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

COURT (CHAMBER)

CASE OF BARFOD v. DENMARK

(Application no. 11508/85)

JUDGMENT

STRASBOURG

22 February 1989

In the Barfod case*,

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 J. CREMONA,
Mrs D. BINDSCHEDLER-ROBERT,
Mr F. GÖLCÜKLÜ,
Mr F. MATSCHER,
Mr B. WALSH,
Mr B. GOMARD, *ad hoc judge*,

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

Having deliberated in private on 26 October 1988 and on 28 January 1989,

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

PROCEDURE

1. The case was brought before the Court on 16 October 1987 by the European Commission of Human Rights ("the Commission") and on 4 November by the Government of the Kingdom of Denmark ("the Government"), within the period of three months laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. The case originated in an application (no. 11508/85) against Denmark lodged with the Commission in 1985 by Mr Bjørn Barfod, a Danish citizen, under Article 25 (art. 25).

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Denmark recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The purpose of the request and of the Government's application was to obtain a decision as to whether or not the facts of the case disclosed a breach by the respondent State of its obligations under Article 10 (art. 10) of the Convention.

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* Note by the Registrar: The case is numbered 13/1987/136/190. The second figure indicates the year in which the case was referred to the Court and the first figure its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases and of originating applications (to the Commission) referred to the Court since its creation.

2. In response to the inquiry 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 pending before the Court and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included, as ex officio members, Mr J. Gersing, the elected judge of Danish nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 30 November 1987 the President of the Court drew by lot, in the presence of the Registrar, the names of the other five members, namely Mr J. Cremona, Mrs D. Bindschedler-Robert, Mr F. Gölcüklü, Mr B. Walsh and Mr A.M. Donner (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

Subsequently, Professor B. Gomard was appointed by the Government on 28 September 1988 to sit as an ad hoc judge in place of Mr Gersing, who had died, and Mr F. Matscher, substitute judge, replaced Mr Donner, who had resigned and whose successor at the Court had taken up his duties before the hearing (Rules 2 para. 3, 22 para. 1, 23 para. 1 and 24 para. 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5). He ascertained, through the Registrar, the views of the Agent of the Government, the Delegate of the Commission and the lawyer for the applicant regarding the need for a written procedure (Rule 37 para. 1). Thereafter, in accordance with the Order and directions of the President, the registry received the Government's memorial on 12 October 1988 and the applicant's claims under Article 50 (art. 50) on 25 October and 10 November 1988.

5. In a letter of 27 May 1988, the Agent of the Government advised the Court of an attempt to reach a friendly settlement with the applicant. On 15 June 1988, after consulting, through the Registrar, those who would be appearing before the Court, the President directed that the oral proceedings should open on 24 October 1988 (Rule 38) unless such a settlement intervened before this date. On 28 September, the Court was informed by the Agent of the Government that the negotiations had failed.

6. The hearing took place in public in the Human Rights Building, Strasbourg, on the appointed day. Immediately prior to its opening, the Court had held a preparatory meeting.

There appeared before the Court:

- for the Government

Mr T. LEHMANN, Under-Secretary for Legal Affairs,
Ministry of Foreign Affairs, *Agent*,
Mr I. FOIGHEL, Professor, *Counsel*,
Mr J. BERNHARD, Head of Division, Ministry of Foreign Affairs,
Mr F. ABRAHAMSEN, Assistant Head of Division,
Ministry of Foreign Affairs,
Mr K. HAGEL-SØRENSEN, Ministry of Justice,

Ms N. HOLST-CHRISTENSEN, Head of Section,
Ministry of Justice, *Advisers*;
- for the Commission
Mr S. TRECHSEL, *Delegate*;
- for the applicant
Mr J. KORSØ JENSEN, advokat, *Counsel*.

The Court heard addresses by Mr Lehmann and Mr Foighel for the Government, by Mr Trechsel for the Commission and by Mr Korsø Jensen for the applicant, as well as their replies to its questions.

