[TRANSLATION - EXTRACT]

…

THE FACTS

The applicant [Mr Jacques Cheminade] is a French national who was born in 1941 and lives in Paris. Before the Court he was represented by Ms A. de Coulhac-Mazérieux of the Paris Bar.

The facts of the case, as submitted by the parties, may be summarised as follows.

A. The circumstances of the case

Having collected the signatures of more than five hundred mayors, as required by the Institutional Act of 13 January 1988, the applicant decided to stand as a candidate in the 1995 presidential election.

By a decision of 6 April 1995 the Constitutional Council accepted his candidacy and by virtue of his status as a candidate the State paid him an advance of one million French francs (FRF) on the lump-sum reimbursement of his campaign expenses, for which there was a ceiling of FRF 90,000,000 in force for each candidate and FRF 120,000,000 for each candidate in the second round of voting.

In the first round of the presidential election, which took place on 23 April 1995, the applicant received 84,959 votes, or 0.28% of the votes cast. He did not take part in the second round of the election on 7 May 1995.

In accordance with Article L. 52-12 of the Elections Code, which requires campaign accounts to be lodged within two months of the second round of voting, the applicant lodged his accounts with the Constitutional Council on 7 July 1995. In response to requests for further particulars on 27 July and 15 September 1995 from the scrutineers auditing his accounts, the applicant supplied the information and documents sought on 17 August and 25 September 1995.

The applicant's accounts showed electoral expenses of FRF 4,718,018 and receipts of FRF 4,718,040. The receipts were broken down as follows: an advance from the State of FRF 1,000,000, FRF 350,000 in bank loans, FRF 359,000 in the form of an advance from a party named "*Fédération pour une nouvelle solidarité*" (Federation for a New Solidarity) and FRF 2,980,990 in loans made by natural persons, which included FRF 2,340,990 interest-free, and FRF 27,550 in donations.

It appears from the documents supplied by the applicant that he had personally taken out a bank loan of FRF 200,000 and that it had been stipulated that this loan was to be "paid off by reimbursement of the campaign expenses".

The loans amounting to a total of FRF 2,980,990 were made by twenty-nine individuals during the period from 10 February to 6 July 1995. All but three of these loans were interest-free and were to be repaid in full after Mr Cheminade had received the statutory lump-sum reimbursement to candidates in presidential elections. The loan contracts were sent in by the applicant after his campaign accounts had been lodged in response to the scrutineers' requests.

The receipts of the other candidates in the presidential election amounted, for the candidates in the first round of voting only, to approximately FRF 7,200,000 for Mrs Voynet, FRF 11,300,000 for Mrs Laguiller, FRF 24,000,000 for Mr de Villiers, FRF 41,700,000 for Mr Le Pen, FRF 50,000,000 for Mr Hue and FRF 91,000,000 for Mr Balladur. For the two candidates in the second round the receipts recorded in the campaign accounts were approximately FRF 89,000,000 for Mr Jospin and FRF 120,000,000 for Mr Chirac.

Article 3 of the Law of 6 November 1962 on election by universal suffrage to the office of President of the Republic, as amended by the Institutional Act of 19 January 1995 on the financing of political life, provides for a sum of up to 8% of the maximum expenses (that is a maximum of FRF 7,200,000) to be reimbursed in a lump-sum to each candidate who does not obtain more than 5% of the total votes cast in the first round.

This lump-sum reimbursement may not, however, exceed the amount of the candidate's expenses as recorded in his campaign accounts, and no reimbursement is made to candidates whose campaign accounts have been rejected.

In the present case, by a decision of 11 October 1995, the Constitutional Council, which was empowered for the first time, pursuant to the Institutional Act of 19 January 1995, to approve, reject or correct the campaign accounts of candidates in a presidential election, rejected the applicant's campaign accounts on the following grounds:

> "It appears from the campaign accounts lodged by the candidate that he received a total of FRF 2,340,990 stated to be interest-free loans from natural persons. The investigation has revealed that FRF 1,711,450 out of this sum, or more than a third of all the receipts declared, came from twenty-one loans made after 7 May 1995. In view of the relative weight of these resources in the campaign finances as a whole, the fact that no interest was stipulated gave the candidate in the present case an advantage which must be equated with a donation pursuant to Article L. 52-17 of the Elections Code. Regard being had to the dates of the contracts concerned, and the scale and systematic nature of the advantages thus provided, the campaign accounts must be

considered to have been drawn up in breach of Articles L. 52-4, L. 52-5, L. 52-6 and L. 52-8 of the Elections Code and must accordingly be rejected."

