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

THIRD SECTION

CASE OF ANNONI DI GUSSOLA AND OTHERS v. FRANCE

(Applications nos. 31819/96 and 33293/96)

JUDGMENT

STRASBOURG

14 November 2000

FINAL

14/02/2001

In the case of Annoni di Gussola and Others v. France,

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

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

Having deliberated in private on 29 February and 17 October 2000,

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

PROCEDURE

1. The case originated in two applications (nos. 31819/96 and 33293/96) against the French Republic lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three French nationals, Mr Guido Annoni di Gussola, and Ms Valérie Desbordes and Mr Stéphane Omer ("the applicants"), the first on 4 June and the other two on 26 September 1996.

2. The French Government ("the Government") were represented by their Agent, Mr R. Abraham, Director of Legal Affairs, Ministry of Foreign Affairs.

3. Relying on Article 6 § 1 of the Convention, the applicants complained that they had been denied access to the Court of Cassation to appeal on points of law against the adverse judgments of the courts of appeal, as, despite their limited financial means, the President of the Court of Cassation had removed their appeals from the Court of Cassation list pursuant to Article 1009-1 of the New Code of Civil Procedure.

4. On 14 January 1998 the Commission (Second Chamber) decided to communicate the applications to the Government and invited them to make written observations on their admissibility and merits. The Government submitted their observations on 20 March 1998. Mr Guido Annoni di Gussola replied on 4 December 1998, and Ms Valérie Desbordes and Mr Stéphane Omer on 7 May 1998.

5. The applications were transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of

Protocol No. 11). They were allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court).

6. On 6 January 2000 the Chamber declared the applications admissible [*Note by the Registry.* The Court's decisions are obtainable from the Registry.].

7. A hearing took place in public in the Human Rights Building, Strasbourg, on 29 February 2000 (Rule 59 § 2).

There appeared before the Court:

(a) *for the Government*
Mrs M. DUBROCARD, Head of the Human Rights Section,
Legal Affairs Department,
Ministry of Foreign Affairs, *Agent*,
Mr G. BITTI, Human Rights Office,
Department of European and International Affairs,
Ministry of Justice, *Counsel*;

(b) *for the applicants*
Mr J.-A. BLANC, of the *Conseil d'Etat* and
Court of Cassation Bar, *Counsel*.

The Court heard addresses by Mr Blanc and Mrs Dubrocard.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The case of Mr Annoni di Gussola

8. On 15 October 1990 a bank, Diffusion industrielle nouvelle (“DIN”), granted the applicant a consumer loan in the sum of 172,000 French francs (FRF) with interest at the rate of 14.5% for the purchase of a vehicle. The loan was repayable in fifty-seven monthly instalments of FRF 4,419.44 (making a total of FRF 251,908.08).

9. In March 1991 the bank notified the applicant of its intention to seize the vehicle as he had failed to pay the January and February 1991 instalments. The applicant settled the arrears.

10. From July 1991 to October 1991 the applicant stopped payment of the instalments owing to defects in the vehicle.

11. In November 1991 he made a payment.

12. On 14 December 1991 DIN terminated the loan agreement and had the car sold for FRF 74,243.56. It issued proceedings against the applicant for payment of the balance of the loan.

13. On 24 April 1992 the President of Nantua District Court ordered the applicant to pay the sum of FRF 98,032. The applicant, who contested the amount claimed and the price at which the car had been sold, applied to have that order set aside.

14. In a judgment of 24 June 1993 Nantua District Court ordered the applicant to pay FRF 95,156.26 plus interest at the contractual rate of 14.5% and a further sum of FRF 3,000. The applicant appealed against that judgment, arguing that the bank had been at fault for selling the car at a derisory price. He sought an order against the bank for the payment of damages to be set-off against the amount of his indebtedness. In the alternative, he asked to be allowed to pay off the debt over two years.

15. The applicant, who worked as a consultant in Switzerland, was made redundant in 1994. From 1 January 1995 onwards he received minimum welfare benefit (*revenu minimum d'insertion – RMI*) of FRF 3,569 monthly.

16. On 31 May 1995 the Lyons Court of Appeal partly allowed the applicant's appeal, ordering him to pay DIN the sum of FRF 90,371.26 with interest at the contractual rate from 19 February 1992 plus FRF 3,000 by way of statutory compensation. It held that the applicant had not established any fault on the part of the bank such as would warrant an order for damages.

