



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

CASE OF FRYDLENDER v. FRANCE

(Application no. 30979/96)

JUDGMENT

STRASBOURG

27 June 2000

In the case of Frydlender v. France,

The European Court of Human Rights, sitting as a Grand Chamber composed of the following judges:

Mrs E. PALM, *President*,
Mr J.-P. COSTA,
Mr A. PASTOR RIDRUEJO,
Mr L. FERRARI BRAVO,
Mr L. CAFLISCH,
Mrs F. TULKENS,
Mr W. FUHRMANN,
Mr K. JUNGWIERT,
Mr M. FISCHBACH,
Mr V. BUTKEVYCH,
Mr J. CASADEVALL,
Mr B. ZUPANČIČ,
Mrs N. VAJIĆ,
Mr J. HEDIGAN,
Mrs W. THOMASSEN,
Mr T. PANȚÎRU,
Mr K. TRAJA,

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

Having deliberated in private on 15 March and 17 May 2000,

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

PROCEDURE

1. The case was referred to the Court in accordance with the provisions applicable prior to the entry into force of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”)¹ by the European Commission of Human Rights (“the Commission”) on 6 March 1999 (Article 5 § 4 of Protocol No. 11 and former Articles 47 and 48 of the Convention).

2. The case originated in an application (no. 30979/96) against the French Republic lodged with the Commission under former Article 25 of the Convention by a French national, Mr Nicolas Frydlender (“the applicant”), on 20 November 1995. The applicant alleged a violation of his right to a hearing within a reasonable time, within the meaning of Article 6 § 1 of the Convention. The Commission declared the application admissible on 14 April 1998. In its report of 20 October 1998 (former Article 31 of the

1. *Note by the Registry.* Protocol No. 11 came into force on 1 November 1998.

Convention) it expressed the opinion that there had been a violation of Article 6 § 1 (twenty votes to ten)¹.

3. Before the Court the applicant was represented by Mr F.-H. Briard, of the *Conseil d'Etat* and Court of Cassation Bar. The French Government ("the Government") were represented by their Agent, Mrs M. Dubrocard, Deputy Head of the Human Rights Office, Ministry of Foreign Affairs.

4. On 31 March 1999 the panel of the Grand Chamber determined that the case should be decided by the Grand Chamber (Rule 100 § 1 of the Rules of Court). On 26 April 1999 the President of the Court, Mr L. Wildhaber, decided that in the interests of the proper administration of justice the case should be assigned to the Grand Chamber that had been constituted to hear the case of *Pellegrin v. France* (Rules 24, 43 § 2 and 71).

5. The applicant and the Government each filed an initial memorial in June 1999. At the Court's request, the parties also each filed an additional memorial in February 2000 on the questions raised by the application in the light of the judgment of 8 December 1999 in the *Pellegrin* case (*Pellegrin v. France* [GC], no. 28541/95, ECHR 1999-VIII).

6. A hearing took place in public in the Human Rights Building, Strasbourg, on 15 March 2000.

There appeared before the Court:

(a) *for the Government*

Mr J.-F. DOBELLE, Deputy Director
of Legal Affairs, Ministry of Foreign Affairs, *Agent*,
Mr P. BOUSSAROQUE, administrative court judge,
on secondment to the Legal Affairs Department,
Ministry of Foreign Affairs, *Counsel*;

(b) *for the applicant*

Mr F.-H. BRIARD, of the *Conseil d'Etat*
and Court of Cassation Bar, *Counsel*.

The applicant was also present at the hearing.

The Court heard addresses by Mr Briard, for the applicant, and Mr Dobelle, for the Government.

1. *Note by the Registry*. The report is obtainable from the Registry.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. In July 1972 the applicant was engaged as an official employed under an individual contract (*agent contractuel*) by the Economic Development Department of the Ministry for Economic Affairs. Under a contract of 29 September 1977 he was sent to Athens to work as a technical adviser.

Following an amendment of 30 August 1984 to the contract of 29 September 1977, he was posted to New York with effect from 25 June 1984 to head an autonomous section of the Economic Development Department. Under the authority of the chief commercial adviser of the New York office, who was himself responsible to the chief commercial adviser at the French embassy in Washington, to whom the agricultural attaché was also answerable, he was placed in charge of the wines, beers and spirits sector, where he had dealings with exporters and importers and, in particular, the SOPEXA company (*Société pour l'expansion des ventes des produits alimentaires et agricoles*).

