commission of Human Rights (“the Commission”) on 25 October 1997 and by the French Government (“the Government”) on 11 December 1997. The Gonzalez and Others v. France case was referred to the Court, as established under Article 19 as amended, by the Commission on 9 December 1998. Both cases were so referred within the three-month period laid down by

Notes by the Registry

1-2. Protocol No. 11 and the Rules of Court came into force on 1 November 1998.

3. Since the entry into force of Protocol No. 11, which amended Article 19, the Court has functioned on a permanent basis.

former Articles 32 § 1 and 47 of the Convention. The two cases originated in ten applications (no. 24846/94 and nos. 34165/96 to 34173/96, the latter having been joined by the Commission on 9 April 1997) against the French Republic lodged with the Commission under former Article 25 by eleven French nationals. The first application was lodged by Mr Benoît Zielinski and Mr Patrick Pradal on 5 July 1994, the second by Ms Jeanine Gonzalez on 19 August 1996 and the other eight by Ms Martine Mary, Ms Anita Delaquerrière, Mr Guy Schreiber, Ms Monique Kern, Mr Pascal Gontier, Ms Nicole Schreiber, Ms Josiane Memeteau and Mr Claude Cossuta on 9 September 1996.

The Commission's requests referred to former Articles 44 and 48 and to the declaration whereby France recognised the compulsory jurisdiction of the Court (former Article 46). The Government's application referred to former Article 48. The object of the requests and of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 § 1 and Article 13 of the Convention.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of former Rules of Court A¹, Mr Zielinski and Mr Pradal stated that they wished to take part in the proceedings and designated the lawyer who would represent them (former Rule 30).

3. As President of the Chamber which had originally been constituted for the first case (former Article 43 of the Convention and former Rule 21) in order to deal, in particular, with procedural matters that might arise before the entry into force of Protocol No. 11, Mr R. Bernhardt, acting through the Registrar, consulted the Agent of the Government, Mr Zielinski's and Mr Pradal's lawyer and the Delegate of the Commission on the organisation of the written procedure. Pursuant to the order made in consequence, the Registrar received the applicants' memorial and the Government's memorial on 27 April 1998.

4. After the entry into force of Protocol No. 11 on 1 November 1998 and in accordance with the provisions of Article 5 § 5 thereof, the case was referred to the Grand Chamber of the Court. The Grand Chamber included *ex officio* Mr J.-P. Costa, the judge elected in respect of France (Article 27 § 2 of the Convention and Rule 24 § 4 of the Rules of Court), Mr L. Wildhaber, the President of the Court, Mrs E. Palm, Vice-President of the Court, and Mr M. Fischbach, Vice-President of Section (Article 27 § 3 of the Convention and Rule 24 §§ 3 and 5 (a)). The other members appointed to complete the Grand Chamber were Mr L. Ferrari Bravo, Mr Gaukur Jörundsson, Mr L. Caflisch, Mr W. Fuhrmann, Mr K. Jungwiert, Mr B. Zupančič, Mrs N. Vajić, Mr J. Hedigan, Mrs W. Thomassen,

1. *Note by the Registry.* Rules of Court A applied to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and from then until 31 October 1998 only to cases concerning States not bound by that Protocol.

Mrs M. Tsatsa-Nikolovska, Mr T. Panțîru, Mr E. Levits and Mr K. Traja (Rule 24 § 3 and Rule 100 § 4).

Subsequently, Mr Costa withdrew from sitting in the Grand Chamber (Rule 28). The Government accordingly appointed Mr A. Bacquet to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1). Later, Mr J. Makarczyk and Mrs S. Botoucharova, substitute judges, replaced Mrs Palm and Mr Gaukur Jörundsson, who were unable to take part in the further consideration of the case (Rule 24 § 5 (b)).

5. In accordance with the provisions of Article 5 § 4 of Protocol No. 11 read in conjunction with Rules 100 § 1 and 24 § 6, a panel of the Grand Chamber decided on 14 January 1999 that the Gonzalez and Others case should be considered by the same Grand Chamber as the one already constituted to hear the Zielinski and Pradal case. Subsequently the Grand Chamber decided, on an application by the Government, to join the two cases (Rule 43 § 1).

6. Through the Registrar, Mr Wildhaber consulted the Agent of the Government, the applicants' lawyer and the Delegate of the Commission on the organisation of the written procedure. Pursuant to the order made in consequence, the Registrar received the applicants' memorial on 23 March 1999 and the Government's memorial on 25 March 1999.

7. At the Court's invitation (Rule 99), the Commission delegated one of its members, Mr M. Nowicki, to take part in the proceedings before the Grand Chamber.

8. In accordance with the President's decision, a hearing took place in public in the Human Rights Building, Strasbourg, on 26 May 1999.

There appeared before the Court:

(a) *for the Government*

Mr R. ABRAHAM, Director of Legal Affairs, Ministry of Foreign Affairs,	<i>Agent,</i>
Mr P. BOUSSAROQUE, Human Rights Section, Legal Affairs Department, Ministry of Foreign Affairs,	
Ms E. DUCOS, Human Rights Office, European and International Affairs Department, Ministry of Justice,	<i>Advisers;</i>

(b) *for the applicants*

Ms H. MASSE-DESSEN, of the <i>Conseil d'Etat</i> and Court of Cassation Bar,	<i>Counsel;</i>
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(c) *for the Commission*

Mr M. NOWICKI,

Ms M.-T. SCHOEPFER,

Delegate,

Secretary to the Commission.

The Court heard addresses by Mr Nowicki, Ms Masse-Dessen and Mr Abraham.

THE FACTS

9. Mr Zielinski, Mr Pradal, Ms Gonzalez, Ms Mary, Ms Delaquerrière, Mr Schreiber, Ms Kern, Mr Gontier, Ms Schreiber, Ms Memeteau and Mr Cossuta are French nationals who were born in 1954, 1955, 1956, 1953, 1955, 1948, 1949, 1957, 1950, 1954 and 1957 respectively. They live in the *départements* of Meurthe-et-Moselle (Mr Zielinski), Moselle (Mr Pradal), Bas-Rhin (Ms Mary) and Haut-Rhin (all the other applicants) and work for social-security bodies in Alsace-Moselle.

I. THE CIRCUMSTANCES OF THE CASE

A. Background to the case

1. The preliminaries

10. On 28 March 1953 the representatives of the social-security offices of the Strasbourg region signed an agreement with the regional representatives of the trade unions. Under the agreement, a “special difficulties allowance” (*indemnité de difficultés particulières* – “IDP”) was introduced for the staff of social-security bodies on the ground that applying the local law of the *départements* of Haut-Rhin, Bas-Rhin and Moselle was a particularly complicated task. The agreement specified that the allowance was equal to twelve times the value of one salary “point” as laid down in the national agreement covering social-security staff.

The Minister of Employment and Social Security approved the agreement in a letter of 2 June 1953. The agreement was accordingly implemented as expected.

11. Following two amendments of 10 June 1963 and 17 April 1974 concerning the method of calculating salaries and the classification of jobs, changes which affected the value of the point, the boards of the social-security bodies reduced the IDP, which was set at the equivalent of six points in 1963 and 3.95 points in 1974, instead of twelve points as provided in the 1953 agreement. Further, the IDP was not taken into

account for the purpose of calculating the annual Christmas bonus (*treizième mois*) payable under the national collective agreement.

12. In 1988, however, several social-security bodies decided to incorporate the *IDP* into their basis for calculating annual allowances, with five years' retrospective effect. The Regional Health and Social Affairs Department, the supervising authority for these public bodies, quashed the decisions authorising the transfer of the funds needed to make these payments to staff.

2. Actions brought by certain staff members – other than the applicants – of the social-security bodies concerned

(a) The judgments of the Forbach, Sarrebourg and Sarreguemines industrial tribunals

13. Applications were made to five industrial tribunals by 136 staff members of the social-security offices concerned, seeking to have the 1953 agreement implemented strictly and to be paid the corresponding salaries backdated to 1 December 1983 (claims in respect of pay being statute-barred after five years).