17. The applicant appealed to the Court of Cassation on 18 September 1995. He lodged written submissions containing three grounds of appeal on 18 January 1996. In particular, he argued that DIN had acted unfairly since, although he had paid off FRF 10,000 in November 1991 and had undertaken to pay the balance of the loan by the end of the year, DIN had nonetheless seized the vehicle he had purchased with the aid of the loan and had it sold at a derisory price. The applicant consequently asked the Court of Cassation to rule that the Court of Appeal had given insufficient reasons for its decision, in that it had failed to explain why it had rejected his ground of appeal based on the financial institution's liability for making his situation worse by not selling the car at its true value when the proceeds of sale would have been more than ample to cover the balance of the loan.

18. On 16 February 1996 DIN applied for the appeal to the Court of Cassation to be struck out of the list pursuant to Article 1009-1 of the New Code of Civil Procedure, as the applicant had failed to comply with the Court of Appeal's judgment.

19. The applicant lodged submissions in which he explained that he was not in a position to pay any of the amount claimed as he was unemployed, his only income since 1 January 1995 being minimum welfare benefit of FRF 3,569 monthly. Furthermore, he was two years in arrears with his rent.

He lodged additional submissions informing the court that he had made an application for legal aid on 14 March 1996.

20. By an order of 16 April 1996 following a hearing on 27 February 1996 the delegate of the President of the Court of Cassation made an order for the case to be removed from the list, holding:

> "An order for 'removal from the list', which under this provision [Article 1009-1] may be made against a judgment debtor who appeals to the Court of Cassation, does not constitute a penalty for failure to exercise diligence or as a result of any inadmissibility.
>
> It is an administrative and regulatory measure intended to remind parties that an appeal to the Court of Cassation is an extraordinary remedy and to enable beneficiaries of enforceable judicial decisions to enjoy the prerogatives afforded them by the judges of the courts below in full, all in accordance with the fundamental rules of the administration of justice.
>
> An application may be made for such an order, which is provisional only and preserves all rights, remedies and grounds of appeal, as soon as the notice of appeal bringing the case before the Court of Cassation has been lodged with the registry of that court, without the applicant's having to wait until the time allowed to the appellant and the respondent for lodging their written submissions has expired.
>
> In the instant case, Guido Annoni di Gussola has failed to show that he has taken any steps apt to demonstrate his intention to comply with the decision of the court below and has not pleaded any personal circumstances that give rise to a danger or presumption that compliance will entail manifestly unreasonable consequences.
>
> In those circumstances, the appeal must be removed from the Court of Cassation's list..."

21. With contractual interest, the sum owed by the applicant at that time came to more than FRF 150,000.

22. On 15 March 1998 the applicant and his family were evicted from their home after failing to pay their rent for two years.

23. On 1 April 1998 the applicant began to receive a monthly retirement pension of FRF 2,480.65.

24. By an order of 25 November 1998 the delegate of the President of the Court of Cassation noted that the appeal had lapsed, no steps having been taken to prosecute it in the two years since the order removing it from the list had been made.

B. The case of Ms Desbordes and Mr Omer

25. After a loan offer was accepted on 13 October 1990, a finance company, SOVAC, granted Ms Desbordes a credit facility in the sum of FRF 85,000, with interest at 20.90%, for the purchase of a vehicle. Mr Omer, her husband, acted as guarantor.

26. The first nineteen monthly instalments – a total of FRF 45,760.36 – were repaid. The applicants were unable to pay the subsequent monthly instalments, as Mr Omer lost his job.

27. SOVAC seized the vehicle, and obtained FRF 41,658.43 on a forced sale. Alleging an event of default under the agreement, it brought an action against the applicants for immediate payment of the sum of FRF 38,669.97, that being the outstanding capital, together with interest at the contractual rate of 20.90% since 1 November 1992.

28. On 16 April 1993 the Abbeville District Court dismissed SOVAC's claim. It held that since the authorised overdraft of FRF 85,000 had been used in a single transaction, it did not constitute a credit facility usable in tranches, but an ordinary loan. Section 5 of the Law of 10 January 1978 on consumer information and protection in financing transactions laid down that a statement of the total cost of the credit, broken down item by item, had to be provided for loans of that type. Noting that the agreement did not contain a statement of the total cost of the credit, the District Court held that the loan offer was not in the required form and that by virtue of section 23 of the Law SOVAC, accordingly, forfeited its rights to interest. SOVAC appealed.

29. On 11 October 1994 the Amiens Court of Appeal overturned that judgment. In so doing, it accepted SOVAC's submissions that the statement required by section 5 of the aforementioned Law of 10 January 1978 was too inflexible to be applicable to an offer with a variable rate of interest, and that a single rate had been applied solely because the applicants had been paid the amount in full, and not in tranches, as they had been at liberty to request. The Court of Appeal ordered the applicants to pay the sum claimed together with compound interest from 20 September 1993.