8. In accordance with Decree no. 69-697 of 18 June 1969 on the general terms and conditions of service of persons working overseas for the State under individual contracts, the applicant was employed on a series of thirty-month contracts which were to be automatically renewed unless expressly terminated. The State could terminate any contract on three months' notice for, *inter alia*, inadequate performance.

9. In a letter dated 10 December 1985, which was served on the applicant on 27 December 1985, the Minister for Economic Affairs informed the applicant that, owing to his inadequate performance, he did not intend to renew his contract when it expired on 13 April 1986. In a letter dated 9 January 1986, served on the applicant on 21 January 1986, the Minister informed him of his final decision not to renew the contract, on the ground that, among other matters, the applicant had shown a marked lack of initiative towards importers.

10. By letters of 28 February, 3 March and 13 June 1986, the applicant lodged three applications for judicial review of this decision with the Paris Administrative Court. The first sought to have the Minister's first letter of 10 December 1985, which was in the nature of a preliminary to a final decision, set aside. The second was aimed at having the final decision to dismiss the applicant, contained in the letter of 9 January 1986, quashed. The third challenged the lawfulness of the appointment of the applicant's replacement.

11. In a judgment of 6 January 1989 the Paris Administrative Court, having joined all three applications, dismissed them.

12. On 24 October 1989 the applicant gave notice of an appeal to the *Conseil d'Etat* on points of law. He lodged a statement of the grounds of appeal on 23 February 1990. In a judgment of 10 May 1995, which was served on the applicant on 26 October 1995, the *Conseil d'Etat* dismissed the appeal, holding, *inter alia*, that it had been lawful for the Minister to dismiss the applicant on the ground of inadequate performance.

II. RELEVANT LAW

A. The general terms and conditions of service of commercial and agricultural attachés and advisers working for the Economic Development Department of the Ministry for Economic Affairs

13. According to Article 1 of Decree no. 50-446 of 19 April 1950 laying down regulations governing the terms and conditions of service specific to economic development personnel, “the civil servants of the economic development offices overseas constitute a body of staff responsible to the Minister for Economic Affairs. In the performance of their duties they shall be attached to either a diplomatic delegation or a consulate ...”

Article 3 of the decree provides that they are to act as delegates of the Minister for Economic Affairs in respect of all matters relating to France's foreign trade. In particular, they are responsible for studying all problems having a bearing on the French economy, supplying information to the various French administrative authorities and assisting with the preparation, negotiation and execution of commercial treaties and agreements. They must also participate in various surveys or special projects and in all economic events organised or run by the various ministries or official groups, defend the country's general economic interests and on that account provide direct assistance, in overseas markets, to French businessmen, industrialists and agricultural producers.

The Overseas Economic Development Department has an establishment of 128 staff. Commercial attachés second class are recruited from among graduates of the National College of Administration (*ENA*); commercial advisers of the various classes may in addition be recruited from the State civil service. All commercial advisers and attachés are posted abroad by order of the Minister for Economic Affairs, made after the agreement of the Minister for Foreign Affairs has been obtained.

14. In addition, by Law no. 50-340 of 27 March 1950, five posts of agricultural attaché have been created. Agricultural attachés are responsible to the head of the relevant economic development office. Their duties are described in Article 3 of Decree no. 56-1242 of 3 December 1956: they study, from the technical point of view, problems affecting French agricultural development, particularly by seeking outlets in the local market

for imports of French agricultural produce, and act as advisers during the preparation of negotiations on international commercial agreements and their application, assisting the head of office in his relations with the public administrative authorities dealing with foreign trade matters.

B. The general terms and conditions of service of persons working overseas for the State under individual contracts

15. The general terms and conditions of service of persons of French nationality working overseas for the State or State public administrative bodies under individual contracts are laid down by Decree no. 69-697 of 18 June 1969. The provisions of the decree are not applicable to technical assistance or cooperation staff placed at the disposal of foreign States. The different types of post are defined in orders made by the ministries concerned. They may be filled either by non-established employees or by established civil servants.

