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

COURT (CHAMBER)

CASE OF ALLENET DE RIBEMONT v. FRANCE

(Application no. 15175/89)

JUDGMENT

STRASBOURG

10 February 1995

In the case of Allenet de Ribemont v. France[1],

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 Rules of Court A[2], as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr F. GÖLCÜKLÜ,
Mr L.-E. PETTITI,
Mr J. DE MEYER,
Mr I. FOIGHEL,
Mr A.N. LOIZOU,
Mr J.M. MORENILLA,
Mr G. MIFSUD BONNICI,
Mr B. REPIK,

and also of Mr H. PETZOLD, *Acting Registrar*,

Having deliberated in private on 27 October 1994 and 23 January 1995,

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 21 January 1994, 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. 15175/89) against the French Republic lodged with the Commission under Article 25 (art. 25) by a French national, Mr Patrick Allenet de Ribemont, on 24 May 1989.

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 Article 6 paras. 1 and 2 (art. 6-1, art. 6-2) of the Convention.

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[1] The case is numbered 3/1994/450/529. 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.

[2] Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, 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 28 January 1994, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr J. De Meyer, Mr I. Foighel, Mr A.N. Loizou, Mr J.M. Morenilla, Mr G. Mifsud Bonnici and Mr B. Repik (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the French Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). On 6 April 1994 the Commission produced various items, as requested by the Registrar on the President's instructions, including a video recording produced by the Government that contained extracts from television news programmes. Pursuant to the order made in consequence, the applicant's and the Government's memorials were received at the registry on 15 and 26 May 1994 respectively. On 19 July the Secretary to the Commission indicated that the Delegate would submit his observations at the hearing.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 24 October 1994. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mrs E. BELLIARD, Deputy Director of Legal Affairs,
Ministry of Foreign Affairs, *Agent*,
Mr Y. CHARPENTIER, Head of the Human Rights Section,
Legal Affairs Department, Ministry of Foreign Affairs,
Mrs M. PAUTI, Head of the Office of Comparative and
International Law, Civil Rights Department, Ministry of
the Interior,
Mr F. PION, magistrat,
on secondment to the European and International Affairs
Section, Ministry of Justice, *Advisers*;

- for the Commission

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

- for the applicant

Mr J. DE GRANDCOURT, avocat,
Mr R. DE GEOUFFRE DE LA PRADELLE, avocat, *Counsel*.

The Court heard addresses by Mrs Belliard, Mr Soyer and Mr de Grandcourt.

6. In a letter received at the registry on 29 November 1994 the Government clarified a number of points relating to the tape recording mentioned above.

AS TO THE FACTS

7. Mr Patrick Allenet de Ribemont is a company secretary. He currently lives in Lamontjoie (Lot-et-Garonne).

A. The background to the case

8. On 24 December 1976 Mr Jean de Broglie, a Member of Parliament (département of Eure) and former minister, was murdered in front of the applicant's home. He had just been visiting his financial adviser, Mr Pierre De Varga, who lived in the same building and with whom Mr Allenet de Ribemont was planning to become the joint owner of a Paris restaurant, "La Rôtisserie de la Reine Pédauque". The scheme was financed by means of a loan taken out by the victim. He had passed on the borrowed sum to the applicant, who was responsible for repaying the loan.

9. A judicial investigation was begun into the commission by a person or persons unknown of the offence of intentional homicide. On 27 and 28 December 1976 the crime squad at Paris police headquarters arrested a number of people, including the victim's financial adviser. On the 29th it arrested Mr Allenet de Ribemont.

B. The press conference of 29 December 1976 and the implicating of the applicant

10. On 29 December 1976, at a press conference on the subject of the French police budget for the coming years, the Minister of the Interior, Mr Michel Poniatowski, the Director of the Paris Criminal Investigation Department, Mr Jean Ducret, and the Head of the Crime Squad, Superintendent Pierre Ottavioli, referred to the inquiry that was under way.

11. Two French television channels reported this press conference in their news programmes. The transcript of the relevant extracts reads as follows:

"TF1 NEWS

Mr Roger Giquel, newsreader: ... Be that as it may, here is how all the aspects of the de Broglie case were explained to the public at a press conference given by Mr Michel Poniatowski yesterday evening.

Mr Poniatowski: The haul is complete. All thepeople involved are now under arrest after thearrest of Mr De Varga-Hirsch. It is a very simplestory. A bank loan guaranteed by Mr de Broglie wasto be repaid by Mr Varga-Hirsch and Mr de Ribemont.

A journalist: Superintendent, who was the key figurein this case? De Varga?

Mr Ottavioli: I think it must have been Mr De Varga.

Mr Ducret: The instigator, Mr De Varga, and hisacolyte, Mr de Ribemont, were the instigators of themurder. The organiser was Detective Sergeant Simonéand the murderer was Mr Frèche.

Mr Giquel: As you can see, those statements include a number of assertions. That is why the police are now being criticised by Ministry of Justice officials. Although Superintendent Ottavioli and Mr Ducret were careful to (end of recording).

ANTENNE 2 NEWS

Mr Daniel Bilalian, newsreader: ... This evening, therefore, the case has been cleared up. The motives and the murderer's name are known.

Mr Ducret: The organiser was DetectiveSergeant Simoné and the murderer was Mr Frèche.

Mr Ottavioli: That is correct. I can ...[unintelligible] the facts for you by saying thatthe case arose from a financial agreement betweenthe victim, Mr de Broglie, andMr Allenet de Ribemont and Mr Varga.