30. The applicants applied on 17 January 1995 for legal aid to appeal to the Court of Cassation. The legal aid office granted their application on 15 June 1995 on the ground that they had insufficient means (their disposable income being put at minus FRF 862).

31. The applicants accordingly appealed to the Court of Cassation on 14 August 1995 through the lawyer assigned to represent them and he lodged written submissions on 11 January 1996. The applicants alleged that the finance company had contravened the statutory consumer-protection provisions. They relied in their appeal on judgments in which the Civil Division of the Court of Cassation had overturned awards of interest made in cases in which the evidence had showed that the lender had failed to state the overall effective rate of interest or the total cost of the credit, broken down item by item, in the loan agreement.

32. On 27 March 1996 SOVAC requested the President of the Court of Cassation to order the removal of the case from the list pursuant to Article 1009-1 of the New Code of Civil Procedure.

33. In submissions dated 14 May 1996 the applicants opposed that application on the ground that they had insufficient means, as attested by the fact that they had been granted legal aid in 1995.

34. By an order of 21 May 1996 the delegate of the President of the Court of Cassation found, *inter alia*, that the applicants had failed to show that they had taken "any steps apt to demonstrate their intention to comply with the decision of the court below and [had] not [pleaded] any personal circumstances that [gave] rise to a danger or presumption that compliance [would] entail manifestly unreasonable consequences". The delegate of the President of the Court of Cassation ordered the case's removal from the list.

II. RELEVANT DOMESTIC LAW AND PRACTICE

35. *New Code of Civil Procedure*

Article 386 is worded as follows:

> "Proceedings shall lapse if none of the parties take any steps for two years."

Article 1009-1 of the New Code of Civil Procedure, as initially worded when Decree no. 89-511 of 20 July 1989 was issued, provided:

> "Except in cases in which an appeal on points of law acts as a bar to execution of the impugned decision, the President may, on application by the respondent and after obtaining the opinion of Principal State Counsel and the parties, order the removal of the case from the list if the appellant fails to show that he or she has complied with the impugned decision, or unless it appears to the President that compliance may entail manifestly unreasonable consequences.
>
> The President shall grant permission for the case to be restored to the list on proof that the impugned decision has been complied with."

Article 1009-1 was amended by Decree no. 99-131 of 26 February 1999, which came into force on 1 March. It was reworded and supplemented by two Articles and now reads as follows:

> "Except in cases in which an appeal on points of law acts as a bar to execution of the impugned decision, the President or his or her delegate shall, on application by the respondent and after obtaining the opinion of Principal State Counsel and the observations of the parties, order the removal of the case from the list if the appellant fails to show that he or she has complied with the impugned decision, or unless it appears to the President that compliance may entail manifestly unreasonable consequences. The respondent's application must be made before the expiration of the periods laid down in Articles 982 and 991, failing which the court shall of its own motion declare it inadmissible. An order for the case's removal from the list shall not prevent time running for the purposes of the time-limits to which the appellant is subject by virtue of Articles 978 and 989."

Article 1009-2

"Time shall start to run from the date the order for removal of the appeal from the list is served. It shall be interrupted by an act that unequivocally manifests an intention to comply."

Article 1009-3

"Unless he or she finds that the appeal has lapsed, the President or his or her delegate shall grant permission for the case to be restored to the list on proof of compliance with the impugned decision."

For the purposes of the time-limits to which the respondent is subject by Articles 982 and 991, time shall start to run from the date the order for the restoration of the appeal to the list is served."

36. *Case-law*

(i) "Appellants to the Court of Cassation may not rely on Article 6 of the European Convention on Human Rights to oppose an application for an order for removal of an appeal from the list, since they have been able to exercise their right to appeal to the Court of Cassation and are not entitled to avoid their own obligations to comply with the orders made in the judgment against them, as they would otherwise deprive their opponent of a prerogative which the latter enjoys by virtue of the judicature rules." (*Cass. ord. 1er prés., 22 February 1995, Bull. civ. ord.,* no. 6)

(ii) "... Mr and Mrs ... appealed on points of law against the judgment ... of the ... Court of Appeal ordering them to pay ... 206,050.31 francs... Mr and Mrs ... contest that measure on the ground that they have been granted full legal aid.