14. In judgments of 22 December 1989 and 26 April 1990 (Sarrebourg industrial tribunal, miscellaneous activities division), 20 December 1989 (Sarrebourg industrial tribunal, executive staff division) and 10 April and 12 June 1990 (Forbach industrial tribunal, executive staff division) the officials' claim for back payment of the *IDP* on the basis of twelve times the value of the point was dismissed.

15. In judgments of 23 April and 14 May 1990 (Forbach industrial tribunal, miscellaneous activities division) and 19 March 1990 (Sarreguemines industrial tribunal, executive staff division) the Sarreguemines Health Insurance Office (*Caisse primaire d'assurance maladie* – “*CPAM*”) was ordered to pay the officials the amounts sought in back payment of the *IDP* as calculated on the basis of twelve points.

(b) The Metz Court of Appeal's judgments of 26 February 1991

16. In twenty-five judgments of 26 February 1991 concerning 136 officials, the Metz Court of Appeal gave judgment in their favour. The representatives of the State – the prefect of the region and, on the latter's authority, the Regional Director of Health and Social Affairs – appealed on points of law.

(c) The ministerial decisions of 30 July 1991 and 8 July 1992 concerning the ministerial approval

17. On 30 July 1991 the Minister of Social Affairs withdrew the ministerial approval given on 2 June 1953. On 8 July 1992 the Minister of Social Affairs revoked that withdrawal of approval.

(d) The Court of Cassation's judgments of 22 April 1992

18. In three judgments of 22 April 1992 the Court of Cassation quashed in part the twenty-five judgments given by the Metz Court of Appeal on 26 February 1991 in the actions brought by the 136 officials. The court considered that the change of classification in 1963 had resulted in the disappearance of the reference index in the 1953 agreement. It consequently remitted the cases to the court below to determine whether a practice had been established or, if none had been, to determine the value that the reference index would have reached had it been retained.

19. The Court of Cassation directed that the case should be reheard by the Besançon Court of Appeal.

(e) The judgments of the Colmar Court of Appeal of 23 September 1993

20. The Colmar Court of Appeal, with which appeals concerning the *IDP* had also been lodged, delivered judgments on 23 September 1993 in which it held, having regard to the terms of the Court of Cassation's judgments of 22 April 1992, that the reference index had disappeared and that a practice had been established of paying the *IDP* at 3.95 times the value of the point since the amendment of 17 April 1974.

(f) The judgment given on 13 October 1993 by the Besançon Court of Appeal after rehearing pursuant to the Court of Cassation's decision

21. In a judgment of 13 October 1993 the Besançon Court of Appeal, after rehearing the case pursuant to the Court of Cassation's decision, held that the agreement of 28 March 1953 was lawful, that it had not lapsed and that no other practice had been established. It consequently ordered that the *IDP* should be calculated on the basis of 6.1055% of the minimum wage, which percentage corresponded to the amount of the *IDP* as calculated on the basis of twelve points at 1 January 1953. The Besançon Court of Appeal said, in particular:

“As the 1953 agreement has not been denounced and the *IDP* must continue to be paid, the only issue to be resolved, after the partial quashing of the judgments delivered by the Metz Court of Appeal, is the new method of calculating the allowance in 1963, which may be based either on a practice or, failing that, on the determination of the value which the reference index would have reached on each due date of the allowance if that index had been retained.

... The unilateral change made in 1963 to the method of calculating the *IDP* cannot have given rise to a practice which, moreover, would itself have been unilaterally changed in 1974 in breach of the relevant rules. ...

If the reference index disappears, it is necessary to create a linking index in accordance with the contracting parties' intention.

The method adopted by the social-security offices in 1963 and 1974, whereby the amount of the *IDP* was regarded as being fixed and was divided by the new value of

the point to obtain the number of points necessary for calculating the *IDP*, disregards the general growth of salaries and has resulted in a progressive erosion of the *IDP*, as is shown by studies of the progression of the *IDP* compared with basic pay which the plaintiffs adduced in evidence.

In order for the common intention of the parties to be carried out, the allowance must be the same for officials in the three *départements*, irrespective of their category, and the benefits acquired by employees must be retained.

A comparison of the *IDP* with the minimum wage is revealing. ... In January 1990, for instance, the *IDP* as calculated on the basis of 3.95 points, the point having a value of FRF 38.652, amounted to FRF 152.67, whereas if it had been calculated on the basis of 6.1055% of the statutory minimum wage (*SMPG*), which was then set at FRF 5,596, the *IDP* would have been FRF 341.66.

...”

22. The Court of Appeal accordingly ordered a fresh hearing to enable the plaintiffs to calculate the amounts of back pay to which they were individually entitled.

(g) Law no. 94-43 of 18 January 1994

23. During the passage through Parliament of a bill on public health and social welfare, which began on 26 October 1993, the government took the initiative of tabling an amendment. The debates on that amendment, which became section 85 of the eventual Act, took place mainly on 30 November 1993 in the National Assembly and 13 December 1993 in the Senate. Clause 85 of the bill was adopted.

24. Section 85 of the Act provided that, subject to any court judgment to the contrary that had become final on the merits, the amount of the *IDP* introduced by the agreement of 28 March 1953 for staff of the social-security bodies administering the general social-security scheme and their dependent institutions in the *départements* of Bas-Rhin, Haut-Rhin and Moselle would, with effect from 1 December 1983, be set at 3.95 times the value of the point as determined under the pay agreements and paid twelve times a year, notwithstanding any provisions to the contrary in collective or individual agreements that were in force on the date of commencement of section 85.

25. An application was made to the Constitutional Council by a number of members of parliament who considered, in particular, that section 85 of the Act contravened the principle of the separation of powers in that it represented an interference by the legislature with pending court proceedings and that, further, the section in issue, which related to employment law, was unconnected with the purpose of the Act.

26. In a decision of 13 January 1994 the Constitutional Council held that the legislative provisions complained of were not unconstitutional, on the following grounds:

“In setting the amount of the ‘special difficulties’ allowance at 3.95 times the value of the point as determined by applying pay agreements of 8 February 1957, with

retrospective effect from 1 December 1983, the legislature intended to stop further conflicting decisions being given by the courts and thereby prevent fresh disputes arising whose outcome might adversely affect the financial stability of the social-security schemes in issue.

The legislature expressly preserved the position of persons who had obtained a court decision that had become final on the merits. There is nothing in the Act to warrant the inference that the legislature departed from the principle that criminal provisions must not have retrospective effect. The legislature was entitled, subject to compliance with the aforementioned principles, to make use, as it alone could do in the circumstances, of its power to make retrospective provisions in order to resolve, in the general interest, situations that had arisen from the conflicting court decisions mentioned above. That being so, the impugned provisions are not contrary to any rule, nor do they offend any constitutional principle. ...”

27. Section 85 of the Act (Law no. 94-43) was consequently held to be constitutional. The Act was promulgated on 18 January 1994.

(h) The Court of Cassation’s judgments of 15 February and 2 March 1995

28. On 15 February 1995 the Court of Cassation, ruling on the appeal brought by the Sarreguemines *CPAM*, the prefect of the Lorraine region and the Alsace Regional Director of Health and Social Affairs against the Besançon Court of Appeal’s judgment of 13 October 1993, quashed that judgment in part, without ordering a rehearing by another court of appeal, in the following terms:

“... However, section 85 of the Act of 18 January 1994 sets the amount of the *IDP*, for each payment period, at 3.95 times the value of the point resulting from the application of the pay agreements concluded in accordance with the national collective agreement of 8 February 1957 covering the staff of social-security bodies. In that the judgment under appeal adopts a different method of calculation from the one laid down in the aforementioned provision, it must be quashed.

In accordance with Article 627, second paragraph, of the New Code of Civil Procedure, the case should be disposed of by applying the appropriate rule of law.