AS TO THE FACTS

I. PARTICULAR CIRCUMSTANCES OF THE CASE

7. The applicant is a Danish citizen, born in 1919. He is a precious-stone cutter by profession and resides at Narssaq, Greenland.

8. When, in 1979, the Greenland Local Government decided to introduce taxation of Danish nationals working on American bases in Greenland, a number of the persons affected (which persons did not include Mr Barfod) challenged that decision before the High Court of Greenland (Grønlands Landsret). They argued that the decision was illegal on the grounds, inter alia, that they did not have the right to vote in local elections in Greenland and did not receive any benefits from the Greenland authorities. The case was heard in the High Court sitting with one professional judge and two lay judges; the latter were both employed by the Local Government. In its judgment of 28 January 1981, which is not the object of the present complaint, the High Court unanimously found for the Local Government; this judgment was subsequently upheld by the High Court for Eastern Denmark (Østre Landsret) on 8 September 1983 ("the 1981 tax case").

9. After learning about the judgment of the High Court of Greenland, the applicant wrote an article on the judgment, published in a magazine called "Grønland Dansk" in August 1982.

In the article he expressed his opinion that the two lay judges were disqualified under Article 62 of the Danish Constitution (see paragraph 15 below); he also questioned their ability and power to decide impartially in a case brought against their employer. The article included the following passage (translation from Danish):

> "Most of the Local Government's members could ... afford the time to watch that the two Greenland lay judges - who are by the way both employed directly by the Local Government, as director of a museum and as consultant in urban housing affairs

> - did their duty, and this they did. The vote was two to one [cf paragraph 13 below] in favour of the Local Government and with such a bench of judges it does not require much imagination to guess who voted how."

10. The professional High Court judge considered that these remarks on the two lay judges were of a kind which might damage their reputation in the eyes of the public and hence generally impair confidence in the legal system. As head of the Greenland judiciary, he consequently applied to the Greenland Chief of Police, asking for a criminal investigation to be instituted. The applicant was subsequently charged with defamation of character within the meaning of Article 71(1) of the Greenland Penal Code (Kriminalloven for Grønland; see paragraph 17 below) before the District Court (Kredsret) of Narssaq.

11. After an initial question of venue had been settled, the case was heard by the District Court of Narssaq on 9 December 1983. The applicant confirmed that he had written the article in question but he maintained that the lay judges had been barred, by virtue of Article 62 of the Danish Constitution (see paragraph 15 below), from adjudicating in the tax case and that the defamation case brought against him violated Article 77 of the Danish Constitution, which guarantees freedom of expression (see paragraph 16 below). In its judgment of the same day, the District Court stated (translation from Danish):

> "The Court does not find that the validity of the High Court judgment of 28 January 1981 should be examined in the present proceedings. The sole question is whether the accused, through the contents of his article, has insulted two of the judges sitting in that case.
>
> The Court finds that in the particular paragraph of the article in question the accused used such words that the two judges concerned may rightly consider their honour offended.
>
> The right invoked by the accused to freedom of expression in accordance with Article 77 of the Constitution is not found to be violated since the accused is entitled, without prior censorship, to state his views, although he may still be held responsible in the courts.
>
> Accordingly, the Court finds the accused guilty of having violated Article 71(1) of the Greenland Penal Code since it does not find that the accused has, in accordance with Article 71(2) of the same Code, proved the justification of his choice of words in the article in question."

The District Court imposed a fine of 2,000 Danish Crowns on the applicant.

12. The applicant appealed to the High Court for Eastern Denmark, but the proceedings were transferred to the High Court of Greenland as this court was considered the proper court of appeal. When the High Court heard the case, the usual professional judge, who was disqualified as he had been

responsible for initiating the proceedings, was replaced by one of his deputies (see paragraphs 10 above and 18 below).

