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

COURT (CHAMBER)

CASE OF DE GEOUFFRE DE LA PRADELLE v. FRANCE

(Application no. 12964/87)

JUDGMENT

STRASBOURG

16 December 1992

In the case of de Geouffre de la Pradelle v. France*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")** and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr Thór VILHJÁLMSSON,
Mr L.-E. PETTITI,
Mr B. WALSH,
Mr S.K. MARTENS,
Mr I. FOIGHEL,
Mr A.N. LOIZOU,
Mr F. BIGI,
Sir John FREELAND,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 28 August and 24 November 1992,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 13 December 1991, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 12964/87) against the French Republic lodged with the Commission under Article 25 (art. 25) by a French national, Mr Raymond de Geouffre de la Pradelle, on 2 February 1987.

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

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* The case is numbered 87/1991/339/412. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Mr L.-E. Pettiti, the elected judge of French nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 24 January 1992, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr B. Walsh, Mr S.K. Martens, Mr I. Foighel, Mr A.N. Loizou, Mr F. Bigi and Sir John Freeland (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the French Government ("the Government"), the Delegate of the Commission and the applicant's lawyer on the organisation of the procedure (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 21 May 1992 and the applicant's memorial on 22 May. On 8 July 1992 the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

5. At the Government's request, the Registrar had asked the Commission to produce the file on the proceedings before it, and this it did on 2 April 1992. On 9 June the applicant filed his claims under Article 50 (art. 50) of the Convention.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 27 August 1992. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr B. GAIN, Head of the Human Rights Section,
Department of Legal Affairs, Ministry of Foreign Affairs,
Agent,

Mrs E. FLORENT, Judge
of the Administrative Court, on secondment to the Department of Legal Affairs, Ministry of Foreign Affairs,

Mr J. QUINETTE, Department of Architecture and Town Planning,
Ministry of Infrastructure, Housing and Transport, *Counsel*;

- for the Commission

Mr J.-C. SOYER, *Delegate*;

- for the applicant

Mr D. FOUSSARD, of the Conseil d'État and Court of Cassation Bar,
Counsel.

The Court heard addresses by Mr Gain for the Government, Mr Soyer for the Commission and Mr Foussard for the applicant, as well as replies to its questions.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. Mr Raymond de Geouffre de la Pradelle is a French national and practises as a lawyer (avocat). He lives in Paris, where he has his chambers.

He owns an estate of about 250 hectares in the département of Corrèze. The River Montane crosses the property, which lies within the administrative districts (communes) of Saint-Priest-de-Gimel and Gimel. In order to provide an electricity supply for the château of Saint-Priest, which was on his land, he envisaged converting a long-disused hydroelectric dam into a self-contained miniature power-station. On 9 January 1976 Électricité de France gave its approval. On 21 January 1977 and 10 April 1979 the Council of the département of Corrèze consented in principle.

8. On 3 April 1980 the Minister for the Environment and the Quality of Life decided to set in motion proceedings to designate the land in the Montane valley as an area of outstanding beauty and of public interest; an area of 80 hectares was affected, most of it belonging to the applicant.

The Prefect of Corrèze informed the applicant of this in a letter of 12 May 1980; pursuant to section 9 of the Law of 2 May 1930 on the conservation of natural monuments and places of interest (see paragraph 18 below), which prohibits for a period of twelve months any alteration of the state of a site that is in the process of being designated, he also refused the application for permission to undertake hydroelectric works.

9. Together with the seven other property owners affected, the applicant was invited to submit any comments he might have on the designation proposal (section 5-1 of the Law of 2 May 1930 - see paragraph 18 below), and he indicated his objections in a letter of 22 May 1980 to the Prefect of Corrèze.

10. A public inquiry was opened by a prefectoral decision of 7 October 1980, which was notified personally to the parties concerned (Article 4 of Decree no. 69-607 of 13 June 1969 - see paragraph 19 below). Mr de Geouffre de la Pradelle sent the Prefect a statement of his objections in which he challenged the point of designating the land in the first place and suggested organising an inspection of the site by all the parties concerned.

11. On 4 July 1983, following a favourable report by the National Places of Interest Commission, the Prime Minister, after consulting the Conseil d'État, issued a decree (section 6 of the Law of 2 May 1930 -see paragraph 18 below) designating the Montane valley. On 12 July the Official Gazette (Journal officiel) published the following extract:

"By a decree dated 4 July 1983, the area formed by that part of the Montane valley situated within the administrative districts of Gimel and Saint-Priest-de-Gimel is designated as one of the areas of outstanding beauty in the département of Corrèze[1]."