It appears that the grant was made on the basis that the spouses' disposable monthly income was 3,834 francs. In those circumstances and regard being had to the amount of the order, it appears that compliance with the judgment would entail manifestly unreasonable consequences for them." (*Cass. ord. 1er prés.,* no. 91205 of 2 February 2000)

(iii) "By a judgment ... the ... Court of Appeal ordered Mr L. and the SCI A. to pay various sums to Mr D.B...

Mr L. says he is impecunious ... The documents produced by Mr L., who is in receipt of minimum welfare benefit, show that his financial circumstances are indeed extremely precarious ... that compliance with the judgment would entail manifestly unreasonable consequences for him ..." (*Cass. ord. 1er prés.,* no. 90971 of 12 January 2000)

THE LAW

I. JOINDER

37. Noting that applications nos. 31819/96 (Annoni di Gussola) and 33293/96 (Desbordes and Omer) are concerned with Article 1009-1 of the New Code of Civil Procedure and that the same complaint is made in each, the Court orders their joinder pursuant to Rule 43 § 1 of the Rules of Court.

III. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

38. The Government raised a preliminary objection of a failure to exhaust domestic remedies, arguing that at the date the applications were communicated the applicants had not exhausted domestic remedies as the period for prosecution of their appeal had not expired and they therefore retained a chance of having their appeals restored to the Court of Cassation's list. They also maintained that the applicants did not have standing as victims since, until their appeals had lapsed, their alleged damage was wholly uncertain and contingent. The Government relied on Articles 34 and 35 of the Convention.

39. In addition to the fact that the appeals lapsed on 21 May and 25 November 1998 respectively, the Court considers that the issues raised by the objections are identical to those on the merits of the applications, since it is precisely the applicants' inability to request the restoration of the appeals to the Court of Cassation's list that is at the core of the applicants' complaint.

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

40. The applicants complained that they had been denied access to the Court of Cassation on their appeals on points of law against decisions of the Lyons Court of Appeal and the Amiens Court of Appeal, as, despite their limited financial means, the President of the Court of Cassation had removed their appeals from the Court of Cassation's list pursuant to Article 1009-1 of the New Code of Civil Procedure. They alleged a violation of Article 6 § 1 of the Convention, which provides:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

A. The parties' submissions

1. The applicants

41. The applicants explained that although the reform introduced by the 1989 decree had been presented as a measure intended to "moralise the judicial debate", it had essentially been conceived as a favoured means of reducing the Court of Cassation's caseload. That aim had proved illusory

owing to the many unanticipated issues of fact and law to which the cases had given rise. A number of judges delegated by the President of the Court of Cassation were involved in considering applications for the removal of appeals from the list when they could have been spending that time examining the merits of the appeals.

42. The applicants maintained that the provision in issue, which was already narrowly worded since it only made an exception for cases entailing "manifestly unreasonable consequences" was applied strictly and even harshly. Legal commentators were hostile to it. Removing appeals from the list was alien to the Court of Cassation's role and a stopgap measure to make up for the ineffectiveness of enforcement measures in France and the excessive length of proceedings before the Court of Cassation. Further, that procedure meant that the exercise of a constitutionally guaranteed right, namely to take part in court proceedings, was made conditional on the exercise of another right – the right of enforcement – that was not constitutionally guaranteed. Lastly, the provision made money the criterion for determining access to the Court of Cassation and discriminated between litigants.

43. The applicants thus maintained that the system of removing appeals from the list was unfair on principle. In their view, it was not consistent with the right of access to a court for a mere administrative authority (albeit someone who was also France's senior judge), acting in an administrative capacity with a discretionary power to decide by a simple administrative decision against which there was no right of appeal whether a litigant was entitled to have his appeal determined by the Court of Cassation.

44. The decision of the President of the Court of Cassation to remove the appeals from the list was taken without an examination of the "manifestly unreasonable consequences" which compliance with the judgments by the applicants entailed. It was quite simply physically impossible for the applicants to make the slightest payment given the precarity of their respective financial circumstances. Mr Annoni di Gussola said that he had informed the President in his written submissions that he had been out of work for two years and was almost two years in arrears with his rent. He had also produced evidence to show that he was in receipt of minimum welfare benefit. Ms Desbordes and Mr Omer argued that the fact that they had been granted legal aid and that their monthly resources had been assessed in a negative amount was a clear indication that it would be unreasonable to require them to comply with the court of appeal's judgment.

The applicants submitted that the president had failed to examine that material information in an effective and detailed manner, or at least that it was not apparent that he had done so from the orders for the removal of the appeals from the list which contained stereotyped reasoning that was strictly identical to all other such orders that were made at the time.