13. In its judgment of 3 July 1984 upholding the District Court's judgment, the High Court emphasised that the applicant had misunderstood the votes in the 1981 tax case: it was only with regard to the reasoning that there was a dissent; with regard to the conclusion all three judges had decided in favour of the Local Government (see paragraph 8 above). As to the charge brought against the applicant, the Court stated inter alia (translation from Danish):

> "Like the District Court, the High Court agrees with the prosecution that the words of the article to the effect that the two Greenland lay judges did their duty - namely their duty as employees of the Local Government to rule in its favour - represent a serious accusation which is likely to lower them in public esteem. Proof of the accusation has not been adduced, something which, moreover, would not have been possible since it cannot be excluded that they would have reached the same result had they not been employed by the Local Government. The accused will hereafter be considered guilty of having violated Article 71(1) of the Penal Code.
>
> Finally, concerning the question of the competence of the two lay judges, the High Court agrees with the accused that they, being employed in leading positions by the defendant party, ought - as was pointed out by the defence and notwithstanding the specific difficulties in Greenland of observing strict rules in regard to competence - to have considered themselves as disqualified and thus refrained from participating in the case, and that he was correct in drawing attention to this.
>
> Having regard, on the one hand, to the seriousness of the accusation and the information now available about the accused's economic situation - which would give grounds for a considerable increase of the fine imposed - and, on the other hand, to the appropriateness of drawing attention to the failure to observe reasonable rules of competence which occurred, the Court finds that the fine imposed should be confirmed."

14. The applicant subsequently asked the Ministry of Justice for leave to appeal to the Supreme Court (Højesteret), but his request was rejected on 14 March 1985.

II. DOMESTIC LAW AND PRACTICE

A. Danish Constitution

15. According to Article 62 of the Constitution (Danmarks Riges Grundlov), the administration of justice shall remain separated from the Executive and the rules in this respect shall be laid down by law.

16. Freedom of expression is protected by Article 77 of the Constitution, which provides (translation from Danish):

"Everyone shall be entitled to make public his views in print, in writing and in speech, with the proviso that he may be held responsible in a court of justice. Censorship and other preventive measures shall never again be introduced."

B. Greenland Penal Code

17. The crime of defamation of character is defined in Article 71 of the Greenland Penal Code (Kriminalloven for Grønland), which provides (translation from Danish):

[(1)] "Any person shall be liable to punishment for defamation of character if he degrades the honour of another person through insulting words or acts or if he makes or disseminates an accusation which is likely to damage the esteem in which the insulted party is held by his fellow citizens or which may in other ways damage his relationship with other people.

(2) However, no person may be convicted on the ground of an accusation which is proved true or has been made in good faith, if the perpetrator was under an obligation to make the statement or acted in order to safeguard, justifiably, an evident public interest or his own or another's interest.

(3) A person making an accusation supported by evidence may nevertheless be convicted if the wording of the accusation is unduly insulting or if the perpetrator had no reasonable cause to make the accusation.

(4) Whenever a defamatory accusation is unwarranted, the insulted party may call for a statement to this effect to be included in the conclusions of the judgment."

C. Administration of justice in Greenland

18. The administration of justice in Greenland is much influenced by the special conditions obtaining there: time-honoured traditions, the country's enormous size and widely scattered settlements. The legal system consists of two levels of courts: the district courts, which are the courts of first instance, and the High Court, which is the court of appeal but can also hear certain cases at first instance. Depending on whether the High Court decides a case on appeal or at first instance, its judgment can be appealed either to the Supreme Court, if leave to appeal is granted by the Ministry of Justice, or to the High Court for Eastern Denmark.

The High Court is presided over by the High Court Judge or one of his deputies, all of whom are legally trained. The High Court also includes two lay judges, appointed for four years at a time by the Greenland Parliament (Landstinget) upon nomination by the High Court Judge. The district courts are composed of three lay judges appointed for four years: the president, appointed by the High Court Judge, and two other lay judges appointed by the local authorities upon nomination by the High Court Judge.

The lay judges discharge their duties as a civic obligation alongside their ordinary work. Any person entitled to vote in local elections may be appointed to act as a lay judge. Only if it is especially onerous for a lay judge to discharge his duties, may he be relieved of his appointment by the High Court Judge.