16. The relevant provisions of the decree are worded as follows:

Article 6

“Persons to whom Article 1 applies shall sign a contract of service. The contract, which must refer to the provisions of this decree, shall specify its duration, the date on which it is to take effect, the staff member's category, grade and duties, the appropriate residence allowance group, the country of the posting and, where applicable, the family allowance group.”

Article 8

“Where the staff member was recruited in the country of the posting, the contract must be for a period of at least three years. Where the staff member was recruited in France or in a foreign country other than the country of the posting, the contract must be for at least thirty months plus the length of his or her official home leave entitlement.

...

A contract does not become final until expiration of the period of probation or training which the staff member may be required to complete immediately after signature of the contract in the country of recruitment. The contract may be terminated by either party without restriction or notice at any time during this traineeship period or on its expiry.”

Article 10

“The contract shall be terminated: 1. when it expires, save that it will be deemed to have been tacitly renewed for a period equivalent to its original length unless terminated either by the State or by the member of staff at least three months before the date on which it is due to expire. Refusal to renew the contract or to sign a new

contract shall be deemed a resignation. Such a refusal on the part of the State shall be deemed a dismissal, save where a new contract is signed within six months of the expiry of the previous one; 2. at any time if terminated by the State on three months' prior notice where the grounds for the termination are redundancy or inadequate performance; [or] in the case of dismissal on disciplinary grounds."

C. Case-law of the Court of Justice of the European Communities and the Communication from the European Commission published in OJEC no. C 72 of 18 March 1988

17. Article 48(4) of the Treaty of 25 March 1957 instituting the European Economic Community ("the EEC Treaty") provides for a derogation from the principle of freedom of movement for workers within the Community in respect of "employment in the public service". The Court of Justice of the European Communities has developed a restrictive interpretation of this derogation. In its judgment of 17 December 1980 in the case of *Commission v. Belgium* (C-149/79, ECR 3881) it decided that the derogation concerned only posts which involved direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities, and which thus presumed on the part of those occupying them the existence of a special relationship of allegiance to the State and a reciprocity of rights and duties which formed the foundation of the bond of nationality.

18. The European Commission, to which the EEC Treaty assigned responsibility for ensuring the correct application of Community rules, noted that a large number of posts likely to be caught by the derogation had in reality no bearing on the exercise of powers conferred by public law or protection of the general interests of the State.

19. In a communication of 18 March 1988 it set itself the task of listing separately those activities which were covered by the derogation and those which were not. It thus established two distinct categories of activities according to whether or not they involved "direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State".

20. These categories were defined as follows:

"Exclusion of specific activities in the national public service [from freedom of movement for workers]

On the basis of current Court of Justice rulings, and bearing in mind the present conditions for establishing the single market, the Commission considers that the derogation in Article 48(4) covers specific functions of the State and similar bodies such as the armed forces, the police and other forces for the maintenance of order, the judiciary, the tax authorities and the diplomatic corps. This derogation is also seen as covering posts in State Ministries, regional government authorities, local authorities

and other similar bodies, central banks and other public bodies, where the duties of the post involve the exercise of State authority, such as the preparation of legal acts, the implementation of such acts, monitoring of their application and supervision of subordinate bodies ...

Activities concerned by action in the public service sector

The Commission considers that the functions involved in certain forms of public employment are for the most part sufficiently remote from the specific activities of the public service as defined by the Court of Justice that they would only in very rare cases be covered by the exception in Article 48(4) of the Treaty.

The Commission proposes therefore to implement its action in the following areas by order of priority:

- bodies responsible for administering commercial services (e.g. public transport, electricity and gas supply, airline and shipping companies, posts and telecommunications, radio and television companies),
- public health care services,
- teaching in State educational establishments,
- research for non-military purposes in public establishments.

Each of these activities also exists in the private sector, to which Article 48(4) does not apply, or may be exercised in the public sector without the imposition of nationality requirements ...”

THE LAW

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

21. The applicant complained of the length of the administrative proceedings which began on 28 February 1986 and ended on 26 October 1995. He relied on Article 6 § 1 of the Convention, which provides:

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

A. Applicability of Article 6

22. The Court must first determine whether that Article is applicable in the present case. The applicant and the Commission argued that it was applicable; the Government submitted that it was not.