They accepted that the President's practice had considerably evolved in recent years and explained that decisions refusing an order to remove an appeal from the list had become far more numerous while those in which such an order was made contained fuller reasons, making it possible for the criteria used for deciding whether the consequences would be manifestly unreasonable to be identified. Thus, receipt of legal aid or minimum welfare benefit had become criteria of relevance to the decision whether an order would entail "manifestly unreasonable consequences".

The applicants said in conclusion that the application of Article 1009-1 in their cases had been totally disproportionate in view of their lack of means and that the door had been closed on their appeal to the Court of Cassation because they were poor; that consequence was unacceptable in a democratic society.

2. The Government

45. The Government pointed out that the provisions of Article 1009-1 of the New Code of Civil Procedure were explained by the fact that an appeal to the Court of Cassation was an extraordinary remedy which had no suspensive effect in civil proceedings. The result was that the respondent was entitled to enforce the judgment of the court of appeal in his favour in full. The procedure introduced by the 1989 decree of removing appeals from the list was thus intended to encourage immediate compliance with judgments. It constituted a measure of "judicial morality" which reinforced the authority of and compliance with the decisions of the courts below by preserving the rights of creditors and relieving them of the heavy burden entailed by the enforcement procedures while discouraging debtors from lodging dilatory appeals to the Court of Cassation leaving those same creditors with the heavy burden of enforcement.

The Government also pointed out that the machinery established by Article 1009-1 did not apply automatically: the President of the Court of Cassation issued his decision at the end of adversarial proceedings and only ordered removal of an appeal from the list if he or she considered that compliance with the impugned judgment might entail "manifestly unreasonable consequences". Thus, removal from the list did not mean the irrevocable disappearance of the appeal but only deferral of its examination until the debtor proved compliance with the impugned decision either by the obvious method of making immediate payment in full, or by demonstrating an intention to make regular part payments.

The judicial rules governing the application of Article 1009-1 became more elaborate with time, and involved an examination on a case by case basis of any manifestly unreasonable consequences that compliance with the impugned judgment might entail. The Government explained that the President objectively examined in each case whether or not the impugned

decision had been complied with in practice. His decision concerned the administration of justice and there was no right of appeal.

Concluding their preliminary observations, the Government pointed out that the European Commission of Human Rights had already expressed the opinion that the system introduced by Article 1009-1 was consistent with the provisions of the Convention in that it was aimed at securing "the proper administration of justice" (see M. v. France, application no. 20373/92, Commission decision of 9 January 1995, Decisions and Reports 80-B, p. 56, and Marc Venot v. France, application no. 28845/95, Commission's report of 21 April 1999, unpublished).

46. The Government submitted that the European Court of Human Rights had held that the right of access to a court was not absolute but could be subject to limitations provided that they pursued a legitimate aim and there was a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see the following judgments: Golder v. the United Kingdom, 21 February 1975, Series A no. 18; Ashingdane v. the United Kingdom, 28 May 1985, Series A no. 93; Lithgow and Others v. the United Kingdom, 8 July 1986, Series A no. 102; and Tolstoy Miloslavsky v. the United Kingdom, 13 July 1995, Series A no. 316-B). Furthermore, as had been emphasised, in particular in the last of the cited judgments, the States had a wide margin of appreciation as regards regulating access to the courts, such that the Court's supervisory powers were even more limited. In the Government's submission, it was not for the Court to take the place of the French authorities to decide what was the best policy for regulating access to the Court of Cassation or to review the matters which had led the President of the Court of Cassation to reach one decision rather than another.

47. With regard to the application of those principles to the instant cases, the Government began by observing that in neither of the two cases had compliance even in part with the judgments of the Amiens Court of Appeal and the Lyons Court of Appeal been established or alleged. The orders for the removal of the appeals from the list had therefore been proportionate to the aim pursued by the decree of 20 July 1989 (see paragraph 35 above), namely the introduction of an administrative and regulatory measure intended to remind the parties that appeals to the Court of Cassation were an extraordinary remedy and to guarantee beneficiaries of enforceable court decisions the full effectiveness of the prerogatives afforded them by the court below. The decisions for removal of the appeals from the list had been taken after an adversarial hearing in public that had allowed an effective and concrete examination of the alleged manifestly unreasonable consequences. Those consequences had to be examined with regard to compliance with the impugned judgment and not to the decision to remove the appeal from the list. It was not enough to assert that compliance with the impugned judgment would produce adverse consequences: a fragile financial position

had to be established by adducing the relevant evidence necessary for proper argument to be heard. Thus, the Court of Cassation had taken into consideration in previous cases such matters as an appellant's advanced age and insufficient means, his or her failing health, and personal, family or job-related problems that were particularly acute.