19. It is a fundamental principle of Danish as well as Greenland administration of justice that a judge must be impartial and be guided solely by the law and the evidence adduced. This principle applies to all persons exercising judicial power, that is both professional judges and lay judges.

20. The rules relating to disqualification of judges are laid down in the Greenland Administration of Justice Act. However this Act is worded in general terms and does not explicitly mention an employee/employer relationship between judges and parties as a ground for disqualification.

21. A decision given by a judge under the influence of considerations other than those deriving from the law or the evidence adduced, for example in deference to his employers, would be a manifest breach of duty for which sanctions would be available either under the Greenland Administration of Justice Act (disciplinary punishment) or under Article 28 of the Greenland Penal Code (abuse of public authority).

PROCEEDINGS BEFORE THE COMMISSION

22. In his application (no. 11508/85) lodged with the Commission on 22 March 1985, Mr Barfod complained of violations of the following Articles of the Convention: Article 6 para. 3 (art. 6-3), in that neither of the lay judges was heard as a witness in the defamation case against him; Article 10 (art. 10), because of his conviction for defamation of character; and Article 13 (art. 13), in that the Ministry of Justice refused him leave to appeal to the Supreme Court. He additionally invoked Article 17 (art. 17) of the Convention.

23. On 17 July 1986, the Commission declared admissible "the complaint that there has been an unjustified interference with the applicant’s right to freedom of expression", guaranteed by Article 10 (art. 10); it declared the remainder of the complaints inadmissible. In its report of 16 July 1987 (Article 31) (art. 31), it concluded, by fourteen votes to one, that there had been a violation of Article 10 (art. 10).

The full text of the Commission’s opinion and of the two separate opinions contained in the report is reproduced as an annex to this judgment.

AS TO THE LAW

24. The applicant submitted that his conviction for defamation by the Greenland High Court constituted a violation of Article 10 (art. 10) of the Convention, which reads:

> "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."

The Government contested the applicant's allegation, whereas the Commission agreed with it.

25. As was not disputed, the applicant's conviction clearly amounted to an interference by a public authority with his right to freedom of expression as enshrined in Article 10 (art. 10). Such interferences will not however contravene the Convention provided the conditions laid down in the Article's second paragraph (art. 10-2) are fulfilled.

26. The applicant did not contest either that the interference was "prescribed by law" or that its aims were those invoked by the Government, namely the protection of the reputation of others and, indirectly, the maintenance of the authority of the judiciary. Like the Commission, the Court has no cause to doubt that the interference satisfied the requirements of Article 10 para. 2 (art. 10-2) in these respects.

27. The sole issue debated before the Court was whether the interference was "necessary in a democratic society" for achieving the above-mentioned aims.

28. The Court has consistently held that the Contracting States have a certain margin of appreciation in assessing the existence and extent of such a necessity, but this margin is subject to a European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court.

The Court is therefore empowered to give the final ruling on whether a "restriction" or "penalty" is reconcilable with freedom of expression. In so doing, the Court must consider the impugned judgment of 3 July 1984 in the light of the case as a whole, including the relevant statements in the applicant's article and the context in which they were written; in particular, it must determine whether the interference at issue was "proportionate to the legitimate aim pursued", due regard being had to the importance of freedom

of expression in a democratic society (see the Müller and Others judgment of 24 May 1988, Series A no. 133, pp. 21-22, paras. 32-33).

29. In the present case proportionality implies that the pursuit of the aims mentioned in Article 10 para. 2 (art. 10-2) has to be weighed against the value of open discussion of topics of public concern (see, mutatis mutandis, the Lingens judgment of 8 July 1986, Series A no. 103, p. 26, para. 42). When striking a fair balance between these interests, the Court cannot overlook, as the applicant and the Commission rightly pointed out, the great importance of not discouraging members of the public, for fear of criminal or other sanctions, from voicing their opinions on issues of public concern.