*1. Arguments of those appearing before the Court***(a) The applicant**

23. The applicant submitted that, even though since the judgment of 8 December 1999 in the *Pellegrin* case (*Pellegrin v. France* [GC], no. 28541/95, ECHR 1999-VIII) the nature of the legal relation between an official and the State – whether governed by statutory conditions of service or stipulated in a contract – was not considered to have any bearing on assessment of the applicability of Article 6 of the Convention, it nevertheless provided a valuable indicator as to whether or not a post entailed the exercise of powers conferred by public law. The general framework of rules within which the applicant had carried out his duties therefore had its importance. In that connection, the applicant pointed out that he did not belong to the category of commercial attachés and advisers created by the decree of 19 April 1950, who were the representatives abroad of the Minister for Economic Affairs, or that of the agricultural attachés created by the decree of 3 December 1956. These two texts had public-service overtones, particularly in those clauses which laid down the duties of officials of the Economic Development Department, who were posted to embassies or consulates and were responsible, among other matters, for assisting with the preparation and negotiation of international commercial treaties. However, especially in departments working overseas, the administrative authorities, at least up to the level of officials working in a specific sector (who were therefore technical specialists), sometimes called upon the services of officials working under individual contracts, some established and others not, and even of foreign nationals recruited on the spot whose remuneration and social security arrangements were governed by local law. The applicant belonged to that category, since he was subject to the general terms and conditions of service of officials working overseas under individual contracts, as laid down by the decree of 18 June 1969, which did not give any definition of the precise duties of such officials. Although officials under individual contracts were obviously bound by the constraints of public service too, they did not exercise any powers conferred by public law, their employment could be terminated at any time and there was between them and the administrative authority which employed them no special bond of trust and loyalty. With more particular regard to economic development offices overseas, the applicant submitted that their main role was to inform and advise importers and exporters of French products. The officials concerned did not participate in the performance of diplomatic duties and did not exercise any portion of the State's sovereign power.

24. With regard to his duties during his New York posting, the applicant pointed out that his only task, performed with the assistance of one

secretary, was to promote sales of French wines, beers and spirits, under the authority of the head of the New York office, a commercial adviser, who was himself responsible to the agricultural attaché. The agricultural attaché was responsible to the chief commercial adviser at the Washington office, who was answerable to the ambassador, who took his instructions from the government in Paris. The applicant had no financial responsibilities, did not participate in negotiations concerning commercial treaties and did not represent the Minister for Economic Affairs at trade fairs. For the purposes of the European Commission's communication of 1988, he therefore considered himself a civil servant employed in an administrative capacity rather than a civil servant exercising authority.

(b) The Government

25. The Government submitted that the applicant performed his duties as a member of a diplomatic service responsible for protecting the State's commercial interests.

The decree of 19 April 1950, which laid down general terms and conditions of service for economic development staff abroad, clearly defined those duties, which primarily involved providing the Minister for Economic Affairs with strategic information so that he could determine and optimise France's position in multilateral, regional and bilateral forums for consultation and negotiation. To that end, economic development staff carried out economic surveys in their respective geographical areas. They also assisted with the preparation, negotiation and execution of international treaties between France and the country where they were in post. In doing so, they sometimes had to collect and transmit, by encrypted diplomatic telegrams, confidential information intended to be used for the elaboration of French economic strategy, for example when the highest authorities of the State made visits abroad to promote French commercial interests. They thus represented the Minister for Economic Affairs. Secondly, the work of the economic development offices included informing and advising French firms conducting market research with a view to establishing a presence abroad. The information provided for that purpose was related both to the local economic context and to the administrative formalities foreign businesses were required to complete, and the fee charged for this service, in accordance with the public-service philosophy, was well below what would have been charged by a private consultancy firm. In addition, a favourable opinion from the economic development offices was a prerequisite for any business that sought to have a particular commercial risk guaranteed by COFACE (*Compagnie française d'assurances pour le commerce extérieur* – the French company for the insurance of foreign trade), a body financed by public funds. Lastly, under the applicable legal rules the staff of the economic development offices formed part of the

diplomatic or consular staff, whose premises they often shared moreover, and were placed under the authority of the ambassador or consul.