For these reasons ...:

Quashes the judgment delivered on 13 October 1993 by the Besançon Court of Appeal but only in so far as that court held that the *IDP* should be calculated on the basis of 6.1055% of the statutory minimum wage;

Holds that it is unnecessary to order a rehearing of the case;

Holds that the amount of the *IDP* must be set, for each payment period, at 3.95 times the value of the point as determined by applying the pay agreements concluded in accordance with the national collective employment agreement of 8 February 1957 covering the staff of social-security bodies;

...”

29. In a judgment of 2 March 1995 the Court of Cassation likewise dismissed, in similar terms, the appeals on points of law brought against the Colmar Court of Appeal's judgments of 23 September 1993.

B. Proceedings relating to Mr Zielinski and Mr Pradal

1. The Metz industrial tribunal's judgments of 4 December 1991 and 21 October 1992

30. On 15 and 17 April 1991 Mr Zielinski and forty-seven other officials, represented by an officer from the French Democratic Labour Confederation (*Confédération française démocratique du travail* – “*CFDT*”) likewise applied to the industrial tribunal seeking payment of arrears of the *IDP* (assessed at FRF 31,131.11 for the applicant) and an order that this allowance should in future be calculated on the basis of twelve points as provided in the 1953 agreement.

31. Before the Metz industrial tribunal the prefect of the region and the Director of Health and Social Affairs challenged the officials' arguments and sought to have the proceedings stayed pending the Court of Cassation's ruling on the appeals in the identical cases that had given rise to the Metz Court of Appeal's twenty-five judgments of 26 February 1991.

32. On 28 June and 12 July 1991 the second applicant and forty-eight other officials, represented by the *CFDT* officer, lodged identical claims with the Metz industrial tribunal.

33. In judgments of 4 December 1991 (Mr Zielinski) and 21 October 1992 (Mr Pradal) the Metz industrial tribunal awarded the plaintiffs back payment of the allowance and found that the *IDP* should be calculated on the basis of twelve monthly points, in accordance with the 1953 agreement. It held, *inter alia*:

“The agreement lays down that this allowance is equal to twelve times the value of the point, set by the national agreement covering the staff of social-security bodies.

In the wake of changes made to the latter agreement in amendments of 10 June 1963 and 17 April 1974 concerning the method of calculating salaries and the classification of jobs and the effects of those changes on the value of the point, the boards of the bodies that signed the 1953 agreement decided to keep the *IDP* at a constant value by means of adjustments.

It is established that those adjustments had the effect of reducing the *IDP* to the equivalent of six and then 3.95 points.

The terms of the 1953 agreement are precise and the basis of twelve points could not be changed unilaterally.

The social-security bodies should have denounced the agreement if they considered that the adjustments made in 1963 and 1974 resulted in an excessive burden.

Such a change must be disregarded unless the parties agreed it in advance, and the silence of the other signatories to the agreement cannot be regarded as signifying their approval (Article L. 143-4 of the Labour Code) ..." (wording of the judgment of 4 December 1991)

34. Acting on the authority of the prefect of the region, the Director of Health and Social Affairs appealed against those judgments.

2. The Metz Court of Appeal's judgments of 19 and 20 April 1993

35. In judgments of 19 April (Mr Pradal) and 20 April (Mr Zielinski) 1993 the Metz Court of Appeal upheld the industrial tribunal's judgments, holding that the allowance had been changed unilaterally in breach of the Collective Agreements Act of 1950, on the following grounds in particular:

"In the final analysis, the calculation of this allowance must be based on the value of the point as determined under the amendments of 10 June 1963 and 17 April 1974 and those in force on each occasion when the allowance becomes payable.

By Article 1134 of the Civil Code, lawfully concluded agreements are legally binding on those who have made them. They can only be revoked by common consent or on grounds permitted by law. Similarly, by Article 135-1 of the Labour Code, collective employment agreements are binding on all those who have signed them.

...

There is no escaping the fact that the agreement of 28 March 1953 has not been denounced by any of the parties. It must consequently continue to be implemented and the two reductions in the multiplier were imposed in breach of both Article 1134 of the Civil Code and the provisions governing collective employment agreements.

The allowance must consequently be paid on the basis of twelve points, as provided in the aforesaid agreement.

..."

3. The Court of Cassation's judgment of 2 March 1995

36. On 2 March 1995 the Court of Cassation gave judgment as follows on the appeal brought by the prefect and the Director of Health and Social Affairs against the Metz Court of Appeal's judgments of 19 and 20 April 1993 (in respect of Mr Zielinski and Mr Pradal) and also against two other judgments, of 21 April and 6 September 1993, 150 officials being concerned in all.

"As to the application of section 85 of the Act of 18 January 1994 (Law no. 94-43) on public health and social welfare:

...

Section 85 of the Act of 18 January 1994 (Law no. 94-43), however, which is applicable to pending proceedings, including those pending before the Court of

Cassation, is intended, in the absence of agreement between the parties, to remedy the disappearance of a reference index and thus enable the amount of an allowance to be calculated. This legislative provision, on whose application the parties were able to present argument, does not amount to an intervention by the State in proceedings between it and private individuals. It does not call in question final court decisions and has been declared to be constitutional by the Constitutional Council. It follows that the provision is not contrary to Article 6 § 1 or Article 13 of the European Convention on Human Rights and Fundamental Freedoms.

As to the ground, raised of the Court's own motion, notice having been given to the parties:

Having regard to section 85 of the Act of 18 January 1994 (Law no. 94-43) on public health and social welfare,

In reaching its decision that the amount of the so-called special difficulties allowance must be calculated on the basis of twelve points as provided in the agreement of 28 March 1953 and that the value of the point must be that adopted for the calculation of pay in the collective agreements in force, the Court of Appeal held that there was no contractual provision which made the retention of the chosen index conditional upon retention of the classification in force at the time of the agreement and that to decide the contrary would be to add to the terms of the agreement, which were perfectly clear and precise, and to alter its nature. It added that the agreement in dispute did not exclude taking into account changes in the value of the point that resulted from the grading reorganisation and that accordingly the value of the point as determined under the amendments of 10 June 1963 and 17 April 1974 had to be adopted for calculating the *IDP*. It noted, further, that the new methods of calculating the *IDP* that had been adopted following the classification changes in 1963 and 1974 had not been agreed on by all the signatories to the agreement of 28 March 1953 and that as the agreed index remained applicable, it was unnecessary to determine whether an alternative practice existed. Lastly, it noted that the agreement of 28 March 1953 was a collective agreement which could be called in question only if it were revised or denounced, which it had not been.

Section 85 of the Act of 18 January 1994 (Law no. 94-43), however, lays down the amount of the so-called special difficulties allowance, for each payment period, at 3.95 times the value of the point as determined by applying the pay agreements concluded in accordance with the national collective agreement of 8 February 1957 covering the staff of social-security bodies. In so far as they adopt a method of calculating the amount of this allowance that differs from the one laid down in the aforementioned enactment, the judgments under appeal must be quashed.

In accordance with Article 627, second paragraph, of the New Code of Civil Procedure, the case should be disposed of by applying the appropriate rule of law.

For these reasons:

Quashes the judgments delivered in these cases on 19, 20 and 21 April and 6 September 1993 by the Metz Court of Appeal but only in so far as that court held that the amount of the so-called special difficulties allowance must be calculated on the basis of twelve points, the value of the point being that adopted for the calculation of pay in the collective agreements currently in force;

Holds that it is unnecessary to order a rehearing of the cases;

Holds that the amount of the *IDP* must be set, for each payment period, at 3.95 times the value of the point as determined by applying the pay agreements concluded in accordance with the national collective employment agreement of 8 February 1957 covering the staff of social-security bodies;

...”