In the case of Ms Desbordes and Mr Omer, the applicants had confined themselves to saying that they had been granted legal aid and had not drawn the President's attention to the fact that they had two dependent minor children and a monthly disposable income of minus FRF 862. In the other case, Mr Annoni di Gussola had merely attached to his request a notice of his entitlement to minimum welfare benefit for the years 1995 and 1996.

In addition to the fact that the applicants had failed to provide full evidence of their impecuniosity, the amount which their creditors had sought to enforce under the impugned decisions was not disproportionate to the applicants' means and did not attain the levels noted by the European Commission of Human Rights in the cases of Ferville v. France (application no. 27659/95, Commission's report of 31 August 1998, unpublished) and Marc Venot v. France (cited above) in which the applicants had owed sums of FRF 5,403,339 and FRF 2,500,000 plus interest. The Government maintained that the amounts due under the decisions appealed against was a decisive factor in determining whether the measure concerned was proportionate and observed in that connection that the applicants had initially been ordered to pay FRF 38,669 and FRF 90,371.

As to the other factors that might be taken into consideration, such as the prospects of the appeal succeeding or the fact that legal aid had been granted, the Government explained that, since the decision of the President was a measure concerning the administration of justice, he or she was precluded from examining the prospects of success of an appellant's appeal. Article 1009-1 did not require any such examination, but merely an objective determination of whether or not the impugned decision had been complied with and an assessment of the personal circumstances of the parties. The fact that in Ms Desbordes' and Mr Omer's case the judgment of the court of first instance was overturned on appeal was therefore of little consequence, since that disagreement had no bearing on the President's decision whether or not to make an order for removal of the appeal from the list. The same applied to the grant of legal aid which could not be regarded as a guarantee of the viability of the ground of appeal (at best it could be considered as raising a "presumption" of the existence of manifestly unreasonable consequences), and offered no release from the obligation to comply with the decisions of the courts of appeal.

The Government concluded that the circumstances in which Article 1009-1 of the New Code of Civil Procedure had been applied in the applicants' cases had not violated their right of access to the Court of Cassation. Although the Government had initially left the merits of

Mr Annoni di Gussola's complaint to the Court's discretion, they had ultimately come to the conclusion that it was unfounded, having regard to the lack of information which the President of the Court of Cassation had available to examine any "manifestly unreasonable consequences".

B. The Court's assessment

48. The Court reiterates at the outset that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. Further, the "right to a court", of which the right of access is one aspect, is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard (see, among other authorities, the Edificaciones March Gallego S.A. v. Spain judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 290, § 34, and *García Manibardo v. Spain,* no. 38695/97, § 36, ECHR 2000-II).

49. In the instant case, the appeals were removed from the Court of Cassation's list as a result of decisions by the President of the Court of Cassation taken pursuant to Article 1009-1 of the New Code of Civil Procedure on the ground that the applicants had failed to show that they had complied with the impugned decisions.

50. The Court considers that the aims pursued by the obligation imposed on appellants to comply with the decisions are legitimate, notably for the purposes of ensuring protection for judgment creditors, avoiding dilatory appeals, reinforcing the authority of the courts below and relieving congestion in the Court of Cassation's list. It notes that such a system may permit a temporary reduction in the backlog in the Court of Cassation's list until such time as appeals before that court are examined within a "reasonable time", as required by Article 6 § 1 of the Convention.

51. In any event, while it is true that "this rule, which may make access to a higher court conditional on payment of a particular sum due under the terms of a lower appeal court judgment, does raise potential problems under Article 6 § 1 of the Convention ... this provision does not prevent Contracting States from regulating access to appellate courts, provided that such regulations are aimed at ensuring the proper administration of justice" (see the M. v. France decision cited above). In that connection, the Commission considered that the procedure provided for in Article 1009-1 was aimed at securing the proper administration of justice, noting: "[it] is designed to ensure compliance with the principle that an appeal to the Court of Cassation, which is confined to an appeal on points of law, is an extraordinary procedure in civil proceedings, which, as a matter of principle, has no suspensive effect. Moreover, the rule is not applied

automatically: on an application for striking out, the President of the Court of Cassation makes a ruling after hearing argument for both sides and will order the appeal to be struck out only if the consequences of such a measure do not appear to him or her to be manifestly extreme. The Commission notes finally that the sole effect of an order striking out an appeal is to stay the proceedings until judgment is executed" (see M. v. France cited above).