The present decree shall be notified to the Prefect, Commissioner of the Republic for the département of Corrèze, and to the mayors of the districts concerned.

12. On 13 September 1983 the Prefect of Corrèze served the full text of the decree at the applicant's Paris home, together with a letter that read:

"...

I have the honour to notify to you by this letter the decree of 4 July 1983 designating the area formed by the Montane valley at Gimel and St-Priest-de-Gimel, which is partly situated on your property, as a conservation area.

I should perhaps remind you that in the conservation area you are required to comply with the obligations laid down in the amended Law of 2 May 1930 on the conservation of places of interest, and in particular in sections 11, 12 and 13, which deal with transfers, alterations and the creation by agreement of any easements which might affect a designated place of interest.

..."

13. On 27 October 1983 the applicant, acting through his lawyer, applied to the Conseil d'État for judicial review of the decree of 4 July 1983.

14. As his main submission, the Minister for Town Planning, Housing and Transport argued that the application was "apparently made out of time"; as the designation decree did not contain any "special directions", the time within which any appeal had to be brought ran from its publication in the Official Gazette.

15. In his reply the applicant began by challenging the administrative authorities' interprétation of Articles 6 and 7 of the decree of 13 June 1969 (see paragraph 19 below), according to which, in the absence of any special directions, the time within which any appeal had to be brought ran from the publication of the designation decision in the Official Gazette. He regarded the approach adopted by the administrative authorities as being a likely source of difficulties for members of the public. Could it reasonably be asked of people, he continued, to envisage exceptions being made to the normal rule, namely that the time allowed for appealing should begin to run from publication in the case of general regulatory decisions and from notification in the case of individual decisions? Where appeals and the procedures for bringing them were concerned, things should be simple. And if, as in the instant case, there was no good reason for making an exception, it was only right to retain a practice consistent with ordinary law.

[1] The plan and the full text of the decree may be consulted at the prefecture of Corrèze.

He added that, at all events, if the authorities' interprÉtation were to prevail, Articles 6 and 7 would have to be considered unlawful as being contrary to the principle of equality in that an owner of property covered by such a decision would be less favourably treated than other persons affected by individual measures.

In the alternative, he complained of the incompleteness and irregularity of the publication of 12 July 1983 (see paragraph 11 above), which did not enable the persons concerned to acquaint themselves with the exact scope of the designation. In his submission, the time allowed for appealing had begun to run only when the full text of the decree was made available to the public at the Corrèze prefecture; and the administrative authorities had not shown that the application registered on 27 October 1983 had been registered more than two months after the full text had been made available. Mr de Geouffre de la Pradelle alleged, lastly, that the impugned measure was a naked misuse of power designed to frustrate his modernisation scheme (see paragraph 7 above) and the exercise of the water rights associated with his status as a former producer of electricity.

16. On 7 November 1986 the Conseil d'État, accepting the submissions of the Government Commissioner (commissaire du gouvernement), declared the application inadmissible for the following reasons:

"...

By Article 49 of the Ordinance of 31 July 1945, 'unless otherwise provided by legislation, an application to the Conseil d'État against a decision by an authority, court or tribunal within its jurisdiction shall be admissible only within a period of two months; this period shall run from the date of publication of the disputed decision unless it has to be notified or served, in which case the period shall run from the date of notification or service'.

By the provisions of Article 6 of the decree of 13 June 1969, decisions whereby a natural monument or a place of interest is designated are published in the Official Gazette. Although, under Article 7 of the same decree, these decisions are notified to the property owners concerned where they contain special directions designed to alter the state or change the use of the site, and although the time within which any appeal to the courts must be brought runs in that case only from the notification of the designation decree or order, this latter provision applies only where it is necessary to give notice to the property owner to alter the state or change the use of the site. In other cases, however, the time in which any appeal to the courts has to be brought runs from the publication of the designation decision in the Official Gazette, even if after that publication the decision was notified to the property owner.

It appears from the evidence that the impugned decree designating the area formed by the Montane valley in the département of Corrèze did not include any notice to the property owners to alter the state or change the use of the site. It follows that, in accordance with the provisions referred to above, the time within which any appeal to the courts against the said decree had to be brought ran from the date of its publication in the Official Gazette.

An extract from the decree was published in the Official Gazette of 12 July 1983, together with the information that the full text could be consulted at the Corrèze prefecture. That being so, the applicant is not justified in contending that the publication was incomplete or irregular and consequently not such as to make time begin to run for the purposes of bringing an appeal. The application for review of the impugned decree was registered only on 27 October 1983, that is to say after the expiry of the time allowed for appealing under the provisions of the decree of 13 June 1969 that have been examined above.