The applicant was therefore deprived of the possibility of obtaining a lump-sum reimbursement of his electoral expenses to the value of FRF 3,690,490 and on 18 October 1995 the Minister of the Interior served him with an order to repay the FRF 1,000,000 paid to him by the State as an advance on this reimbursement.

On 10 April 1996 the Treasury sent the applicant a notice to pay, which led to nothing. On 26 July 1996 a bailiff drew up a report on a seizure of goods carried out with a view to the sale of furniture from the applicant's home, namely a period wardrobe, a desk, a bench, an armchair, a folding screen and approximately five hundred books.

On 20 August 1996 the applicant applied to the judge at the Paris *tribunal de grande instance* responsible for the execution of judgments arguing that some of the goods seized were in fact exempt from seizure and that he was entitled to a stay of execution until such time as the European Commission of Human Rights ("the Commission") had reached a decision on the violations of the Convention alleged in the present application.

On 2 August 1996 the Treasury had attached two sums of money available in the applicant's bank accounts.

B. Relevant domestic law

1. *Article 3 of the Law of 6 November 1962 on election by universal suffrage to the office of President of the Republic, as amended by the Institutional Act of 19 January 1995*

"Electoral transactions shall be organised according to the rules laid down by Articles ... L. 52-4 to L. 52-11, L. 52-12 and L. 52-16 of the Elections Code ..., subject to the following provisions.

The ceiling for electoral expenses laid down by Article L. 52-11 shall be FRF 90,000,000 for a candidate for election to the office of President of the Republic. That figure shall be raised to FRF 120,000,000 for each of the candidates in the second round of voting.

Campaign accounts and their annexes shall be lodged with the Constitutional Council within two months of the round of voting from which the successful candidate emerges ...

The amount of the advance payment ... must be included in the receipts recorded in the campaign accounts.

When the list of the candidates in the first round is published the State shall pay to each of them the sum of FRF 1,000,000 as an advance on the lump-sum reimbursement of their campaign expenses provided for in the following paragraph.

Where the amount of the reimbursement does not reach that sum, the surplus must be repaid.

A sum of up to one-twentieth of the amount of the relevant ceiling for campaign expenses shall be reimbursed, in a lump-sum, to each candidate. This sum shall be increased to a quarter of that ceiling for each candidate who receives more than 5% of the total votes cast in the first-round ballot. It may not exceed the candidate's total expenses as recorded in his campaign accounts [exceptionally, for the application of this paragraph of Article 3 of the Law of 6 November 1962 to the first election of a President of the Republic following publication of the present Institutional Act, the proportions of one-twentieth and one-quarter of the ceiling for electoral expenses shall be raised to 8% and 36% of that ceiling respectively].

The lump-sum reimbursement provided for in the previous paragraph shall not be made to candidates ... whose campaign accounts have been rejected."

2. The Elections Code

Article L. 52-4

"During the year preceding the first day of the month in which an election is held and until the date of the round of voting from which the successful candidate emerges a candidate in this election may not have collected funds with a view to financing his campaign otherwise than through an agent designated by him ..."

Article L. 52-6

"A financial agent may collect funds only during the period contemplated in Article L. 52-4."

Article L. 52-8

"Donations made by a duly identified natural person to finance the campaign of one or more candidates in the same election may not exceed FRF 30,000."

Article L. 52-12

"Each candidate ... is required to keep campaign accounts recording the source of all receipts and the nature of all the expenses incurred or paid with the election in mind, other than those for the official campaign, by himself or on his behalf, during the period contemplated in Article L. 52-4 ... The campaign accounts must be in balance or in surplus and may not show any deficit."