C. Proceedings relating to Ms Gonzalez and others

1. The Colmar industrial tribunal's judgments of 2 July 1991

37. On 17 August 1990 (Ms Gonzalez, Ms Mary, Ms Delaquerrière, Mr Schreiber, Ms Kern, Mr Gontier, Ms Schreiber and Mr Cossuta) and 28 August 1990 (Ms Memeteau) the applicants applied to the industrial tribunal on the basis of the 1953 agreement seeking payment of arrears of the *IDP* and calculation of that allowance on the basis of twelve points in future. No compromise having been reached at the conciliation hearing on 18 December 1990, the case was referred to the adjudication panel on 9 April 1991.

38. In nine judgments of 2 July 1991 the Colmar industrial tribunal allowed the applications on the following grounds:

“... The agreement signed on 28 March 1953 ... introducing the special difficulties allowance (*IDP*) of twelve points is still in force and has acquired the force of law.

On 2 June 1953 the Ministry gave its approval to the agreement.

Following changes to the classification of the staff of social-security bodies in 1963 and 1974, this allowance was reduced by decision of the Common Interests and Coordination Department of the Social Security Offices.

This department, an advisory body which was not a signatory to the 1953 agreement, took that unilateral decision and had it approved by the social-security regional head office and the boards of the local offices.

Those changes are consequently not binding [on the plaintiffs], especially as in the letter of 11 February 1989 the Ministry of Solidarity, Health and Social Welfare stated that the agreement must be fully implemented.

Apart from the changes in the value of the point that were made unilaterally, no subsequent changes were made to the 1953 agreement by the signatory parties.

Clause 63 of the national collective agreement – schedule 7 – provides: ‘This agreement cannot in any circumstances constitute a ground for reducing benefits acquired by staff at the date of signature.’

The 1953 agreement consequently remains applicable in its entirety.

...”

2. *The Colmar Court of Appeal’s judgments of 18 May 1995*

39. The Colmar *CPAM* and the prefect of the Alsace region, who was represented by the Alsace Regional Director of Health and Social Affairs, appealed against those judgments on 10 September 1991.

40. On 12 July 1994 the Colmar Court of Appeal set the case down for hearing on 18 October 1994. On 30 September 1994, after the appellants had filed submissions in which they relied on the Act of 18 January 1994, the applicants lodged their pleadings in reply.

41. In nine decisions of 18 May 1995 the Colmar Court of Appeal gave judgment against the applicants on the ground that:

“... pursuant to [section 85 of the Act of 18 January 1994 (Law no. 94-43)], the judgment appealed against must be set aside, as the claim covers a period after 1 December 1983. ...”

3. *The Court of Cassation’s judgment of 18 June 1996*

42. On 13 and 17 July 1995 the applicants appealed on points of law to the Court of Cassation. They filed their full pleadings on 13 October 1995 and a supplementary pleading on 10 February 1996. Pleadings in reply were filed on 22 December 1995. The reporting judge, who was appointed on 1 February 1996, submitted his report on 16 February 1996.

43. In a judgment of 18 June 1996, after a hearing on 6 May 1996, the Court of Cassation declared the applicants’ appeals inadmissible as follows:

“... in matters in respect of which the parties are not required to be represented by a member of the *Conseil d’Etat* and Court of Cassation Bar the appeal on points of law and subsequent procedural steps must be made, taken, handed over or sent by the party himself or by any representative with special authority to act.

The notices of appeal submitted by the parties do not contain even a summary statement of the grounds of appeal, and the pleadings that do contain such a statement, which were dispatched within the three-month period laid down in Article 983 of the New Code of Civil Procedure, were all drawn up by a representative who produced no special authority to act.

The appeals are accordingly inadmissible. ...”

II. RELEVANT DOMESTIC LAW

A. General principles governing social-security bodies

44. The national, regional and local health-insurance offices have a public-service mission (Constitutional Council decision no. 82-148 DC of

14 December 1982), and this explains both why they are vested with special governmental powers and why they come under the supervision of the minister responsible for social security. They manage the compulsory social-security scheme, with a budget of their own distinct from that of the State.

The minister in charge of social security is responsible for overseeing them, a task in which he is assisted by departments of his ministry, namely a central department and regional departments of health and social affairs, together with a national inspectorate of social affairs. The minister is also represented by the prefects of the *départements* or regions in their capacity as persons exercising State authority and as delegates of the government, the direct representatives of the Prime Minister and each of the other ministers.

The power of supervision is exercised firstly over persons, it being possible, on certain grounds, to dissolve or suspend the entire board of a social-security office, dismiss or require the resignation of certain members of such a board, and give or withhold consent to the appointment of managerial staff, as well as draw up lists of suitable candidates. The power of supervision also extends to decisions, the regional ministerial departments having the power to quash or suspend, on certain grounds, decisions of boards or directors of local social-security bodies and also to oppose decisions of national bodies. Certain special decisions of social-security offices are also subject to an approval procedure, namely constitutional and procedural rules and collective agreements laying down staff regulations and the rules governing retirement.

Lastly, social-security bodies are under the supervision of the Minister for Economic Affairs and Finances, being subject to monitoring by regional Treasury officials and the Court of Audit and also to audits by the national Inspectorate of Public Finances.

B. Law no. 94-43 of 18 January 1994

45. The relevant section of the Act reads as follows:

Section 85

“Subject to any court decisions to the contrary that have become final on the merits, the amount of the so-called special difficulties allowance introduced by the agreement of 28 March 1953 for staff of the social-security bodies administering the general social-security scheme and their dependent institutions in the *départements* of Bas-Rhin, Haut-Rhin and Moselle shall, with effect from 1 December 1983 and for each payment period, be set at 3.95 times the value of the point as determined by applying the pay agreements concluded in accordance with the national collective employment agreement of 8 February 1957 covering the staff of social-security bodies, notwithstanding any provisions to the contrary in collective or individual agreements in force on the date of publication of this Act. It shall be paid twelve times a year. With effect from the same period, the annual Christmas bonus shall be

increased so as to reflect the amount of the so-called special difficulties allowance awarded in respect of the month of December.”

PROCEEDINGS BEFORE THE COMMISSION

46. Mr Zielinski and Mr Pradal applied to the Commission on 5 July 1994; Ms Gonzalez did so on 19 August 1996; and Ms Mary, Ms Delaquerrière, Mr Schreiber, Ms Kern, Mr Gontier, Ms Schreiber, Ms Memeteau and Mr Cossuta did so on 9 September 1996. The applicants complained of violations of Article 6 § 1 and Article 13 of the Convention.

47. On 26 November 1996 the Commission declared Mr Zielinski’s and Mr Pradal’s application (no. 24846/94) admissible. On 22 October 1997 it declared the applications of Ms Gonzalez and others (nos. 34165/96 to 34173/96) admissible as to the complaints concerning the fairness and the length of the proceedings and inadmissible as to the remainder. In its reports of 9 September 1997 and 21 October 1998 (former Article 31 of the Convention), it expressed the unanimous opinion that there had been a violation of Article 6 § 1 of the Convention as regards the fairness of the proceedings and that it was unnecessary to consider the case under Article 13, and further, in respect of Ms Gonzalez, Ms Mary, Ms Delaquerrière, Mr Schreiber, Ms Kern, Mr Gontier, Ms Schreiber, Ms Memeteau and Mr Cossuta, that there had been a violation of Article 6 § 1 of the Convention as regards the length of the proceedings. The full texts of the Commission’s opinions are reproduced as annexes to this judgment¹.

FINAL SUBMISSIONS TO THE COURT

48. In their memorials the Government requested the Court to hold that the application of the provisions of the new Act in the judicial proceedings concerning the applicants that were then pending had not contravened Articles 6 § 1 and 13 of the Convention.

49. The applicants asked the Court to find that there had been a violation of Article 6 § 1 of the Convention and to award them just satisfaction under Article 41.