In order to overcome the fact that his application was out of time, Mr de Geouffre de la Pradelle maintained that these provisions were unlawful because they gave rise to discrimination to the detriment of the property owners of designated places of interest, seeing that these property owners did not have the same time-limits for appealing against designation decisions as other recipients of individual decisions.

But a decision to designate an area of outstanding beauty is not in the nature of an individual decision. Accordingly, the ground based on the argument that the impugned decree infringed the rules on the notification of individual acts and decisions fails.

It follows from all the foregoing considerations that the application is out of time and therefore inadmissible.

..."

17. In November and December 1986 Mr de Geouffre de la Pradelle approached the Architect's Department of the département of Corrèze to seek help with restoration of the site, which had been devastated by the exceptionally high winds of November 1982. His application was unsuccessful.

II. RELEVANT DOMESTIC LAW

A. The Law of 2 May 1930 to reorganise the conservation of natural monuments and places of artistic, historic, scientific, legendary or scenic interest (amended by Law no. 67-1174 of 28 December 1967 on the restoration of historic monuments and the conservation of places of interest)

18. In their current form the relevant provisions of the Law of 2 May 1930 provide:

PART II - LISTING AND DESIGNATION OF NATURAL MONUMENTS AND PLACES OF INTEREST

Section 4

"In each département there shall be drawn up a list of the natural monuments and places of interest whose conservation or preservation is in the public interest from the artistic, historic, scientific, legendary or scenic point of view.

...

Listing shall be effected by means of an order made by the Minister for Cultural Affairs. A decree issued after consultation of the Conseil d'État shall lay down the procedure for notifying the listing to the property owners or for publishing it. Publication may replace notification only in cases in which the latter is made impossible by the large number of owners of one and the same place of interest or natural monument, or if it is impossible for the authorities to ascertain the identity or address of the owner.

On the land within the boundaries laid down in the order, listing shall entail an obligation on those affected not to undertake any works other than those relating to day-to-day agricultural use as regards rural land and to normal upkeep as regards buildings without having given the authorities four months' notice of their intention."

Section 5-1

"Where it is proposed to designate a natural monument or place of interest belonging wholly or in part to persons other than those listed in sections 6 and 7, those affected shall be invited to submit their comments according to a procedure which shall be laid down in a decree issued after consultation of the Conseil d'État."

Section 6

"A natural monument or place of interest forming part of the public or private property of the State shall be designated by means of an order made by the Minister for the Arts if there is agreement with the minister within whose field of responsibility the natural monument or place of interest lies and with the Minister of Finance.

...

If there is no such agreement, designation shall be effected by means of a decree issued after consultation of the Conseil d'État."

Section 7

"A natural monument or place of interest forming part of the public or private property of a département or an administrative district (commune) or belonging to a public institution shall be designated by means of an order made by the Minister for the Arts if the public authority that owns it has consented.

Otherwise designation shall be effected, after the opinion of the National Commission on Natural Monuments and Places of Interest has been sought, by means of a decree issued after consultation of the Conseil d'État."

Section 8

"A natural monument or place of interest belonging to any person other than those listed in sections 6 and 7 shall be designated by means of an order made by the Minister for Cultural Affairs, after the opinion of the département's Committee on

Places of Interest, Views and Landscapes has been sought, if the owner consents. The order shall lay down the designation conditions.

Failing the owner's consent, the designation shall be effected after the opinion of the National Commission has been sought, by means of a decree issued after consultation of the Conseil d'État. Designation may confer on the owner the right to compensation if it entails any alteration of the state or change in the use of the site causing direct, pecuniary and certain damage.

..."

Section 9

"From the day on which the Department of Cultural Affairs notifies the owner of a natural monument or place of interest of its intention to have it designated, no alteration may be made to the state or appearance of the site for a period of twelve months unless special permission has been granted by the Minister for Cultural Affairs, except for the day-to-day agricultural use of rural land and the normal upkeep of buildings.

..."

Section 12

"Designated natural monuments and places of interest may not be demolished nor may their state or appearance be altered `unless special permission has been granted'."

B. Decree no. 69-607 of 13 June 1969 implementing sections 4 and 5-1 of the amended Law of 2 May 1930 on the conservation of places of interest

19. The decree of 13 June 1969 provides, inter alia:

Article 2

"Listing orders shall be notified by the Prefect to the owners of natural monuments or places of interest.

However, where the number of owners affected by the listing of one and the same place of interest or natural monument is greater than a hundred, the procedure of individual notification may be replaced by a general public announcement as provided for in Article 3.