26. With regard to the applicant's grade and level of responsibility, the Government submitted that he had constantly been assigned to managerial-type duties in the foodstuffs sector, which – together with services and consumer goods – was one of the three main spheres of activity of the New York office. In their submission, the importance of the applicant's role was evidenced by the fact that he was classified in the highest category included in the decree used as the basis for calculation of his remuneration. They argued on that account that the applicant was one of those officials held by the Court in *Pellegrin* to be excluded from the scope of Article 6, because their posts typified the specific activities of the public service, which had responsibility for safeguarding the general interests of the State or of other public bodies. The same conclusion could be drawn from the European Commission's communication of 1988, which had included the diplomatic corps, described as a specific activity in the national public service excluded from freedom of movement for workers, in the category of posts involving the exercise of public authority.

2. *The Court's assessment*

27. The Court reiterates that for Article 6 § 1, in its “civil” limb, to be applicable there must be a dispute (*contestation*) over a “right” that can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious. It may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. Moreover, the outcome of the proceedings must be directly decisive for the civil right in question. The Court notes that in the present case it was not contested that there was a “dispute” over a right recognised under domestic law, that the dispute was genuine and serious or that the outcome of the proceedings was directly decisive for the right concerned. It further observes that the dispute related to a right which was civil by its nature, since it was a dispute between an employer and an employee about the way the latter's employment had been terminated.

28. It remains to be determined whether the right in question was a “civil right” for the purposes of Article 6 § 1 of the Convention, regard being had to the fact that in the present case the proceedings concerned the dismissal of an official working for a public authority (see *Pellegrin* cited above).

29. In the present case the parties at first derived argument from the distinction which exists in France, as in some other Contracting States, between two categories of staff at the service of the State, namely officials under contract and established civil servants. The Commission expressed the opinion in its report of 20 October 1998 that Article 6 was applicable, on the ground that since the applicant was not a “civil servant” within the meaning of the applicable domestic law, the established case-law at that

time, to the effect that Article 6 was not applicable to disputes concerning the recruitment, careers or termination of service of civil servants, did not apply (see in particular the *Neigel v. France* judgment of 17 March 1997, *Reports of Judgments and Decisions* 1997-II, pp. 410-11, § 43).

30. It is true that in some States officials under contract are governed by private law, unlike established civil servants, who are governed by public law. The Court notes, however, that in the current practice of the Contracting States established civil servants and officials under contract frequently perform equivalent or similar duties. The question whether the applicable legal provisions form part of domestic public or private law cannot, according to the Court's established case-law, be decisive in itself, and it would in any event lead to inequality of treatment from one State to another and between persons in State service performing equivalent duties.

31. The Court observes that in its leading judgment in the *Pellegrin* case (judgment cited above, § 63), it held that it was important, with a view to applying Article 6 § 1, to establish an autonomous interpretation of the term "civil service" which would make it possible to afford equal treatment to public servants in the States party to the Convention, irrespective of the domestic system of employment and, in particular, whatever the nature of the legal relation between the official and the administrative authority (whether stipulated in a contract or governed by statutory and regulatory conditions of service).

32. To that end, in order to determine the applicability of Article 6 § 1 to public servants, whether established or employed under contract, the Court considered that it should adopt a functional criterion based on the nature of the official's duties and responsibilities (*ibid.*, § 64). It further noted that in each country's public-service sector certain posts involved responsibilities in the general interest or participation in the exercise of powers conferred by public law, and that the holders of such posts thus wielded a portion of the sovereign power of the State, which therefore had a legitimate interest in requiring of these servants a special bond of trust and loyalty (*ibid.*, § 65).

33. The Court has thus decided that the only disputes excluded from the scope of Article 6 § 1 of the Convention are those raised by public servants whose duties typify the specific activities of the public service in so far as the latter is acting as the depositary of public authority responsible for protecting the general interests of the State or other public authorities. A manifest example of such activities is provided by the armed forces and the police. In practice, the Court will seek to ascertain in each case whether the applicant's post entailed – in the light of the nature of the duties and responsibilities appertaining to it – direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities. As it did in *Pellegrin* (*ibid.*, § 66), the Court will have regard, for guidance, to the categories of activities and posts listed by the European Commission in its

communication of 18 March 1988 and by the Court of Justice of the European Communities (see paragraphs 17-20 above).