1. *Note by the Registry.* For practical reasons these annexes will appear only with the final printed version of the judgment (in the official reports of selected judgments and decisions of the Court), but copies of the Commission’s reports are obtainable from the Registry.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS TO THE FAIRNESS OF THE PROCEEDINGS

50. The applicants submitted that the adoption of section 85 of the Act of 18 January 1994 (Law no. 94-43) had entailed a violation of Article 6 § 1 of the Convention, whose relevant part is worded as follows:

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

51. The applicants pointed out that the Besançon Court of Appeal, when rehearing similar earlier cases after judgments in them had been quashed by the Court of Cassation, had determined the matters referred to in the Court of Cassation’s direction and subsequently set the reference value by holding that the *IDP* had to be calculated on the basis of 6.1055% of the minimum wage and ordered a fresh hearing so that the calculations might be made (see paragraphs 21-22 above). Before the delivery of that judgment Mr Zielinski and Mr Pradal had obtained an even more favourable decision as the Metz Court of Appeal had held that the *IDP* was to be calculated on the basis of twelve points (see paragraph 33 above). Decisions favourable to the applicants had thus already been given before the passing of the Act in issue, in proceedings to which the State had been a party. The applicants considered that the Act, resulting as it did from a belated amendment, had had, if not the purpose, at least the effect of influencing the outcome of the case to the State’s advantage.

The applicants disputed the assertion that the Act had been intended to forestall conflicting court decisions. They pointed out, firstly, that in French law the factual circumstances of a case were for the trial and appeal courts to determine and that the Court of Cassation reviewed only issues of law. It was thus inherent in the judicial system that the “facts” might be assessed differently when one and the same case was heard by different courts. Such differences did not in themselves warrant intervention by the legislature. Secondly, there had been no such risk in the instant case. Since what was at issue was an allowance exclusive to staff in post in given *départements*, only the Colmar and Metz courts of appeal had had normal jurisdiction to hear the cases, and the Court of Cassation had taken care, after the judgments of 22 April 1992, in which it had quashed the judgments of the court below, to order a rehearing of the cases by one and the same second court of appeal, namely the Besançon Court of Appeal (see paragraph 19 above).

As to the need for legislative intervention to preserve the stability of the social-security schemes, the applicants said that the case concerned only the

staff in three *départements* and that the sum involved was very small by comparison with the total social-security budget.

The applicants considered that it was unhelpful to refer to the National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom case (judgment of 23 October 1997, *Reports of Judgments and Decisions* 1997-VII). In their submission, there was no question in the instant case of taking advantage of a mistake that frustrated the intention of the legislature but rather of seeking the intention of the employers and the employees when they concluded the collective agreement that had given rise to the rights in issue. It was therefore the Act's clear effect and purpose to prevent the parties' intention from being carried out, to the sole advantage of the State. On this point the applicants referred to the Papageorgiou v. Greece case (judgment of 22 October 1997, *Reports* 1997-VI). The only risk run by the State – one that had proved to be real – was that the courts might not uphold its view. The passing of legislation with retrospective effect had therefore had no other object than to ensure that the State's claims prevailed notwithstanding that the courts had ruled against it. The Court of Cassation – and also the Colmar Court of Appeal when determining the appeals brought by Ms Gonzalez, Ms Mary, Ms Delaquerrière, Mr Schreiber, Ms Kern, Mr Gontier, Ms Schreiber, Ms Memeteau and Mr Cossuta – had subsequently had no option but to endorse the terms of the Act.

52. The Government pointed out, firstly, that as regards retrospective legislative provisions, two levels of scrutiny made it possible to ensure adherence to the principle of legal certainty which had to govern court proceedings. The first scrutiny was carried out by the Constitutional Council when such provisions were submitted to it for review. While it declined to assess whether an Act was compatible with the European Convention on Human Rights, a comparison of Convention law with its decisions on fundamental rights showed that, on many points, the development of its case-law duly reflected that of the European Court's case-law. The Constitutional Council was particularly vigilant to circumscribe very narrowly the use of laws designed to legalise existing practices (*lois de validation*). It laid down three conditions to be satisfied if such laws were to be constitutional: the legalisation could only be preventive; the legalisation measure must not offend the principle that a criminal statute must not have retrospective effect; and the legislature could only intervene on grounds of the general interest. The second scrutiny was carried out by the ordinary courts when applying new legislation to pending cases. Laws to legalise existing practices were passed mainly in the sphere of administrative law, and that explained why there were so few decisions by the Court of Cassation on the subject. But there were very many court decisions concerning retrospective and interpretative legislation. The courts put a limit on the application of such legislation to pending proceedings, holding that

they could not be applied for the first time in the Court of Cassation and could not be a ground for quashing a decision against which it was no longer possible to bring an ordinary appeal.

53. The Government considered that the applicants could not criticise the legislature's adoption of the disputed provision. For one thing, Article 34 of the Convention did not empower the applicants to bring an *actio popularis* and, for another, the adoption of section 85 of the Act of 18 January 1994 was, as such, irrelevant to the issue of equality of arms. The problem therefore lay solely in its application to the facts of the case.

In the Government's submission, the provisions in issue had been adopted on grounds of the general interest and pursued a "legitimate aim". In the first place, the concern had been to prevent further conflicting decisions being given by the courts. In its three judgments of 22 April 1992 the Court of Cassation had drawn the logical conclusion from the finding that the index which served as a basis for the allowance had disappeared; those judgments had the potential to give rise to conflicting decisions by the courts below, since three different courts of appeal had to deal with the issue. Divergences had appeared between the Besançon, Colmar and Metz courts of appeal, none of which had resolved the matter in the same way (see paragraphs 16, 20, 21, 35 and 41 above). Further such divergences could be expected. In the second place, the Government submitted that it had been necessary to avoid jeopardising the financial stability of the social-security schemes in issue, as had been expressly noted by the Constitutional Council. Furthermore, the court actions could have threatened the continuity of the social-security public service. An exponential increase in staff costs would have led to a corresponding reduction in the funds earmarked for paying benefits to those who were insured with the social-security system, especially as roughly 5,000 of the 9,000 or so officials receiving the *IDP* had instituted legal proceedings by the time the Act had been passed. If these actions had generally been successful, the budget of the bodies concerned would have been cut by approximately 350,000,000 francs. The 1994 Act had therefore been dictated by compelling grounds of the general interest (see the National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society judgment cited above).

54. The authorities' good faith was not in issue, in the Government's opinion. The Act was not designed to reduce the *IDP* in an authoritarian way but to guarantee its fixed percentage in staff remuneration, thereby adopting the solution found by the Colmar Court of Appeal in its judgments of 23 September 1993 (see paragraph 20 above). The intention of the legislature had been quite simply to revert to the method of calculation decided on at the time of the original pay agreement. Furthermore, contrary to what applied in the Papageorgiou case (see the judgment cited above), the existence of a link between the provisions of section 85 of the Act of

18 January 1994 and the remainder of that Act was clearly established and confirmed in the Constitutional Council's decision. The Government also considered that the instant case could be distinguished from the Stran Greek Refineries and Stratis Andreadis v. Greece case (judgment of 9 December 1994, Series A no. 301-B).

There had been a "reasonable relationship of proportionality", the Government continued, between the aim pursued and the means employed by the legislature. Firstly, the Court of Cassation had not been able to impose a uniform solution on the various courts of appeal, as it had jurisdiction to deal with matters only of "law", not of "fact". Since, in earlier cases, the Court of Cassation had held, in particular, that the determination of the parties' intention at the time of concluding a contract or agreeing a practice was a question of "fact", intervention by the legislature had been necessary in order to establish a uniform method of calculating the *IDP*. Secondly, the instant case had links with the National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society case (see the judgment cited above): certain trade unions had belatedly taken advantage of a "technical flaw" after several years of lawful application of the collective agreement without any dispute. The applicants therefore could not be unaware that the authorities would not let that "technical flaw" endanger the budget of the social-security schemes. The Government also considered that the State, which occupied a special place in relation to the dispute, had not had recourse to legalisation in consideration of the party concerned (*intuitu personae*) as the Greek State had been accused of doing in the Stran Greek Refineries and Stratis Andreadis case (see the judgment cited above). The applicants were not employees of the State but were employees, subject to private law, of the local social-security offices, which were private-law entities that enjoyed financial autonomy. That explained why the ordinary courts and not the administrative courts had jurisdiction. The State had been a party to the proceedings only very indirectly, in its capacity as "guardian" of the social-security offices and in the general interest of the social-security schemes. Thirdly and lastly, the Government considered that the scope of the legalisation had been as limited as possible. Contrary to what had been the position in the Stran Greek Refineries and Stratis Andreadis case (see the judgment cited above), the purpose of the Act had not been to ensure that pending proceedings failed, as the legislature had excluded from its scope court decisions that had become final on the merits.