30. The applicant's article contained two elements: firstly, a criticism of the composition of the High Court in the 1981 tax case and, secondly, the statement that the two lay judges "did their duty", which in this context could only mean that they cast their votes as employees of the Local Government rather than as independent and impartial judges (see paragraph 9 above).

31. The interference with the applicant's freedom of expression was prompted by the second element alone. However, in the opinion of the Commission this statement concerned matters of public interest involving the functioning of the public administration, including the judiciary. According to the Commission, the test of necessity had to be particularly strict in such matters: thus, even if the article could be interpreted as an attack on the two lay judges, the general interest in allowing public debate about the functioning of the judiciary weighed more heavily than the interest of the two lay judges in being protected against criticism of the kind expressed in the applicant's article.

The applicant supported this view; he maintained in particular that his remarks related to a matter of obvious public concern as they drew attention to the alleged procedural mistake committed by the High Court Judge when he nominated disqualified lay judges.

The Government objected that the Commission had minimised the applicant's impugned statement by treating it merely as a criticism of the composition of the High Court: it was in fact an allegation of abuse of public authority in violation of Article 28 of the Greenland Penal Code (see paragraph 21 above). The Government also disagreed with the Commission's interpretation of the test of necessity: they laid great stress on the national authorities' margin of appreciation. According to the Government, the applicant's accusations were defamatory, unsupported by any evidence and in fact false; furthermore, regardless of whether or not the lay judges were effectively disqualified in the 1981 tax case, the accusations did not constitute a contribution to the formation of public opinion worthy of safeguarding in a democratic society.

32. The basis of the Greenland High Court’s judgment was its finding, made in the proper exercise of its jurisdiction, that "the words of the article to the effect that the two ... lay judges did their duty - namely their duty as employees of the Local Government to rule in its favour - represent a serious accusation which is likely to lower them in public esteem". Having regard to this and to the other circumstances of the applicant’s conviction, the Court is satisfied that the interference with his freedom of expression did not aim at restricting his right under the Convention to criticise publicly the composition of the High Court in the 1981 tax case. Indeed, his right to voice his opinion on this issue was expressly recognised by the High Court in its judgment of 3 July 1984 (see paragraph 13 above).

33. Furthermore, the applicant’s conviction cannot be considered even to have had the result of effectively limiting this right.

It was quite possible to question the composition of the High Court without at the same time attacking the two lay judges personally. In addition, no evidence has been submitted to the effect that the applicant was justified in believing that the two elements of criticism raised by him (see paragraph 30 above) were so closely connected as to make the statement relating to the two lay judges legitimate. The High Court’s finding that there was no proof of the accusations against the lay judges (see paragraph 13 above) remains unchallenged; the applicant must accordingly be considered to have based his accusations on the mere fact that the lay judges were employed by the Local Government, the defendant in the 1981 tax case. Although this fact may give rise to a difference of opinion as to whether the court was properly composed, it was certainly not proof of actual bias and the applicant cannot reasonably have been unaware of that.

34. The State’s legitimate interest in protecting the reputation of the two lay judges was accordingly not in conflict with the applicant’s interest in being able to participate in free public debate on the question of the structural impartiality of the High Court.

When it assessed the amount of the fine to be imposed, the High Court nevertheless took into account that the impugned statement was published in the context of the applicant’s criticism of its composition in 1981 (see paragraph 13 above).

35. The applicant alleged that, having regard to the political background to the 1981 tax case, his accusations against the lay judges should be seen as part of political debate, with its wider limits for legitimate criticism.

The Court cannot accept this argument. The lay judges exercised judicial functions. The impugned statement was not a criticism of the reasoning in the judgment of 28 January 1981, but rather, as found by the High Court in its judgment of 3 July 1984, a defamatory accusation against the lay judges personally, which was likely to lower them in public esteem and was put forward without any supporting evidence (see paragraph 13 above). In view

of these considerations, the political context in which the tax case was fought cannot be regarded as relevant for the question of proportionality.