Article L. 52-17

"Where an item of expenditure recorded in the campaign accounts costs less than the normal price, [the Constitutional Council] shall evaluate the difference and add an equivalent sum to the campaign expenses, after inviting the candidate to produce any documentary evidence which might help to assess the circumstances. The sum thus

added shall be considered a donation, within the meaning of Article L. 52-8, made by the natural person or persons concerned. [The Council] shall deal in the same manner with all direct or indirect advantages, services and donations in kind from which the candidate has derived benefit."

*3. Observations of the Constitutional Council on the presidential election of 23 April and 7 May 1995, from the Official Gazette (*JO*) of 15 December 1995*

"2. Taking receipts into account

…

(b) The Constitutional Council further notes that in some cases funds paid in have been declared to have come from loans made by natural persons. Such loans, which may in part really constitute donations where no interest is payable, or where the rate of interest payable is lower than the usual money-market rates, make any attempt to exercise scrutiny a hit-or-miss affair. Moreover, the Council is not in a position to verify, once the accounts have been made up, whether the contractual repayments have actually been made. Yet in the absence of such verification the payments owed by the State may be the cause of unjustified enrichment for the candidate. It therefore appears to be desirable for natural persons to be allowed to make only donations within the limits laid down by law, but not loans of any kind."

COMPLAINTS

1. Relying on Article 6 § 1 of the Convention, the applicant questioned the fairness and impartiality of the proceedings before the Constitutional Council. He submitted that the President of the Constitutional Council, Mr Roland Dumas, could not be impartial, since in 1982, while in pratice as an advocate, he had defended a satirical newspaper which the applicant had sued for libel. The applicant also complained that there had been no public hearing before the Constitutional Council, that he had not been heard in person and that there had been a failure to respect adversarial procedure and due process.

2. Relying on Articles 10 and 14 of the Convention, the applicant further complained that the Constitutional Council's decision of 11 October 1995 and the Minister of the Interior's decision of 18 October 1995 had constituted a disproportionate interference with his freedom of expression, based on political discrimination.

He pointed out that he had been the only candidate whose campaign accounts had been rejected and maintained on that account that there had been unequal treatment between candidates. He further maintained that the Constitutional Council's decision to reject his campaign accounts had had no foundation, whether in law or in fact, and had been based on a wrongful

distortion of the domestic-law rules on the financing of electoral campaigns, which the Constitutional Council had been asked to apply for the first time. The "penalty" which had thus been imposed on him was, according to the applicant, neither "foreseeable" nor "necessary" in a democratic society, within the meaning of Article 10 § 2 of the Convention.

3. The applicant submitted in addition that the above-mentioned decision of the Constitutional Council and the Minister of the Interior's subsequent order to repay the advance had infringed his right to the peaceful enjoyment of his possessions, contrary to Article 1 of Protocol No. 1. He emphasised that he now had no personal fortune whatsoever and was threatened with ruin because he had to repay not only the State's advance of FRF 1,000,000 but also his personal loan of FRF 200,000 and the sum of approximately FRF 3,500,000 which had been lent to him by a number of individuals to finance his campaign.

…

PROCEDURE

The application was lodged on 5 April 1996 and registered on 28 May 1996.

On 10 September 1997 the Commission decided to give notice of the application to the Government, and invited them to submit observations in writing on its admissibility and merits.

The Government submitted their observations on 12 February 1998, after an extension of the time allowed, and the applicant replied on 29 May 1998, after a further extension had been granted.

Following the entry into force of Protocol No. 11 to the Convention on 1 November 1998 and in accordance with Article 5 § 2 thereof, the application falls to be examined by the Court.

THE LAW

1. The applicant complained that the procedure followed before the Constitutional Council for the scrutiny of his election expenses was unfair, that the Constitutional Council's president was not impartial and that there was no public hearing. He relied on Article 6 § 1 of the Convention, which provides:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the

trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

A. The parties' submissions

The Government submitted that Article 6 § 1 of the Convention was not applicable to the procedure for the scrutiny of the campaign accounts of candidates in the presidential election, which did not concern determination of either civil rights and obligations or a criminal charge.