52. The Court does not intend to reopen the issue of the compatibility of that system with the provisions of the Convention. It points out that it has itself previously held that "execution of a judgment given by any court must therefore be regarded as an integral part of the 'trial' for the purposes of Article 6" (see the Hornsby v. Greece judgment of 19 March 1997, *Reports* 1997-II, pp. 510-11, § 40, and *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 63, ECHR 1999-V). It notes, however, that execution in the present cases is unusual in that a peculiar feature of the decision whether to order the removal of the appeal from the Court of Cassation's list in the light of the aims pursued by Article 1009-1 is that it is the respondent to the appeal who is entitled to make the application, with the danger which that entails of justice being subject to a degree of "privatisation".

53. The Court's task is accordingly to examine whether in the present case the orders for the appeals to be struck out of the list pursuant to Article 1009-1 of the New Code of Civil Procedure did not restrict the access left to the applicants "in such a way or to such an extent that the very essence of the right [was] impaired", whether they pursued a legitimate aim and whether there was a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see the Ashingdane judgment cited above, pp. 24-25, § 57). In other words, in the light of the "manifestly unreasonable consequences" which it is the President of the Court of Cassation's duty to examine, the Court must determine whether the order for removal of the appeals from the list, as made in the cases in issue, amounted to a disproportionate interference with the applicants' right of access to the Court of Cassation.

54. In this regard the Court reiterates that Article 6 of the Convention does not compel the Contracting States to set up courts of appeal or of cassation. Where such courts do exist, the guarantees of Article 6 must be complied with, for instance in that it guarantees to litigants an effective right of access to the courts for the determination of their "civil rights and obligations" (see the Levages Prestations Services v. France judgment of 23 October 1996, *Reports* 1996-V, p. 1544, § 44).

55. In the present case, the Court notes that the orders for the removal of the appeals from the list were made on the ground that the applicants had failed to show that they had taken any steps apt to demonstrate their intention to comply with the decision of the courts below and had not alleged the existence of any personal circumstances that gave rise to a danger or presumption of "manifestly unreasonable consequences" in the

event of compliance. However, it finds that the applicants were heavily in debt and that there was no doubt that their financial situation was precarious at the time the applications for removal of the appeals from the list were made. The fact that Mr Annoni di Gussola was in receipt of minimum welfare benefit throughout the relevant period indisputably prevented him from being able to begin to comply with the court of appeal's order. Likewise, Ms Desbordes' and Mr Omer's initial lack of means and their subsequently insufficient means at that time indicated that they were in the same position. Admittedly, the Government are right to consider that the requirement of exhaustion of domestic remedies would in theory have been satisfied only once the appeal had lapsed for want of prosecution and that the same rule applied to standing as a victim within the meaning of Article 34 of the Convention. The Court observes, however, that the applicants' complaint is precisely that it was impossible for them to have their appeal to the Court of Cassation determined, since no compliance with the impugned decisions could reasonably be envisaged. The disproportion between the respective financial circumstances of the applicants and the sums due under the decisions appealed against is clear and the Court does not share the Government's opinion that it did not reach the levels found by the Commission in the cases of Ferville and Marc Venot cited above.

56. The Court reiterates: "... the Convention must be interpreted in the light of present-day conditions ... and it is designed to safeguard the individual in a real and practical way as regards those areas with which it deals... Whilst the Convention sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature. The Court therefore considers ... that the mere fact that an interpretation of the Convention may extend into the sphere of social and economic rights should not be a decisive factor against such an interpretation; there is no watertight division separating that sphere from the field covered by the Convention" (see the Airey v. Ireland judgment of 9 October 1979, Series A no. 32, pp. 14-15, § 26). It accordingly considers that the precariousness of the applicants' respective financial circumstances, which made it impossible for them even to begin to comply with the judgments of the courts of appeal, constitutes the decisive factor in the examination of the limitations on their right of access to the Court of Cassation.