34. The Court will therefore consider, in the first place, whether the activities of economic development offices entail, as such, duties “designed to safeguard the general interests of the State” within the meaning of *Pellegrin* cited above. In the present case the Government submitted that the aims of the economic development offices overseas (166 offices in 115 countries) were to defend France's economic interests abroad and to promote foreign trade, for which the State held responsibility. They argued that these were incontestably duties designed to safeguard the general interests of the State because they formed part of France's diplomatic activity.

35. In that connection, the Court notes, firstly, that the economic development offices are not responsible to the Ministry of Foreign Affairs but to the Ministry for Economic Affairs, and that they come under the authority of the Secretary of State for Foreign Trade. Admittedly, the staff of these offices are placed under the ambassador's authority, but the Court observes that the same applies to every State official working abroad, since the ambassador is the representative of France in the host country. Secondly, and above all, the Court notes that, contrary to the Government's submission, the 1950 and 1956 decrees on the general terms and conditions of service of commercial attachés or advisers are not applicable to the applicant, whose conditions of service were laid down by a decree promulgated in 1969.

36. It remains to be established whether, in the instant case, the applicant's responsibilities could nevertheless justify the conclusion that he exercised powers conferred by public law. The Court will examine in particular whether, on account of the nature of his duties and the level of his responsibilities, the applicant may in practice have participated in activities designed to safeguard the general interests of the State (see *Pellegrin* cited above, § 69).

37. In the present case the applicant denied that he had performed duties which entailed, even by delegation, the exercise of any portion of the State's sovereign power. He asserted that he had played a subordinate role, restricted to his special field, namely the agri-foodstuffs sector, and that his work for France's commercial services abroad had consisted in giving advice and information to French exporters, but had not included any activity having to do with regulation, administrative supervision or financial responsibility.

38. The Court observes that the documents in the file show that the applicant, a graduate of the National Agronomic Institute in Paris, was posted to the New York economic development office as head of an autonomous section, to handle more specifically the promotion of French wines, beers and spirits. To that end, he maintained regular contacts with the

local branch of SOPEXA and visited exhibitions and trade fairs in the sector to which he had been assigned. He assisted the *CFCE* (*Centre français pour le commerce extérieur* – the French Centre for Foreign Trade), a public body of an industrial and commercial nature, by informing it about local conditions for alcohol imports, provided information to American importers of wines and other alcoholic drinks and gave advice to potential French exporters. His job was thus to facilitate and stimulate exports of certain categories of products and to advise and assist official and semi-official bodies and individual exporters or importers. His “marked lack of initiative towards importers”, moreover, was one of the main grounds cited in the decision of the Minister for Economic Affairs to terminate his contract (see paragraph 9 above).

39. In view of the nature of the duties performed in the present case by the applicant and the relatively low level of his responsibilities, the Court considers that he was not carrying out any task which could be said to entail, either directly or indirectly, duties designed to safeguard the general interests of the State.

40. The Court further observes that *Pellegrin* was intended to restrict cases in which public servants could be denied the practical and effective protection afforded to them, as to any other person, by the Convention, and in particular by Article 6 thereof. The Court must adopt a restrictive interpretation, in accordance with the object and purpose of the Convention, of the exceptions to the safeguards afforded by Article 6 § 1 (see *Pellegrin*, § 64 *in fine*).

Yet this restrictive interpretation would be too seriously weakened if, as the Government wish in the present case, the Court were to find, by analogy or by extension, that the activities of the staff of the economic development offices as a whole, whatever the nature of their duties and their level of responsibility, entailed the exercise of powers conferred by public law.

41. In the light of the above considerations, the Court considers that Article 6 of the Convention is applicable in the present case to the dispute over a civil right between Mr Frydlender and the French State.

B. Compliance with Article 6

42. The applicant submitted that the length of the proceedings had been excessive. The Government left assessment of this point to the Court's discretion.

43. The Court notes that the length of the proceedings complained of, which began on 28 February 1986 with the first application to the Paris Administrative Court and ended on 26 October 1995 when the *Conseil d'Etat's* judgment was served on the applicant, was nearly nine years and eight months.

It reiterates that the “reasonableness” of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among other authorities, *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 19, ECHR 2000-IV).