36. Having regard to the foregoing, the Court reaches the conclusion that no breach of Article 10 (art. 10) has been established in the circumstances of the present case.

FOR THESE REASONS, THE COURT

Holds by six votes to one that there has been no violation of Article 10 (art. 10).

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg on 22 February 1989.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 52 para. 2 of the Rules of Court, the dissenting opinion of Mr Gölcüklü is annexed to this judgment.

R.R.
M.-A.E.

DISSENTING OPINION OF JUDGE GÖLCÜKLÜ

(Translation)

With the greatest respect for the opinion of the majority of my colleagues, I regret that I am unable to agree with the conclusion which the Court has reached in this case. My view is based on the following considerations:

1. In the article giving rise to the case, the applicant called in question the impartiality of the two lay judges, both employees of the Local Government, in proceedings instituted against "their employer". In support of this position he cited Article 62 of the Danish Constitution.

2. Since he was not a party to, nor had any direct or indirect personal interest in the initial proceedings, in which the Government was defendant, Mr Barfod had no motive for attacking the two lay judges individually. He called in question their impartiality not by criticising their actual conduct in the proceedings concerned, but by attacking the fact that they were government officials, in other words the fact that they were government employees sitting in a court which was supposed to be independent and impartial.

3. Although these two lay judges were not strictly speaking politicians, I consider that this case has political overtones inasmuch as it involved criticism of a specific judicial system, namely the Greenland judiciary and its composition, which, in the applicant's view, did not inspire public confidence.

It is in my opinion not possible to extract an a contrario argument from the Lingens case in which the Court held that "politicians" must be ready to accept more criticism than non-politicians (judgment of 8 July 1986, Series A no. 103, p. 26 para. 42). The Court did not of course mean by this that public criticism in political matters could be directed solely against politicians or that the assessment of State institutions and the position of those who, although not politicians in the strict sense, nevertheless take part in public affairs should be excluded from the arena of free discussion and democratic debate.

4. Democracy is an open system of government in which the freedom of expression plays a fundamental role, as the Court stated in its judgment in the Handyside case (7 December 1976, Series A no. 24, p. 29, para. 49, and most recently in the Müller and Others judgment of 24 May 1988, Series A no. 133, p. 21, para. 32). I am in full agreement with the opinion of the European Commission of Human Rights when it states: ".... For the citizen to keep a critical control of the exercise of public power it is essential that particularly strict limits be imposed on interferences with the publication of opinions which refer to activities of public authorities, including the judiciary" (report para. 64); and "... even if the article in question could be

interpreted as an attack on the integrity or reputation of the two lay judges, the general interest in allowing a public debate about the functioning of the judiciary weighs more heavily than the interest of the two judges in being protected against criticism of the kind expressed in the applicant's article" (ibid. para. 71).

5. I consider that what Mr Barfod said, admittedly in somewhat crude and extreme terms, was no different to what was, is or has been stated:

- by the Supreme Court of Greenland - which agreed with him that the two lay judges "ought ... to have considered themselves as disqualified and thus refrained from participating in the case" and that "the accused was correct in drawing attention to this" because they were "employed in leading positions by the defendant party" (judgment, para. 13);

- in Article 62 of the Danish Constitution and by the Danish Government - who "agree ... that the two lay judges to whom the applicant referred in his statement, as employed in leading positions by the defendant party, should have refrained from sitting because this relationship might raise doubt as to their impartiality" (report, para. 42);

- by this Court, on more than one occasion, in its judgments, when it has held that: Justice must not only be done, it must also be seen to be done.

6. Finally, I wish to stress that it is difficult to reconcile the Convention, whose ultimate purpose is to establish European standards, with specific national features such as those put forward by the Government.

7. For the above-mentioned reasons, I consider that this interference in the exercise of the applicant's right to freedom of expression cannot be regarded as "necessary in a democratic society" and that there has therefore been violation of Article 10 (art. 10) of the Convention.