Recourse shall likewise be had to a public announcement where the authorities are unable to ascertain the identity or the number of the property owners."

Article 3

"The public announcements provided for in Article 2 ... shall be made at the instance of the Prefect, who shall have the listing order published in two newspapers, at least one of which shall be a daily newspaper that is distributed in the administrative districts concerned. This notice must be republished at the latest on the last day of the month following the initial publication.

The listing order shall further be published in the relevant administrative districts, for a period of not less than one month, by being displayed at the town hall and in all other places customarily used for posting up public notices; ...

..."

Article 4

"The inquiry provided for in section 5-1 of the Law of 2 May 1930 before any designation decision is taken shall be organised by means of a prefectoral order ...

This order shall specify the times and places at which the public may inspect the designation proposal, which shall contain:

1. an explanatory notice indicating the purpose of the conservation measure, together with any special designation directions; and

2. a plan showing the boundaries of the conservation area.

The order shall be published in two newspapers, at least one of which shall be a daily newspaper that is distributed in the administrative districts concerned. It shall further be published in these districts by being displayed on notice- boards; the mayor shall certify that such publication has taken place."

Article 5

"For a period running from the first day of the inquiry to the twentieth day following its close, any person affected may, by means of a registered letter with recorded delivery, send comments to the Prefect, who shall inform the département's Committee on Places of Interest ...

During the same period and by the same means the property owners concerned shall make known to the Prefect, who shall inform the département's Committee on Places of Interest..., their objections or their consent to the designation proposal.

At the end of this period any property owner who has remained silent shall be deemed to have withheld consent. Where, however, the order that is the subject of the inquiry has been notified to the property owner in person, his silence at the end of the period shall be deemed to imply consent."

Article 6

"The designation decision shall be published in the Official Gazette."

Article 7

"Where a designation decision contains special directions that would alter the state or change the use of the site, it must be notified to the property owner.

This notification shall be accompanied by a formal notice to the effect that the site must be brought into conformity with the special directions in accordance with the provisions of section 8 (third paragraph) of the Law of 2 May 1930."

C. The Circular of 19 November 1969 on the implementation of Part II of Law no. 67-1174 of 28 December 1967 amending the Law of 2 May 1930 on places of interest

20. The relevant provisions of the circular of 19 November 1969 are as follows:

"...

Law of 28 December 1967 made amendments to the Law of 2 May 1930 regarding the procedure for listing and designating places of interest, the rights and obligations of those affected as a result of listing or designation decisions and the penalties for infringement of conservation measures.

Decree no. 69-607 of 13 June 1969 laid down the conditions for implementing some of the new provisions introduced by that Law.

The purpose of the present circular is to define the scope of the Law of 28 December 1967 and the means of implementing it.

I. Listing procedure and effects of listing

...

Another innovation introduced by the Law of 28 December 1967 and the decree of 13 June 1969 is general publication as a method of informing property owners that a place of interest has been listed.

There are now two possible procedures:

- either individual notification, in accordance with the arrangements currently in force in all cases; or

- general publication (public display and publication in two newspapers), to which the Prefect resorts when the number of property owners concerned is greater than a hundred - as with places of interest covering a large area - or when one or more property owners have not been identified.

This general publication will simplify the formalities that were necessary hitherto for the listing of a place of interest to have its full effect, and this will be particularly appreciable in the case of very large areas. It will have the advantage of ensuring that the public are well informed before the listing order is implemented.

...

II. Designation procedure and effects of designation

Because designation imposes substantial obligations on property owners, it will henceforth be preceded by an administrative inquiry open not only to the property owner or owners but to any interested member of the public.

...

This public-inquiry procedure shall be set in motion whenever a designation proposal is being prepared. It is still desirable that the designation proposal should be notified to property owners in person where they are known and are few in number or where they will have to be subject to special directions; but it is not compulsory.

...

Lastly, it is important to note that individual notification of the designation decision continues to be compulsory

(1) in order that special directions designed to alter the state or change the use of sites may be enforceable; and

(2) generally, in order that the penalties provided for in section 21 may apply.

..."

PROCEEDINGS BEFORE THE COMMISSION

21. Mr de Geouffre de la Pradelle applied to the Commission on 2 February 1987 (application no. 12964/87); he relied on Articles 6 and 13 (art. 6, art. 13) of the Convention and Article 1 of Protocol No. 1 (P1-1). As regards Article 6 (art. 6), he complained of a breach of his right of access to a court in that the authorities had notified him of the designation decision only after the period within which any appeal had to be brought had expired.