44. The Court notes, like the Commission, that neither the complexity of the case nor the applicant's conduct explains the length of the proceedings. It points out that the *Conseil d'Etat* gave judgment nearly six years after the case was referred to it and that the Government did not supply any explanation for this delay, which seems manifestly excessive.

45. The Court reiterates that it is for the Contracting States to organise their legal systems in such a way that their courts can guarantee to everyone the right to a final decision within a reasonable time in the determination of his civil rights and obligations (see *Caillot v. France*, no. 36932/97, § 27, 4 June 1999, unreported). It further reiterates that an employee who considers that he has been wrongly suspended or dismissed by his employer has an important personal interest in securing a judicial decision on the lawfulness of that measure promptly, since employment disputes by their nature call for expeditious decision, in view of what is at stake for the person concerned, who through dismissal loses his means of subsistence (see the *Obermeier v. Austria* judgment of 28 June 1990, Series A no. 179, pp. 23-24, § 72, and the *Caleffi v. Italy* judgment of 24 May 1991, Series A no. 206-B, p. 20, § 17).

46. In the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, the Court considers that the length of the proceedings complained of was excessive and failed to satisfy the reasonable-time requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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. Non-pecuniary damage

48. Under this head the applicant claimed the sum of 240,000 French francs (FRF). He submitted that his dismissal on the ground of inadequate performance and the length of the proceedings he brought to challenge it

had caused him substantial non-pecuniary damage. Because he was a specialist in the field of international trade in agri-foodstuffs products and the foreign regulations governing it, and on account of his career up to that point and his age, he had been unable to find a job for nearly six years, since the fact that the proceedings were still pending had barred him in practice from applying to public bodies or establishments, which were the only employers likely to give him a job. The length of the proceedings had also impinged on his family life, both financially and in other ways. The Government did not comment on the applicant's claim.

49. The Court considers that in the present case the prolongation of the proceedings beyond a reasonable time undoubtedly caused the applicant considerable difficulties and a lengthy period of uncertainty which justify the award of compensation. Having regard to the judicial authorities' obligation to determine employment disputes with special diligence (see paragraph 45 above) and making an assessment on an equitable basis, as required by Article 41, the Court awards the applicant the sum of FRF 60,000 in respect of non-pecuniary damage.

B. Costs and expenses

50. The applicant claimed the sum of FRF 50,000 net of tax in respect of the costs he had incurred for his representation before the Convention institutions and produced a copy of the relevant bill of costs. The Government did not comment on this claim. Having regard to the work done by the applicant's lawyer, the Court considers that this amount is reasonable and awards it in full.

C. Default interest

51. 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 2.74% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that Article 6 of the Convention is applicable and has been breached;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, the following sums:

- (i) FRF 60,000 (sixty thousand French francs) for non-pecuniary damage;
- (ii) FRF 50,000 (fifty thousand French francs), plus any value-added tax that may be payable, in respect of costs and expenses;
- (b) that simple interest at an annual rate of 2,74% shall be payable on these sums from the expiry of the above-mentioned three months until settlement;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 27 June 2000.

Elisabeth PALM
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 Mrs Tulkens is annexed to this judgment.

E.P.
M.B.

CONCURRING OPINION OF JUDGE TULKENS

(Translation)

I agree with the Court's conclusion concerning violation of Article 6 of the Convention in the present case, but on the basis of a different approach and for the reasons set out in the joint dissenting opinion annexed to *Pellegrin v. France* ([GC], no. 28541/95, ECHR 1999-VIII).

In the present case it would have been sufficient, in order to find Article 6 applicable, to note that the case concerned a dispute over a right which was civil by its nature, since it was a serious dispute between an employer and an employee about the way the latter's employment had been terminated (see paragraph 27 of the judgment).

Moreover, the analysis of the precise nature of the applicant's duties which the Court imposed on itself, and in particular of his real level of responsibility in the post he occupied at the time of his dismissal in January 1986 – nearly fifteen years ago – illustrates the difficulty of applying the criteria laid down in *Pellegrin*.

Furthermore, I do not see why it should be thought useful to refer in paragraph 33 to “the manifest example” of the activities of the armed forces and police, since that example is irrelevant to the case of Mr Frydlander.