55. As to the effect of applying a new statute in order to resolve a dispute, the Government considered that the circumstances of the instant cases were distinguishable from those noted in the National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society, Stran Greek Refineries and Stratis Andreadis, and Papageorgiou judgments (cited above).

The Metz Court of Appeal had given judgment in favour of Mr Zielinski and Mr Pradal but on the basis of reasoning that conflicted with that of the Court of Cassation, which had found that the reference index had disappeared (see paragraphs 18 and 35 above). The outcome of the litigation was therefore much more uncertain than in the earlier cases considered by the European Court of Human Rights. The Government pointed out that the retrospective application of a new statute to pending proceedings was compatible with the Convention, provided that there had still not been a decision against which it was no longer possible to bring an ordinary appeal. In the instant case Mr Zielinski and Mr Pradal had indeed obtained such a judgment from the Metz Court of Appeal by the time that the new statute was applied to the case. The Court of Cassation had nevertheless held that that was no obstacle to applying the new statute, given the purely “supplementary” (*supplétif*) nature of the Act following the disappearance of the reference index.

As regards Ms Gonzalez, Ms Mary, Ms Delaquerrière, Mr Schreiber, Ms Kern, Mr Gontier, Ms Schreiber, Ms Memeteau and Mr Cossuta, the Government submitted that the Colmar industrial tribunal’s judgments of 2 July 1991 could not be regarded as unappealable, since an appeal with suspensive effect had been lodged against them (see paragraphs 38-39 above). The court decision obtained by those applicants was therefore neither enforceable nor final on the merits. It would not have been possible to pass legalising legislation excluding all pending proceedings regardless of the stage that they had reached; that would have removed the Act’s *raison d’être* and would have led to discrimination between those who had applied to the courts and those who had not, who would have found that the legalising Act was raised against them. The Government noted that the legalisation had had no disproportionate effect on the position of those applicants, because while the Colmar Court of Appeal was bound by the provisions of the Act, it was not to be forgotten that the same court had already ruled on the dispute in terms identical with those of the legalising Act in judgments of 23 September 1993 (see paragraph 20 above).

56. The Commission was of the opinion that section 85 of the Act of 18 January 1994 had quite simply endorsed the State’s position in the proceedings that had been brought against it and that were still pending in the ordinary courts. It noted that the State’s arguments had been rejected by the courts hearing the cases, which had preferred those advanced by the applicants. It also considered that the legislature had once and for all overturned the decisions of the courts and upheld the State by expressly providing that the Act should have retrospective effect. Once the Constitutional Council had confirmed that the Act accorded with the Constitution, the Court of Cassation’s decision had become inevitable. With regard more particularly to the “precedent” created by the Colmar Court of Appeal’s judgments of 23 September 1993, which were expressed in terms

identical with those of the Act in question, the Commission considered that the State could not thereby be dispensed from its obligation not to intervene in pending judicial proceedings with the aim of influencing their outcome.

The Commission consequently concluded that the State had intervened decisively to influence in its own favour the imminent outcome of the proceedings to which it was a party and whose merits had already been decided against it.

57. The Court reaffirms that while in principle the legislature is not precluded in civil matters from adopting new retrospective provisions to regulate rights arising under existing laws, the principle of the rule of law and the notion of fair trial enshrined in Article 6 preclude any interference by the legislature – other than on compelling grounds of the general interest – with the administration of justice designed to influence the judicial determination of a dispute (see the following judgments, cited above: *Stran Greek Refineries and Stratis Andreadis*, p. 82, § 49; *Papageorgiou*, p. 2288, § 37; and *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society*, p. 2363, § 112).

58. In the instant case, as in the above-mentioned cases, the Court cannot overlook the effect of the content of section 85 of the Act of 18 January 1994 (Law no. 94-43), taken together with the method and timing of its adoption.

To begin with, while section 85 expressly excluded from its scope court decisions that had become final on the merits, it settled once and for all the terms of the dispute before the ordinary courts and did so retrospectively and “notwithstanding any provisions to the contrary in collective or individual agreements in force on the date of publication of this Act” (see paragraph 45 above).

Secondly, section 85 was part of an Act on “public health and social welfare” (see paragraph 23 above). It was only in the course of the parliamentary debates and shortly after the delivery on 13 October 1993 of the Besançon Court of Appeal’s judgment that an amendment on the *IDP* was tabled.

Lastly, section 85 quite simply endorsed the position taken up by the State in pending proceedings. The Court notes that a majority of earlier decisions by the tribunals of fact had been favourable to the applicants. Admittedly, whereas the Metz Court of Appeal had found wholly in favour of the employees of the social-security offices concerned (see paragraphs 16 and 35 above), the Colmar Court of Appeal, unlike the Colmar industrial tribunal, had dismissed the claims (see paragraphs 20, 38 and 41 above). However, the special role of the Besançon Court of Appeal, the court which had to rehear the cases after the Court of Cassation’s judgments of 22 April 1992 (see paragraphs 19 and 21 above), must be emphasised. The Besançon Court of Appeal had been designated to resolve the dispute, notably the issues of “fact”, within the legal framework previously laid down by the

Court of Cassation itself (see paragraphs 18 and 19 above). Keeping strictly within the compass of the issues as laid down in the Court of Cassation's judgments of 22 April 1992, it found that no practice had arisen and rejected the method contended for by the State. It set a new reference index and, allowing a claim in the alternative by certain employees of the social-security offices concerned, held that the *IDP* had to be calculated on the basis of 6.1055% of the minimum wage, this being the percentage corresponding to the amount of the *IDP* as calculated on the basis of twelve points at 1 January 1953. Such a decision, which clarified the issues while remaining within the limits laid down by the Court of Cassation on 22 April 1992, was favourable to the applicants, since it had the effect of more than doubling the amount of the allowance actually paid by the social-security offices and conferred a right to back payment of the difference on allowances paid over several years (see paragraphs 21-22 above).

59. The Court cannot discern in the facts of the case why the conflicting court decisions required legislative intervention while proceedings were pending. It considers that such divergences are an inherent consequence of any judicial system which, like the French one, is based on a network of trial and appeal courts with authority over the area of their territorial jurisdiction. As the role of the Court of Cassation is precisely to resolve conflicts between decisions of the courts below, it is impossible to conjecture what its decision in the face of these conflicting decisions would have been but for the intervention of the Act in issue.

In the Court's opinion, the circumstances of the case do not make it possible to assert that the intervention of the legislature was foreseeable, any more than they can support the argument that an original intention had been frustrated (see the National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society judgment cited above, pp. 2362-63, §§ 110-12), seeing that the dispute was over the application of an agreement that had been discussed and adopted under a prescribed procedure by the employers and trade unions concerned.

The Court considers that the financial risk adverted to by the Government (see paragraph 53 above) and expressly noted by the Constitutional Council in the reasons it gave for its decision (see paragraph 26 above) cannot in itself warrant the legislature's substituting itself both for the parties to the collective agreement and for the courts in order to settle the dispute. On that point the Court notes that the Government put forward the sum of 350,000,000 francs' loss for the social-security bodies concerned if the court actions were generally successful (see paragraph 53 above), without providing any other comparative data, notably as to the total cost of the nine thousand employees and the details of the health expenditure of the bodies in Alsace-Moselle.