They argued in the first place that the proceedings in issue could not concern a dispute over civil rights and obligations since electoral disputes fell, in principle, outside the scope of Article 6 § 1 of the Convention.

The case-law had established that the Convention institutions took an autonomous, objective view of whether a matter was civil and placed reliance on the "character of the right at issue" (see the König v. Germany judgment of 28 June 1978, Series A no. 27, p. 30, § 90) not "the character of the legislation which governs how the matter is to be determined (civil, commercial, administrative law, etc.) [or] that of the authority which is invested with jurisdiction in the matter (ordinary court, administrative body, etc.)" (see the Ringeisen v. Austria judgment of 16 July 1971, Series A no. 13, p. 39, § 94), which in the present case would make Article 6 inapplicable, since a dispute over the lawfulness of an election brought political rights and obligations into issue, that is rights vested in individuals in the capacity of citizens and not of private persons.

The Government noted that the Court had consistently drawn the consequences of the above considerations by affirming that electoral disputes fell outside the scope of Article 6 § 1 in its civil aspect. For example, in its Desmeules v. France decision (application no. 12897/87, decision of 13 April 1989) on proceedings before the French Constitutional Council, which had ruled on the right of a candidate on an electoral list to stand in a parliamentary election, the Commission had affirmed that "the proceedings in issue concerned a dispute over the applicant's right to vote in an election and to stand as a candidate... The Commission considers that these rights, which are political rights *par excellence*, cannot be regarded as 'civil rights' for the purposes of Article 6 § 1 of the Convention". Similarly, the Government referred to the Commission's Estrosi v. France decision (application no. 24359/94, decision of 30 June 1995) in which the Commission had affirmed that "review of the lawfulness of an election concerns the conditions for the exercise of a political right and does not have any bearing on civil rights and obligations".

In addition, the Government pointed out that in its Pierre-Bloch v. France judgment (21 October 1997, *Reports of Judgments and Decisions* 1997-VI)

the Court had confirmed this case-law, ruling that Article 6 § 1 was not applicable to the proceedings in issue. It had affirmed that the right to stand as a candidate in an election was a political right and not a civil right for the purposes of Article 6 § 1 of the Convention, "so that disputes relating to the arrangements for the exercise of it – such as ones concerning candidates' obligation to limit their election expenditure – lie outside the scope of that provision" (p. 2223, § 50).

The Government further noted that the Court, while holding that "the proceedings before the National Commission [on Election Campaign Accounts] are not separable from those before the Constitutional [Council]", had affirmed that "[the] economic aspect of the proceedings in issue does not, however, make them 'civil' ones" (p. 2223, § 51). The Court accordingly considered, in the Government's submission, that the impossibility of obtaining the reimbursement of campaign expenses and the obligation to pay the Treasury a sum equivalent to the excess spending were corollaries of the obligation to limit election expenses and were part of the arrangements for the exercise of the right in question.

Lastly, the Government considered that in the Pierre-Bloch judgment the Court had confirmed its case-law to the effect that a dispute did not become a civil matter merely because it also raised an economic issue. In that connection, they referred to the Schouten and Meldrum v. the Netherlands judgment of 9 December 1994, Series A no. 304, and the Neigel v. France judgment of 17 March 1997, *Reports* 1997-II, which they considered to be applicable in the present case, that is to the procedure for scrutiny of the campaign accounts of candidates in the presidential election.

Although the Government did not contest the fact that in the present case there was a dispute and that the proceedings for the scrutiny of the applicant's campaign accounts had an economic aspect for him, because the rejection of these accounts made it impossible for him to obtain reimbursement of his expenses and made him liable to repay to the Treasury the advance of FRF 1,000,000 he had received, they nevertheless considered that this economic aspect could not make the proceedings civil in nature for the purposes of Article 6 § 1 of the Convention since, by analogy with the Court's findings in the Pierre-Bloch case, the applicant's right to stand as a candidate in the presidential election and to obtain on that account an advance on the lump-sum reimbursement of his election expenses was a political rather than a civil right for Convention purposes.