22. On 5 October 1990 the Commission declared the complaint based on Article 1 of Protocol No. 1 (P1-1) inadmissible as being manifestly ill-founded, but declared the allegations concerning Articles 6 and 13 (art. 6, art. 13) of the Convention admissible. In its report of 4 September 1991 (made under Article 31) (art. 31), the Commission expressed the opinion by seven votes to five that there had been a breach of the applicant's right of access to a court, and unanimously that it was unnecessary to examine the application under Article 13 (art. 13).

The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment*.

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

23. The Government requested the Court to find that Mr de Geouffre de la Pradelle's application was inadmissible for failure to exhaust domestic remedies within the meaning of Article 26 (art. 26) of the Convention and, in the alternative, that in this case there had not been any breach either of Article 6 para. 1 (art. 6-1) of the Convention, as regards the right of access to a court, or of Article 13 (art. 13).

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

24. As it had before the Commission, the Government maintained that Mr de Geouffre de la Pradelle had not exhausted domestic remedies, since he had raised only points of French law without pleading, even in substance, the appropriate provisions of the Convention in support of the application for judicial review he had made on 27 October 1983 (see paragraph 13 above).

25. In its decision on the admissibility of the application the Commission dismissed the objection on the ground that the problem of the exhaustion of domestic remedies was intimately bound up with the merits, since the complaint based on Articles 6 and 13 (art. 6, art. 13) specifically concerned the obstacle preventing access to a court and the lack of an effective remedy against the administrative designation decision.

26. The Court reiterates that Article 26 (art. 26) must be applied with some degree of flexibility and without excessive formalism (see, among other authorities, the Cardot v. France judgment of 19 March 1991, Series A no. 200, p. 18, para. 34, and the Castells v. Spain judgment of 23 April 1992, Series A no. 232, p. 19, para. 27).

The applicant did not fail to point out in the Conseil d'État that the Ministry's interprétation of Articles 6 and 7 of the decree of 13 June 1969

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* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 253-B of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

was a likely source of difficulties for members of the public, since it disregarded the need for simple rules in the procedure for bringing appeals; he submitted that a practice consistent with the ordinary law was called for in this case, since there was no good reason for making an exception. He added that if the Ministry's interprétation were to prevail, the aforementioned provisions would prove to be contrary to the principle of equality and therefore unlawful, and that the incomplete and irregular publication of the designation decree of 4 July 1983 had, moreover, not been apt to cause time to begin to run for the purposes of an appeal (see paragraphs 14-15 above).

He thus drew the Conseil d'État's attention to requirements of legal certainty and non-discrimination that are also reflected in the Convention. Without relying on the Convention in express terms, he derived arguments from his country's national law that amounted to complaining, in substance, of an infringement of the rights secured in Articles 6 and 13 (art. 6, art. 13) and gave the Conseil d'État an opportunity to prevent or remedy the alleged breaches, in accordance with the purpose of Article 26 (art. 26).

The objection must accordingly be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1)

27. Mr de Geouffre de la Pradelle claimed that he had been deprived of his right of access to a court as guaranteed in Article 6 para. 1 (art. 6-1), which provides:

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

He claimed he had suffered from the uncertainty prevailing in French law as to the classification of decisions to designate places of interest and from an "insidious" practice of the administrative authorities that was intended to suit the convenience of the public service at the expense of the most elementary rights of its users. Having thus been led to suppose that the designation decision was an individual measure, he had waited until the decree in issue had been notified to him in person before applying to the Conseil d'État, from whose judgment he had subsequently learnt that the time allowed for appealing had expired the day before the Prefect had communicated the decree to him. The designation decision, adopted two and a half years after the proceedings had been set in motion, appeared in a supplementary issue of the Official Gazette (no. 160 of Monday 11 and Tuesday 12 July 1983) in the form merely of an extract; in order to acquaint himself in time with the full text, he would have had to go to Corrèze, 500km away from his home in Paris.

28. The Court reiterates that "the right to a court" enshrined in Article 6 (art. 6) is not an absolute one. It may be subject to limitations, but these

must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired (see, among other authorities, the Philis v. Greece judgment of 27 August 1991, Series A no. 209, p. 20, para. 59).

29. French law undoubtedly gave the applicant the possibility of challenging the relevant decree in court, and he took advantage of this by applying to the Conseil d'État for judicial review (see paragraph 13 above). It remains to be ascertained whether the procedure for making such an application, in particular as regards the calculation of the time-limit to be complied with, was such as to ensure that the right to a court was effective as required by Article 6 (art. 6).