The adoption of section 85 in reality determined the substance of the dispute. The application of it by the domestic courts, in particular the Court of Cassation in its judgments of 2 March 1995 (see paragraphs 29 and 36 above), made it pointless to continue the proceedings.

Like the Commission, the Court considers that the Constitutional Council's decision does not suffice to establish that section 85 of the Act of 18 January 1994 is in conformity with the Convention (see paragraph 26 above).

In view of the foregoing, the Court also considers that no distinction can validly be made between the applicants according as they had or had not obtained a final decision on the merits.

60. As to the Government's argument that this was not a dispute between the applicants and the State (see paragraph 54 above) as the local health-insurance offices were entities subject to private law, not public law, the Court notes that the social-security bodies perform a public-service mission and come under the supervision both of the minister responsible for social security and the Minister for Economic Affairs and Finances. Apart from the potential variety and importance of the forms of oversight, including those affecting collective agreements laying down rules and regulations governing different categories of staff (see paragraph 44 above), the Court notes that the prefect – the State's representative in the *département* or region – or the Regional Department of Health and Social Affairs, an external department of the supervising ministry, systematically intervened as parties to the trial in the proceedings between the applicants and the bodies that employed them. At all events, the French system, with its bodies that manage a public service and have special governmental powers and are subject to ministerial supervisory authorities, is an illustration of the special role and the duties of the member States of the Council of Europe – as may result from the European Social Charter – in relation to the social welfare of their peoples. The finding is therefore inescapable that the intervention of the legislature in the instant case took place at a time when legal proceedings to which the State was a party were pending.

61. There has consequently been a violation of Article 6 § 1 in respect of the right to a fair trial.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS TO THE LENGTH OF THE PROCEEDINGS

62. Ms Gonzalez, Ms Mary, Ms Delaquerrière, Mr Schreiber, Ms Kern, Mr Gontier, Ms Schreiber, Ms Memeteau and Mr Cossuta maintained that the proceedings did not take place within a reasonable time as required by Article 6 § 1 of the Convention.

63. The Commission accepted the applicants' argument, while the Government submitted that the facts of the case disclosed no violation of the Article in question.

A. Period to be taken into consideration

64. The Court notes that the periods to be taken into consideration in order to assess the length of the proceedings in the light of the "reasonable time" requirement of Article 6 § 1 began on 17 and 28 August 1990, the dates of the applications to the Colmar industrial tribunal (see paragraph 37 above) and ended with the Court of Cassation's judgment of 18 June 1996 (see paragraph 43 above). The proceedings consequently lasted for almost five years and ten months.

B. Reasonableness of the length of the proceedings

65. The reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities (see, among many other authorities, the *Vernillo v. France* judgment of 20 February 1991, Series A no. 198, pp. 12-13, § 30).

1. Arguments before the Court

66. The applicants considered that a duration of four years in the Colmar Court of Appeal, to which had to be added almost a year at first instance as well as the proceedings in the Court of Cassation, was plainly excessive. In their submission, the case was not complex and no argument could be based on the time at which they had filed their submissions, since that had no effect on the date set for hearing cases on appeal from industrial tribunals. The cases were set down for hearing by the Court of Appeal and it was in the light of the date on which that decision was taken that the parties subsequently determined how they would proceed. Setting down took place without its being necessary for submissions to have been filed beforehand, as the court was validly seised by means of the notice of appeal and the proceedings were oral. The applicants noted that in the instant case the appeal was lodged on 10 September 1991 but that it was only on 12 July 1994 that the case was set down for hearing on 18 October 1994 (see paragraph 40 above). It was therefore only on 12 July 1994 that pleadings could usefully be filed, once the appellants had filed their submissions, in which they relied on the Act of 18 January 1994.

The applicants maintained that if the Court of Appeal had given judgment without waiting until the Act was passed, like the Metz Court of

Appeal, they would have been in possession of an enforceable decision when the Act was passed. They therefore argued that the excessive length of the proceedings had also had the effect of making it possible to raise the Act of 18 January 1994 against them.

67. The Government contested that analysis. They submitted that the facts of the case and, in particular, the numerous conflicting court decisions made it possible to appreciate the special complexity of the case. The Court of Cassation had not given judgment by the time the Colmar industrial tribunal rendered its decisions on 2 July 1991 (see paragraph 38 above). All the points of law raised by the parties had therefore been in abeyance.

As to the conduct of the applicants, the Government said that in civil cases the parties' conduct was vital since the initiative in conducting the proceedings lay with them. The applicants' representative had not filed pleadings until 30 September 1994, three years after the beginning of the proceedings in the Court of Appeal (see paragraph 40 above). The length of the proceedings at first instance was perfectly reasonable and the Court of Cassation had acted with especial diligence. Responsibility for the length of the proceedings in the Court of Appeal had lain with the applicants.

68. The Commission considered that the proceedings were somewhat complex and, as to the conduct of the parties, that the length of time was not reasonable, regard being had to a number of delays or periods of inactivity for which it regarded the domestic authorities as having been responsible.

2. The Court's assessment

(a) Complexity of the case

69. The Court considers that the subject matter of the case before the domestic courts was undoubtedly complex, as was confirmed by the finding in the Court of Cassation's judgments of 22 April 1992 that the reference index had ceased to exist (see paragraph 18 above).

(b) Conduct of the applicants

70. The Court can find nothing to suggest that the applicants were responsible for prolonging the proceedings. In particular, the date on which the applicants' grounds of appeal were filed had no effect on the Colmar Court of Appeal's setting down of the case for hearing (see paragraph 40 above).

(c) Conduct of the judicial authorities

71. The Court finds that the proceedings lasted three years, eight months and eight days in the Colmar Court of Appeal. Although the appeals had been lodged on 10 September 1991 (see paragraph 39 above), the Court of Appeal did not set a date for the hearing until 12 July 1994, almost three

years later (see paragraph 40 above). The Court considers that no persuasive explanation of that delay has been put forward. In particular, it notes that the Colmar Court of Appeal had already ruled on the issue of the *IDP* in its judgments of 23 September 1993 (see paragraph 20 above), more than two years after the appeals lodged in the instant case. Furthermore, the Colmar Court of Appeal's judgment was delivered on 18 May 1995 (see paragraph 41 above), almost a year and a half after the passing of the Act of 18 January 1994.

(d) Conclusion

72. Having regard to all the evidence, the Court considers that the "reasonable time" within which Article 6 § 1 requires a case to be heard was exceeded.

There has accordingly been a violation of Article 6 § 1 of the Convention as regards the length of the proceedings.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

73. The applicants considered that the adoption of section 85 of the Act of 18 January 1994 (Law no. 94-43) had entailed a breach of Article 13 of the Convention, which provides:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

74. Having regard to the finding in paragraph 61 above, the Court holds that it is unnecessary to rule on the complaint in question.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. 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

76. The applicants alleged that they had sustained pecuniary damage corresponding to the sums they would have received had the legislation remained as it was before the passing of the Act of 18 January 1994. Mr Zielinski and Mr Pradal assessed their pecuniary damage at 47,000 French francs (FRF) each and did not make any claim in respect of non-pecuniary damage. Ms Gonzalez, Ms Mary, Ms Delaquerrière,

Mr Schreiber, Ms Kern, Mr Gontier, Ms Schreiber, Ms Memeteau and Mr Cossuta each sought FRF 21,434 in respect of back payment of the *IDP* for the five-year period before 17 August 1990, FRF 22,257 in respect of back payment of the *IDP* for the period from 18 August 1990 to 30 November 1995, plus FRF 15,000 for interest at the statutory rate and increased with effect from 17 August 1990. They assessed compensation for the non-pecuniary damage sustained by each of them on account of the length of the proceedings at FRF 20,000 and compensation for the non-pecuniary damage stemming from the unfairness of the trial at FRF 50,000.