57. In that connection, the Court considers that the fact that the President of the Court of Cassation was notified of the entitlement to minimum welfare benefit in the first case and of the applicants' lack of means (as indicated by the legal aid office's decision) in the second case was sufficient by itself to signal financial circumstances which he or she should have taken into account. However, it is clear that those financial circumstances were not taken into consideration when the issue of "manifestly unreasonable consequences" entailed by compliance with the judgments of the courts of

appeal was examined. The Court notes that the orders for removal of the appeals from the lists do not contain reasons and are identical in both cases. They do not enable the Court to satisfy itself that the applicants' circumstances were effectively examined in practice. The Court is of the opinion that the precarious financial circumstances of the applicants could have created a sort of rebuttable presumption of the existence of "manifestly unreasonable consequences", as indeed has been the Court of Cassation's approach in its recent case-law on the subject (see paragraph 36 above). At the very least, the President's refusal to accede to the requests for the appeals to remain in the Court of Cassation's list should have been reasoned and been preceded by a careful and thorough examination of the applicants' circumstances. In that connection, the Court notes that the new wording of Article 1009-1 (see paragraph 35 above) provides that the decision whether to order the removal of an appeal from the list shall be taken following observations from the parties, and not just an opinion. This amendment seems to require that greater attention should be paid to the parties' interests.

58. The Court notes, lastly, that quite apart from the fact that the merits of the grounds of appeal are of no relevance in determining whether "manifestly unreasonable consequences" exist, the reforms introduced by Article 1009-1 henceforth require respondents to an appeal to the Court of Cassation to make their application for an order removing the appeal from the list rapidly, so as to avoid the appellant's right to access to the Court of Cassation being interfered with for too long. The Court sees that provision as reflecting an intention to avoid appeals whose outcome is likely to be unfavourable to the respondent's interests being paralysed. In that connection, it notes that the disagreement between the courts of first instance and appeal in the case of Ms Desbordes and Mr Omer pointed to the existence of an issue on a point of law which could have offered prospects of success. It does not, however, consider it necessary to examine whether or not the appeal to the Court of Cassation was "arguable" – the applicants' inability to comply with the impugned decision and the failure to examine the issue of "manifestly unreasonable consequences" appear to suffice – but considers that the fact that legal aid was granted to Ms Desbordes and Mr Omer suggested that they were not in a position to pay the sums ordered in the impugned decision and had a genuine ground of appeal.

59. In the light of all these circumstances, the Court considers that the decision to strike out the applicants' appeals from the Court of Cassation's list were disproportionate having regard to the aims pursued, and that their effective access to the Court of Cassation was hindered as a result.

Consequently, the Court dismisses the Government's preliminary objections and finds a violation of Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. In his application form, Mr Annoni di Gussola put his pecuniary and non-pecuniary damage at 200,000 French francs (FRF), consisting, in particular, of the loss of an opportunity to have the judgment debt against him set aside and of compensation for the persistent threats made against him by DIN. Mr Omer and Ms Desbordes claimed the same amount for the same reasons.

62. The Court notes that the sole basis on which it may award just satisfaction in the instant case is the applicants' inability to enjoy the guarantees provided by Article 6 before the Court of Cassation. While it cannot speculate on what the outcome of the appeal would otherwise have been, it finds that the denial of access to the Court of Cassation caused the applicants actual non-pecuniary damage which the finding of a violation of the Convention in this judgment does not suffice to remedy. Ruling on an equitable basis, as required by Article 41, the Court awards Mr Annoni di Gussola the sum of FRF 100,000 and Mr Omer and Ms Desbordes FRF 50,000 each.

B. Costs and expenses

63. Mr Annoni di Gussola sought reimbursement of the sum of FRF 28,702 for the costs he had incurred before the Convention institutions. Mr Omer and Ms Desbordes put the amount at FRF 29,908.

64. The Government argued that the statement of costs was excessive since the two cases concerned the same complaint, were based on a violation of the same provision of the New Code of Civil Procedure and had been presented by the same lawyer. They suggested an award of FRF 10,000 for each case.

65. The Court does not agree with the Government's opinion and awards the sums claimed, namely FRF 28,702 for Mr Annoni di Gussola and FRF 14,904.50 each for Mr Omer and Ms Desbordes.

C. Default interest

66. 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. *Joins* the applications;

2. *Joins to the merits* the Government's preliminary objections and *dismisses* them;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention:
      (i) FRF 100,000 (one hundred thousand French francs) in respect of pecuniary damage to Mr Annoni di Gussola and FRF 50,000 (fifty thousand French francs) each to Mr Omer and Ms Desbordes;
      (ii) FRF 28,702 (twenty-eight thousand seven hundred and two French francs) in respect of costs and expenses to Mr Annoni di Gussola and FRF 14,904.50 (fourteen thousand nine hundred and four French francs fifty centimes) to Mr Omer and Ms Desbordes;
   (b) that simple interest at an annual rate of 2.74% shall be payable from the expiry of the above-mentioned three months until settlement;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 14 November 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

W. FUHRMANN
President