The consequences of the rejection of the applicant's campaign accounts, in the Government's submission, were only corollaries of the obligation to limit electoral expenses and were part of the arrangements for the exercise of the right in question. In that connection, the Government referred to the Schouten and Meldrum judgment in which the Court held: "[It is not] in itself sufficient to show that a dispute is 'pecuniary' in nature. There may exist 'pecuniary' obligations *vis-à-vis* the State or its subordinate authorities

which, for the purpose of Article 6 § 1, are to be considered as belonging exclusively to the realm of public law and are accordingly not covered by the notion of 'civil rights and obligations'. Apart from fines imposed by way of 'criminal sanction', this will be the case, in particular, where an obligation which is pecuniary in nature derives from tax legislation or is otherwise part of normal civic duties in a democratic society" (pp. 20-21, § 50).

The Government argued that this case-law was applicable in the present case because the obligation to repay to the Treasury the advance given on condition of compliance with the statutory provisions governing campaign accounts did indeed appear to be a normal civic duty incumbent on candidates and intended to ensure democratic elections in which no relevant information was hidden from the electorate.

In the second place, the Government argued that the applicant could not claim to have been the subject of a criminal charge within the meaning of Article 6 § 1 of the Convention.

In that connection, they referred to the Pierre-Bloch judgment in which the Court examined the question whether the existence of an underlying "accusation" in the proceedings in issue brought them into the criminal sphere. The Government noted that in that judgment the Court had assessed the legal classification and nature of the offence in French law and the nature and degree of severity of the penalty.

With regard to the legal classification of the offence in French law and its nature, the Government submitted that, *mutatis mutandis*, the line followed in the Pierre-Bloch judgment was also valid in the present case, observing that the requirements concerning campaign accounts, the system for scrutinising the relevant expenditure, the obligation to repay to the Treasury the advance from the State and the impossibility of obtaining the lump-sum reimbursement of election expenses were not part of criminal law but of electoral law.

The Government further observed that the sum the applicant was required to pay to the Treasury corresponded to the advance of FRF 1,000,000 which had previously been paid to him. It was therefore a matter of reimbursing to the community a sum which the candidate had used to gain an unfair advantage in seeking votes, so that the measure was one of those intended to ensure that the presidential elections were properly conducted, and in particular that the candidates were on an equal footing. In the Government's submission, therefore, this obligation of repayment could not be equated with a fine. Moreover, no entry concerning this obligation to repay the Treasury was made in the criminal record, the rule that consecutive sentences are not imposed in respect of multiple offences did not apply, and imprisonment was not available to sanction failure to pay.

The applicant submitted that the procedure for scrutiny of his campaign accounts came within the scope of Article 6 § 1 of the Convention in so far

as what was in issue in the case was his right to obtain reimbursement of the full amount of his election expenses by the French State. He maintained that the dispute could not therefore have been about an electoral right.

In addition, the applicant observed that whereas the Constitutional Council had taken a purely mathematical approach in the Pierre-Bloch case, reaching what were merely objective findings about the various heads of Mr Pierre-Bloch's campaign accounts, it had gone further in his own case and undertaken a redefinition of the "loans" and "donations" recorded as separate heads in his accounts and altered their legal nature.

He argued that by thus carrying out a legal reclassification of the donations and loans, which, moreover, was invalid in his submission, the Constitutional Council had placed itself in the civil sphere and interfered through this decision in the contractual field governed by private law. The decision had, firstly, modified the legal nature of the contractual relations between himself and those who had lent him money, deemed by the Constitutional Council to have made donations, and secondly had affected the conditions for the fulfilment of all his obligations *vis-à-vis* those with whom he had entered into private-law contracts.

The applicant observed that because of the Constitutional Council's decision he had been obliged to take on the burden of meeting all his election expenses alone out of his own resources.