30. In the Government's submission, decisions to designate an area as being of outstanding beauty formed a category of administrative acts sui generis; they were directed at a given geographical area rather than at property owners themselves and, like general regulatory decisions, were of public, impersonal effect. For such decisions, the Government continued, publication in the Official Gazette was itself sufficient to cause the time allowed for appealing to begin to run. Furthermore, Article 7 of the decree of 13 June 1969 required notification only if the designation decree imposed any specific restrictions on a given tract of land (see paragraph 19 above); the decree in issue did not, however, contain any such restrictions. The Government conceded that these rules did limit public access to the courts to some degree, but argued that such a limitation was justified by the need to establish a simple, fair process for private individuals while ensuring lasting protection for the common national heritage. Lastly, the choice of time for notifying the decision to the applicant after it had been published (see paragraph 12 above), although psychologically unfortunate for him, was purely coincidental and had no legal consequences since in this instance notification was a purely optional formality.

31. In the instant case the Court does not have to assess, as such, the French system of classifying administrative acts and the procedure for appealing against them; it must confine its attention as far as possible to the issue raised by the specific case before it (see, among many other authorities, the Mellacher and Others v. Austria judgment of 19 December 1989, Series A no. 169, p. 24, para. 41). It must nevertheless look at the provisions of the decree of 13 June 1969 and the circular of 19 November 1969 in so far as the application of them may have given rise to the uncertainty in Mr de Geouffre de la Pradelle's mind and accounted for the time he took to apply to the Conseil d'État.

32. The rule in Article 6 of the decree of 13 June 1969 (see paragraph 19 above) that designation decisions shall be published nationally offers undeniable advantages; as the Government pointed out, it is intended to provide for legal stability and to simplify the formalities for implementing

such measures, particularly where they cover extensive tracts of land in multiple ownership.

33. Like the applicant, however, the Court cannot but be struck by the extreme complexity of the positive law resulting from the legislation on the conservation of places of interest taken together with the case-law on the classification of administrative acts. In view also of the proceedings that actually took place in respect of the applicant, which were spread over a period of not less than two and a half years (7 October 1980 - 4 July 1983), such complexity was likely to create legal uncertainty as to the exact nature of the decree designating the Montane valley and as to how to calculate the time-limit for bringing an appeal.

The Court notes in the first place the numerous methods of publication provided for in the decree of 13 June 1969 (see paragraph 19 above): for listing orders, either individual notification or publication, depending, inter alia, on a numerical criterion (Article 2); and for designation decisions, publication in the Official Gazette if they do not contain any special directions that would alter the state or change the use of the site (Article 6), otherwise notification (Article 7).

Furthermore, the scheme in issue covered a limited area and affected eight identifiable property owners in all (see paragraphs 8-9 above). Mr de Geouffre de la Pradelle and the other seven were, moreover, individually informed that designation proceedings had been set in motion and that a public inquiry was being opened (see paragraphs 8 and 10 above). Although optional (see paragraph 20 above), these notifications served the authorities' interests, as the Government acknowledged: the purpose of the first notification was to "freeze" the state of the site for a year (section 9 of the Law of 2 May 1930 - see paragraph 18 above), while the second notification was intended to force property owners to voice any dissent within twenty days, failing which they would be deemed to have consented (Article 5 of the decree - see paragraph 19 above). The property owners could reasonably infer from them that the outcome of the proceedings, whether favourable or unfavourable, would likewise be communicated to each of them without their having to peruse the Official Gazette for months or years on end.

34. In sum, the applicant was entitled to expect a coherent system that would achieve a fair balance between the authorities' interests and his own; in particular, he should have had a clear, practical and effective opportunity to challenge an administrative act that was a direct interference with his right of property. In this connection, the Court points out that, before the designation proceedings were set in motion, he had obtained the appropriate authorities' consent to his scheme for a miniature hydroelectric power-station (see paragraph 7 above).

In addition, the Prefect did not notify him of the impugned decree, an extract of which had been reproduced in the Official Gazette of 12 July 1983, until two months and one day later (see paragraph 12 above). Mr de

Geouffre de la Pradelle applied to the Conseil d'État (see paragraph 13 above), but it dismissed his application as being out of time. Admittedly it had already held that where a decree designating an area as being of outstanding beauty was concerned, the time allowed for appealing started to run from the moment of publication in the Official Gazette even in the event of subsequent notification, but this was, at the time, an isolated judgment, of which only a summary had appeared in the Recueil Lebon (Conseil d'État, Dames Moriondo and Carro judgment of 29 November 1978, pp. 881 and 908).