77. The Government did not express a view.

78. The Delegate of the Commission wished to leave the matter to the Court's discretion.

79. The Court notes that in the present case an award of just satisfaction can only be based on the fact that the applicants did not have the benefit of the guarantees of Article 6, including the one regarding the length of the proceedings in respect of Ms Gonzalez, Ms Mary, Ms Delaquerrière, Mr Schreiber, Ms Kern, Mr Gontier, Ms Schreiber, Ms Memeteau and Mr Cossuta. As to the fairness of the proceedings, whilst the Court cannot speculate as to the outcome of the trial had the position been otherwise, it does not find it unreasonable to regard the applicants as having suffered a loss of real opportunities (see the *Colozza and Rubinat v. Italy* judgment of 12 February 1985, Series A no. 89, p. 17, § 38). To that must be added non-pecuniary damage, which the findings of violations in this judgment do not suffice to remedy, except in the case of Mr Zielinski and Mr Pradal, who made no claim under this head. Making its assessment on an equitable basis as required by Article 41, the Court awards FRF 47,000 each to Mr Zielinski and Mr Pradal and FRF 80,000 to each of the other nine applicants, in respect of all heads of damage taken together.

B. Costs and expenses

80. The applicants each sought FRF 30,000 in respect of the costs and expenses relating to their representation.

81. The Government did not express a view.

82. The Delegate of the Commission wished to leave the matter to the Court's discretion.

83. The Court notes that Mr Zielinski and Mr Pradal were represented by the same lawyer throughout the proceedings before the Commission and the Court, the other nine applicants having used the services of the same lawyer only after the Grand Chamber had ordered the joinder of the applications. Consequently, and on the basis of the information in its possession, the Court, making its assessment on an equitable basis, awards Mr Zielinski and Mr Pradal FRF 30,000 each in respect of the proceedings

before the Commission and the Court and each of the other applicants FRF 4,000.

C. Default interest

84. According to the information available to the Court, the statutory rate of interest applicable in France at the date of adoption of the present judgment is 3.47% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the fairness of the proceedings;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the length of the proceedings in respect of Ms Gonzalez, Ms Mary, Ms Delaquerrière, Mr Schreiber, Ms Kern, Mr Gontier, Ms Schreiber, Ms Memeteau and Mr Cossuta;
3. *Holds* that it is unnecessary to rule on the complaint under Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay, within three months, 47,000 (forty-seven thousand) French francs each to Mr Zielinski and Mr Pradal for pecuniary damage, 80,000 (eighty thousand) French francs to Ms Gonzalez, Ms Mary, Ms Delaquerrière, Mr Schreiber, Ms Kern, Mr Gontier, Ms Schreiber, Ms Memeteau and Mr Cossuta for pecuniary and non-pecuniary damage, and 30,000 (thirty thousand) French francs each to Mr Zielinski and Mr Pradal and 4,000 (four thousand) French francs to each of the other nine applicants for costs and expenses;
 - (b) that simple interest at an annual rate of 3.47% shall be payable on those sums from the expiry of the above-mentioned three months until settlement;
5. *Dismisses* the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 28 October 1999.

Luzius WILDHABER
President

Maud DE BOER-BUQUICCHIO
Deputy Registrar

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Mr Bacquet is appended to this judgment.

L.W.
M.B.

CONCURRING OPINION OF JUDGE BACQUET

(Translation)

I voted in favour of this judgment, which, firstly, provides a balanced answer to the question of principle whether laws designed to legalise existing practices (*lois de validation*) are compatible with the Convention and, secondly, applies that answer rigorously but logically to the present case.

1. On the general question the Court reaffirms the principle, based on Article 6 § 1 of the Convention, that the legislature must not intervene with the aim of retrospectively establishing or altering a given legal situation so as to influence the judicial determination of a dispute; but it makes an exception for cases in which such an intervention would be justified on compelling grounds of the general interest. The Court therefore confirms all its decisions in earlier cases, in which initially the principle was laid down that the legislature must not interfere with the administration of justice (*Stran Greek Refineries and Stratis Andreadis v. Greece* judgment of 9 December 1994, Series A no. 301-B, and *Papageorgiou v. Greece* judgment of 22 October 1997, *Reports of Judgments and Decisions* 1997-VI), and then the idea introduced that such interference could, however, be justified on compelling grounds of the general interest (judgment of 23 October 1997 in the *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom* case, *Reports* 1997-VII), grounds which are assessed by the Court against the background and in the circumstances of each case and which may, exceptionally, be held by it to be more legitimate than the rights relied on by certain individuals or, at any rate, held to prevail over them.

2. In the instant case the reason for the legislature's intervention (section 85 of the Act of 18 January 1994) was primarily, if not exclusively, the fact that there was a conflict of case-law, on a question of fact, between two tribunals of fact, the Colmar and Besançon courts of appeal, the latter of which had ruled on a case referred to it after a judgment of the Metz Court of Appeal had been quashed. The financial considerations relating to the substantial costs to the social-security bodies of the ruling given by any particular court should not, in my view, be regarded as having been decisive in the legislature's intervention in this instance.

Where it is impossible, or no longer possible, for the Court of Cassation to remedy them, conflicting decisions rendered by trial and appeal courts are undoubtedly likely to surprise, perturb or shock the public, but they are the price to be paid for operating a decentralised system of courts, whose supreme overseer, the Court of Cassation, respects the wholly independent assessment of the facts by the tribunals of fact and rules only on issues of law. The European Court therefore cannot accept too lightly, on the sole

ground of rationality and of an abstract application of the idea of justice, that such conflicts constitute a compelling ground of the general interest which justifies the intervention of the legislature.

There are, however, very cogent reasons for accepting such an intervention where, in certain temporal and geographical circumstances, the conflicting decisions in practice lead to a denial of justice, for example where the execution of irreconcilable decisions is physically impossible or, if not impossible, would immediately create an intolerable inequality of position between the parties concerned.

The present case in fact appears to be such an instance at first blush. In 1988, staff members of the local social-security offices of Alsace-Moselle challenged before several industrial tribunals the method whereby the offices had, for nearly fifteen years, calculated the amount of a special allowance introduced by an agreement of 1953. In April 1992 the Court of Cassation quashed judgments of the Metz Court of Appeal relating to some of these cases, held that the 1953 agreement could no longer apply in its original terms and ordered that the cases should be reheard by a tribunal of fact in order that it might be determined whether a practice had been established (on account of the application of a given method of calculation by the social-security offices over many years) or, in the absence of such a practice, in order that the method of calculating the allowance should be determined. In September 1993, however, the Colmar Court of Appeal held that a practice had been established for paying the allowance by the method adopted by the social-security offices, while in October the Besançon Court of Appeal held, on the contrary, that no practice had been established and laid down a new method of calculation – in other words, two unappealable but contradictory assessments of one and the same question of fact, namely whether a practice existed. At that stage, there is no doubt that an unjustifiable inequality of position arose between staff members of the local social-security offices of Alsace-Moselle in respect of the calculation of the allowance in question, according as they came, as litigants, within the jurisdiction of the Colmar Court of Appeal or within that of the Metz Court of Appeal. Besides, how could the social-security offices in practice have applied these irreconcilable decisions to their staff?

Did that situation, however, constitute in autumn 1993 a compelling ground of the general interest which justified the intervention of the legislature? That would have been so, in my view, if the legislature alone had been in a position to remedy the contradictions between the judgments. But in fact the interested parties could still have applied to the Court of Cassation, relying precisely on the conflict of judgments. A judicial resolution of the difficulty, which would have remedied the denial of justice, was therefore possible. It was ultimately for that reason that the conflict between decisions given in autumn 1993 by the Colmar and Metz courts of appeal did not amount to a compelling ground of the general

interest justifying the legislature's intervention, it being remembered that, regardless of the resulting confusion, that conflict did not in itself cause any financial difficulties for the social-security bodies.