Yet the only reason why he had not hesitated to stand as a candidate and contract personal debts in order to run his presidential campaign was that it was to be presumed that this decision would not expose him to any financial burden, since the French State was to pay all his campaign expenses. In addition, the applicant asserted that it was because there was a lump-sum reimbursement by the State that his backers had agreed to lend him the money, since they were certain of being repaid. In that connection, he cited the actual terms of the loans from private individuals in question, which stipulated under the heading "Repayment term": "This loan is to be repaid in full after receipt of the statutory lump-sum reimbursement provided for in presidential elections".

Similarly, the applicant pointed out that a financial institution had agreed to let him run an overdraft on his bank account only because this was to be "paid off by the reimbursement of the election expenses".

Consequently, by destroying the legal certainty which the applicant had thought he was protected by, the Constitutional Council had betrayed the legitimate trust which had prompted him to stand and induced those to whom he was contractually bound to lend him their money. This had flouted the principle of foreseeability which ought to prevail in any democratic society.

The applicant therefore considered that the applicability of Article 6 § 1 of the Convention was accordingly established by the Constitutional Council's decision, which had thus determined both the nature and

existence of the obligations he had entered into with persons governed by private law and the conditions for their fulfilment. On that point he referred to the Ringeisen v. Austria judgment of 16 July 1971 (Series A no. 13, p. 39, § 94) in which the Court held: "The ... expression '*contestations sur [des] droits et obligations de caractère civil*' covers all proceedings the result of which is decisive for private rights and obligations... The character of the legislation which governs how the matter is to be determined ... and that of the authority which is invested with jurisdiction in the matter ... are therefore of little consequence."

Consequently, the applicant's obligation to pay, incurred as a result of the Constitutional Council's decision, was personal, economic and subjective, which gave the dispute a mixed character (see the Deumeland v. Germany judgment of 29 May 1986, Series A no. 100, p. 25, § 74).

This mixed character, in the applicant's submission, was all the more fundamental because it distinguished the present case from the Pierre-Bloch case, since in that case the Constitutional Council had disqualified Mr Pierre-Bloch from standing for election for one year and ruled that he should be removed from office by operation of the law, which meant that that dispute concerned the very exercise of a political right.

In the present case, however, although the dispute had indeed originated in a political context, since it had arisen on the occasion of the presidential election, that political context was nevertheless not sufficient to make the matters at issue political in nature (see the Ringeisen judgment cited above). The applicant's rights and obligations in issue, by their existence and nature and by the conditions for their exercise, were civil in character, whether they concerned the obligation to pay lenders and suppliers, the right to peaceful enjoyment of possessions and the means of subsistence or the right to protection of one's reputation.

By interfering in the contractual sphere of private law which linked the candidate with those he had entered into contractual obligations with, the Constitutional Council had gone beyond the irreducible core of the State's sovereign power and brought the dispute into the civil domain.

The applicant pointed out that his object in the present case was not to assert his political right to retain elected office, since he had not been elected, or his right to stand as a candidate in a future election, since he had not been barred from exercising any rights, but to obtain a ruling criticising the fact that the Constitutional Council's decision had interfered with his private, contractual relations with persons governed by private law.

He also observed that the Constitutional Council's decision had obliged him to meet from his own pocket a debt of FRF 4,690,490, a circumstance which constituted a major distinction from the Pierre-Bloch case, in which Mr Pierre-Bloch had been obliged to pay the Treasury only FRF 59,572.

The applicant pointed out that, being unable to discharge these obligations, he was liable to incur coercive measures affecting his property;

that would make him the victim of an interference with his means of subsistence (see the Schuler-Zgraggen v. Switzerland judgment of 24 June 1993, Series A no. 263, and the Feldbrugge v. the Netherlands judgment of 29 May 1986, Series A no. 99), and this in turn would make the dispute civil in character. In that connection, he referred to the Procola v. Luxembourg judgment of 28 September 1995 (Series A no. 326, pp. 14-15, § 38) and the Editions Périscope v. France judgment of 26 March 1992 (Series A no. 234-B, p. 66, § 40) in which the Court held: "The subject-matter of the ... action was 'pecuniary' in nature and ... the action was founded on an alleged infringement of rights which were likewise pecuniary rights. The right in question was therefore a 'civil right', notwithstanding the origin of the dispute and the fact that the administrative courts had jurisdiction."