35. All in all, the system was therefore not sufficiently coherent and clear. Having regard to the circumstances of the case as a whole, the Court finds that the applicant did not have a practical, effective right of access to the Conseil d'État.

There has accordingly been a breach of Article 6 para. 1 (art. 6-1).

III. ALLEGED VIOLATION OF ARTICLE 13 (art. 13)

36. Mr de Geouffre de la Pradelle claimed that he had not had an effective remedy before a national authority. He submitted that this had given rise to a breach of Article 13 (art. 13), 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."

37. In view of its decision concerning Article 6 (art. 6), the Court considers, like the Commission, that it does not have to examine the case under Article 13 (art. 13). The requirements of that Article (art. 13) are less strict than those of Article 6 (art. 6) and are in this instance absorbed by them (see, among many other authorities, the Philis judgment previously cited, p. 23, para. 67).

IV. APPLICATION OF ARTICLE 50 (art. 50)

38. Under Article 50 (art. 50),

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

39. The applicant sought, firstly, compensation in the amount of ten million French francs (FRF) for pecuniary damage. He claimed that the designation decision flowed from ministerial determination to prevent the Montane valley hydroelectric scheme and had therefore caused him serious

detriment in that it had made it impossible for him to carry out his project and derive income from it. The damage caused by the storms of November 1982 (see paragraph 17 above) had, he said, aggravated the detriment, since the authorities had refused to grant him any financial assistance with clearing up the site.

The Court cannot speculate as to the conclusion the Conseil d'État might have reached if it had not dismissed Mr de Geouffre de la Pradelle's application as being out of time. It considers it reasonable, however, to hold that on account of the breach found in the present judgment, the applicant suffered a loss of opportunities justifying an award of FRF 100,000.

40. The applicant also sought costs and expenses in the amount of FRF 100,000, a claim that appears to relate only to the proceedings in Strasbourg. Making its assessment on an equitable basis as required by Article 50 (art. 50), the Court awards him FRF 75,000.

FOR THESE REASONS, THE COURT

1. Dismisses unanimously the Government's preliminary objection;

2. Holds by eight votes to one that there has been a breach of Article 6 para. 1 (art. 6-1);

3. Holds unanimously that it is not necessary also to examine the case under Article 13 (art. 13);

4. Holds unanimously that the respondent State is to pay the applicant, within three months, 100,000 (one hundred thousand) French francs in respect of damage and 75,000 (seventy-five thousand) francs in respect of costs and expenses;

5. Dismisses unanimously 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 16 December 1992.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) dissenting opinion of Mr Thór Vilhjálmsson;

(b) concurring opinion of Mr Martens.

R.R.
M.-A.E.

DISSENTING OPINION OF JUDGE THÓR VILHJÁLMSSON

In this case I find no violation of Article 6 para. 1 (art. 6-1) of the Convention for much the same reasons as are set out by Mrs Liddy in her dissenting opinion contained in the Commission's report.

CONCURRING OPINION OF JUDGE MARTENS

1. The Prime Minister's decree of 4 July 1983, which designated part of the Montane valley as an area of outstanding beauty and public interest within the meaning of the Law of 2 May 1930, restricted the applicant's use of that portion of his estate which was covered by the decree. The decree therefore constituted an interference by the administrative authorities with the applicant's right of property, with the result that he was entitled to have an opportunity of challenging it before a tribunal satisfying the requirements of Article 6 para. 1 (art. 6-1) of the Convention (see the Court's Oerlemans v. the Netherlands judgment of 27 November 1991, Series A no. 219, pp. 20-21, paras. 47 and 48).

2. Under Article 2 of Decree no. 53-934 of 30 September 1953, an appeal against the Prime Minister's decree lay to the Conseil d'État, so that the applicant did in principle have access to a court which fulfilled the said requirements. To this extent his "right of access to a court" under Article 6 para. 1 (art. 6-1) was secured.

3. This "right of access to a court" was, however, limited by:

(a) Article 49 of the Ordinance of 31 July 1945, which reads:

> "Unless otherwise provided by legislation, an application to the Conseil d'État against a decision by an authority, court or tribunal within its jurisdiction shall be admissible only within a period of two months; this period shall run from the date of publication of the disputed decision unless it has to be notified or served, in which case the period shall run from the date of notification or service.";

and

(b) the way this general provision is applied by the Conseil d'État to designation decisions under the Law of 2 May 1930.

Mr de Geouffre de la Pradelle's complaints are directed against these limitations on his "right of access to a court", and more particularly against the result of their application in the present case.

4. The basic requirements of the paragraphs of the Convention that allow for limitations - viz. the second paragraphs of Articles 8 to 11 (art. 8-2, art. 9-2, art. 10-2, art. 11-2) - are threefold: a limitation must (a) be in accordance with the law; (b) pursue a legitimate aim; and (c) comply with the principle of proportionality.

In my opinion, the very same basic requirements apply also to limitations on "the right of access to a court", which right has been read into Article 6 para. 1 (art. 6-1), that is created by the Court's case-law (see the Golder v. the United Kingdom judgment of 21 February 1975, Series A no. 18, p. 18, para. 36).

There are two closely linked arguments for adopting this rule. The first is, of course, that within the system of the Convention this is the most obvious rule to adopt. The existence and the wording of the second paragraphs of Articles 8 to 11 (art. 8-2, art. 9-2, art. 10-2, art. 11-2) strongly

suggest that if the draftsmen had included in the Convention an express provision on the "right of access to a court", they would have inserted similar wording with regard to limitations on that right. This is all the more so because - and this is the second argument for adopting the above rule - they evidently sought guidance from Article 29 of the Universal Declaration of Human Rights, which lays down a general rule on limitations that contains the same three basic requirements: (a) in accordance with the law; (b) a legitimate aim; and (c) proportionality.

I find further support for my opinion in the fact that the Court has already accepted that two of these three basic requirements apply to limitations on "the right of access to a court": I refer to paragraph 57 of the Ashingdane v. the United Kingdom judgment of 28 May 1985 (Series A no. 93, pp. 24-25), which in this connection laid down the following rule:

> "Furthermore, a limitation will not be compatible with Article 6 para. 1 (art. 6-1) if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved."

It may be noted that precisely the same wording appears in paragraph 194(c) of the Lithgow and Others v. the United Kingdom judgment of 8 July 1986 (Series A no. 102, p. 71), which was a judgment of the plenary Court.

5. Accordingly, what is decisive in this case is whether the limitations referred to in paragraph 3 above, and in particular the rules on the calculation of the time-limit to be complied with, satisfied the three requirements indicated in paragraph 4 above.

In the context of this case, consideration must be given primarily to the question whether the limitations are "in accordance with the law". The Court has consistently held this expression to mean that a limitation must have some basis in domestic law and also to imply requirements as to the quality of the "law" in question. When these requirements are being formulated, regard must be had to the nature of the right on which the limitations at issue have been imposed. Given the great importance in our democratic societies of the "right of access to a court", there must be no possibility of misunderstandings as to the limitations placed on it, such as the point at which the time allowed for appealing starts to run. Such limitations must, accordingly, be based on domestic rules that are particularly precise and afford adequate safeguards against an appeal being inadvertently brought after the legal time-limit.

6. In my opinion, the present case - which (I note in passing) concerns a practising lawyer - demonstrates that the above limitations, in particular as regards the starting-point of the time-limit for appealing to the Conseil d'État, do not afford adequate safeguards against an appeal being inadvertently brought after the legal time-limit.

An initial point to be made is that the legislation on the conservation of places of interest gives little guidance as to the "right of access to a court":

there is no indication in the Law of 2 May 1930, the decree of 13 June 1969 or the circular of 19 November 1969 that an appeal can be brought against a designation decision, let alone that this can be done only within two months of the date of publication of that decision in the Official Gazette except where the decision has been notified under Article 7 of the decree of 13 June 1969. Property owners affected are left to infer this from: (a) Article 2 of Decree no. 53-934 of 30 September 1953, in conjunction with (b) Article 49 of the Ordinance of 31 July 1945, (c) the Conseil d'État's case-law on the classification of administrative acts and (d) the legislation on the conservation of places of interest.

I will refrain from arguing why, in my opinion, these legal provisions, while they may not actually be conducive to a misunderstanding as to the point at which the time allowed for appealing starts to run, certainly do not afford adequate safeguards against such a misunderstanding. Here I can simply refer to paragraph 33 of the Court's judgment in this case, to which, in principle, I subscribe.

My conclusion is that the impugned limitations do not meet the requirement of being "in accordance with the law".

7. In view of this conclusion I do not need to go into the question whether those limitations meet the other requirements set out in paragraph 4 above. I nevertheless note that, although their aim - which is set out in paragraph 32 of the Court's judgment - is certainly a legitimate one, their proportionality in cases where the number of property owners affected is such that individual notification would not cause great difficulty or expense seems open to doubt when one takes into consideration the potentially important consequences of a designation decision for the owners and the likelihood that they will miss the announcement in the Official Gazette.

8. For the above reasons I have voted for a finding of violation of Article 6 para. 1 (art. 6-1) in this case.