In any event, the applicant asserted that the Constitutional Council's decision had damaged his reputation, as he was now known as a bad payer. He submitted that this was further proof that the dispute was civil in character, since the Court had held in the Golder v. the United Kingdom judgment that the right to enjoy a good reputation was a civil right (judgment of 21 February 1975, Series A no. 18, p. 13, § 27; see also the Helmers v. Sweden judgment of 29 October 1991, Series A no. 212-A, p. 14, § 27).

B. The Court's assessment

The Court notes in the first place that the applicant asserted that the Constitutional Council had wrongly reclassified his receipts, which mostly consisted of interest-free loans made by private individuals, as donations, which had caused him to exceed the maximum authorised by Article L. 52-8 of the Elections Code for donations made by natural persons to election candidates. The applicant considered that through this decision, which he asserted to be civil in character, the Constitutional Council had interfered in the contractual relations between himself and his creditors, and that this made Article 6 § 1 of the Convention applicable in the present case.

The Court considers, however, that it is not sufficient to assert, as in the present case, that the Constitutional Council has committed an error of assessment of fact or of law in order to conclude that Article 6 § 1 of the Convention is applicable.

It reiterates that for Article 6 § 1 of the Convention to be applicable the proceedings in issue must concern "a *contestation* [dispute] over civil rights and obligations".

Yet the Court observes that proceedings concerning electoral disputes fall in principle outside the scope of Article 6 of the Convention in so far as they concern the exercise of political rights and do not therefore have any bearing on civil rights and obligations (see, *mutatis mutandis*, the Pierre-

Bloch case cited above, opinion of the Commission, pp. 2236-37, § 58, and the case of Priorello v. Italy, application no. 11068/84, Commission decision of 6 May 1985, Decisions and Reports 43, p. 195).

In the present case the Court notes that the object of the proceedings in issue was to verify the lawfulness of the applicant's campaign accounts. It notes that these proceedings originated in the right of the applicant, like any other French citizen, to stand as a candidate in an election – in this case a presidential election. Yet the Court reiterates that according to its case-law the right to stand as a candidate in an election is a political right not a civil one for the purposes of Article 6 § 1 of the Convention, so that disputes relating to the arrangements for the exercise of it – such as ones concerning the regulation of campaign expenditure – lie outside the scope of that provision (see, *mutatis mutandis*, the Pierre-Bloch judgment cited above, p. 2223, § 50).

Admittedly, the Court notes that the applicant also argued that by rejecting his campaign accounts the Constitutional Council had determined a dispute over an economic and hence a civil right, since he was now obliged to repay to the State, from his own funds, the advance of FRF 1,000,000 he had received, like the other candidates, in accordance with the Institutional Act of 19 January 1995, and was unable to obtain reimbursement by the State of the balance of the expenses he had actually incurred to finance his campaign.

In that connection, however, the Court considers that the economic effect of proceedings concerning the conditions for the exercise of a political right, if any, does not make them "civil" ones within the meaning of Article 6 § 1 of the Convention (see, *mutatis mutandis*, the Pierre-Bloch judgment cited above, p. 2223, § 51, and the Schouten and Meldrum judgment cited above, pp. 21-22, § 50).

The impossibility of obtaining the reimbursement of campaign expenses and the obligation to repay to the Treasury the advance paid by the State are corollaries of the obligation to limit election expenses (see, *mutatis mutandis*, the Pierre-Bloch judgment cited above, p. 2223, § 51).

In the light of the foregoing considerations, the Court considers that the complaints relating to an alleged violation of Article 6 § 1 of the Convention must be rejected as being incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 35 § 3 of the Convention.

2. The applicant complained that the rejection of his campaign accounts by the Constitutional Council and the subsequent obligation to repay to the State the advance of FRF 1,000,000 he had received to finance his election campaign had breached Articles 10 and 14 of the Convention.

Article 10 of the Convention provides:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 14 of the Convention provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Court notes at the outset that the applicant, a candidate in the 1995 presidential election, had every opportunity, during his election campaign, to bring his ideas to the attention of his fellow citizens whose votes he sought and thus to make use of the freedom of expression secured to him by Article 10 of the Convention.

The Court notes that not only was there no interference by a public authority with the exercise of that freedom but also the State took positive measures to enable every citizen, without consideration of means, to seek the highest national office, since under the Institutional Act of 1995 election expenses are paid, under certain conditions, from public funds, including those of candidates who win less than 5% of the votes.

The Court considers that the applicant cannot derive from the law in question any absolute right to reimbursement by the State, that is by the national community as a whole, of his election expenses.

As to the conditions laid down by domestic law for lump-sum reimbursement of campaign expenses, the Court considers that these by no means constitute "formalities", "conditions" or "restrictions", within the meaning of Article 10 § 2 of the Convention, imposed on the freedom of expression of election candidates. These conditions, which relate to the proper use of the public funds allocated to finance political activities, are to be found in most of the Contracting States and are intended to ensure that elections are conducted in accordance with the law and in a transparent manner, and in particular that the candidates are on an equal footing.

The Court further considers that when the Constitutional Council rejects a candidate's campaign accounts it is not imposing a "penalty" on him intended to punish excessive use of the freedom of expression. The powers of the Constitutional Council extend only to verifying *ex post facto* whether candidates have complied with the rules governing the funding of their election campaigns. The subsequent obligation for candidates to repay to the

State the advance received with a view to funding their campaign in the event of their campaign accounts being rejected is expressly provided for in the relevant legislation and is likewise not to be considered a penalty for exercising the freedom of expression.

There can therefore be no question, in the present case, of any interference with the applicant's right to freedom of expression, within the meaning of Article 10 of the Convention.

As to the applicant's allegation that there was discrimination contrary to Article 14 of the Convention on account of the fact that he was the only candidate whose campaign accounts were rejected, the Court reiterates that Article 14 of the Convention prohibits discrimination only in relation to enjoyment of the rights and freedoms secured by the Convention (see the Van Raalte v. the Netherlands judgment of 21 February 1997, *Reports* 1997-I, p. 184, § 33). But the Court has just found that there was no interference with the applicant's right to freedom of expression, so that Article 14 is not applicable in the present case.

It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 § 3 of the Convention.

3. The applicant further complained of an infringement of his right to the peaceful enjoyment of his possessions in that the rejection of his campaign accounts had obliged him, firstly, to pay back to the State the advance of FRF 1,000,000, and secondly had deprived him of the right to obtain reimbursement of the whole of his campaign expenses. He relied on Article 1 of Protocol No. 1 to the Convention, the relevant part of which provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

The Court notes in the first place that the Constitutional Council's decision did not deprive the applicant of the ownership of any sum whatsoever, but merely entailed the obligation for him to repay to the State the advance of FRF 1,000,000 because he had not complied with the statutory conditions for claiming the lump-sum reimbursement of his campaign expenses.

Secondly, the Court observes that the Institutional Act of 1995 cannot in any case be interpreted as placing the State in the applicant's debt. Its provisions on the conditions under which candidates can claim reimbursement of their campaign expenses – up to a certain ceiling – are wholly unambiguous, since only candidates whose campaign accounts have been approved by the Constitutional Council are entitled to reimbursement.

Lastly, as regards the applicant's allegation that he had been abusively deprived of his possessions on account of the fact that the State had brought proceedings against him to obtain from his personal funds reimbursement of

the advance of FRF 1,000,000, the Court considers that these proceedings, in which the State, as creditor, sought repayment of a sum unduly received, cannot be regarded as an interference with the debtor's right to peaceful enjoyment of his possessions, since the sum owed could not be considered a "possession" within the meaning of Article 1 of Protocol No. 1.

The same is also true of repayment by the applicant of the personal loan he had taken out to finance his election campaign and the various interest-free loans made to him by natural persons, which in the applicant's submission, he is obliged to repay out of his own pocket.

It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 35 § 3 of the Convention.

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