Mr Poniatowski: It is a very simple story. A bankloan guaranteed by Mr de Broglie was to be repaid byMr Varga-Hirsch and Mr de Ribemont.

A journalist: Superintendent, who was the key figurein this case? De Varga?

Mr Ottavioli: I think it must have been Mr De Varga.

Mr Jean-François Luciani, journalist: The loan was guaranteed by a life insurance policy for four hundred million old francs taken out by Jean de Broglie. In the event of his death, the sum insured was to be paid to Pierre De Varga-Hirsch and Allenet de Ribemont. The turning-point came last night when Guy Simoné, a police officer, was the first to crack. He admitted that he had organised the murder and had lent a gun to have the MP killed. He also hired the contract killer, Gérard Frèche, who was promised three million old francs and who in turn found two people to accompany him. The reasons for their downfall were, first, that Simoné's name appeared in Jean de Broglie's diary and, second, that they killed him in front of no. 2 rue des Dardanelles. That was not planned. The intention had apparently been to take him somewhere else, but Jean de Broglie perhaps refused to follow his killer. At all events, that was their first mistake. Varga and Ribemont apparently then refused to pay them.

That led to the secret meetings in bars, the shadowing by the police and informers - we know the rest of the story - and their arrest. The second mistake was made by Simoné. Before contacting Frèche he approached another contract killer, who turned down the job but apparently talked to other people about it. To catch the killers, the police realistically based their investigation on two simple ideas. Firstly, the murder was committed in the rue des Dardanelles as Jean de Broglie was leaving De Varga's home. There was necessarily a link between the killer and De Varga. Secondly, De Varga's past did not count in his favour and the police regarded him as a rather dubious legal adviser. Those two simple ideas and over sixty investigators led to the discovery of the murderer.

Mr Bilalian: The epilogue to the case coincided with a Cabinet meeting at which the question of public safety was discussed ..."

12. On 14 January 1977 Mr Allenet de Ribemont was charged with aiding and abetting intentional homicide and taken into custody. He was released on 1 March 1977 and a discharge order was issued on 21 March 1980.

C. The compensation claims

1. The non-contentious application

13. On 23 March 1977 Mr Allenet de Ribemont submitted a claim to the Prime Minister based on Article 6 para. 2 (art. 6-2) of the Convention, inter alia. He sought compensation of ten million French francs (FRF) for the non-pecuniary and pecuniary damage he maintained he had sustained on account of the above-mentioned statements by the Minister of the Interior and senior police officials.

2. The proceedings in the administrative courts

(a) In the Paris Administrative Court

14. On 20 September 1977 the applicant applied to the Paris Administrative Court for review of the Prime Minister's implicit refusal of his claim and renewed his claim for compensation. He filed pleadings on 12 October 1977.

On 21 February 1978 the Minister of Justice did likewise. After notice had been served on them by the Administrative Court on 14 March 1978, the Minister of the Interior and the Prime Minister filed pleadings on 21 and 27 April 1978 respectively. Mr Allenet de Ribemont filed more pleadings on 29 March and 24 May 1978.

Further pleadings still were filed on 29 March 1979 by the Minister of Culture, to whom the case file had been sent on 23 January 1979; on 6 June 1979 and 12 August 1980 by the Minister of the Interior; and on 14 May 1980 by the applicant.

15. After a hearing on 29 September 1980, the Paris Administrative Court delivered a judgment on 13 October 1980 in which the following reasons were given:

> "Mr Allenet, known as Allenet de Ribemont, has applied for an order that the State should pay compensation for the damage that the Minister of the Interior of the time allegedly caused him by naming him in statements made on 29 December 1976 during a press conference on the murder of Mr Jean de Broglie.
>
> Although the State may be liable in damages for the administrative acts of a member of the Government, statements that he makes in the course of his governmental duties are not susceptible to review by the administrative courts. It follows that the application is inadmissible.
>
> ..."

(b) In the Conseil d'Etat

16. On 15 December 1980 the Conseil d'Etat registered a summary notice of appeal by Mr Allenet de Ribemont. After a warning on 19 May 1981, he filed his full pleadings on 1 July 1981. On 7 July these pleadings were sent to the Minister of the Interior, who submitted his observations on 13 April 1982. The applicant replied on 7 July 1982.

17. After a hearing on 11 May 1983 the Conseil d'Etat dismissed the appeal on 27 May 1983, on the following grounds:

> "Mr Allenet, known as de Ribemont, claimed compensation for the damage he allegedly sustained on account of statements made to the press on 29 December 1976 by the Minister of the Interior, the Director of the Criminal Investigation Department and the Head of the Crime Squad on the outcome of the police inquiries carried out as part of the judicial investigation into the murder of Mr Jean de Broglie. Statements made by the Minister of the Interior at the time of a police operation cannot be dissociated from that operation. Accordingly, it is not for the administrative courts to rule on any prejudicial consequences of such statements.
>
> It follows from the foregoing that, although the Paris Administrative Court was wrong to rule in the impugned judgment that the applicant's claim related to an act performed 'in the course of governmental duties' and thus not susceptible to review by the administrative courts, Mr Allenet's appeal against the dismissal of his claim in that judgment is unfounded."

3. The proceedings in the ordinary courts

(a) In the Paris tribunal de grande instance

18. Mr Allenet de Ribemont brought proceedings in the Paris tribunal de grande instance against the Prime Minister on 29 February 1984 and the Government Law Officer (agent judiciaire du Trésor) on 5 March 1984.

On 25 September 1984 the Prime Minister submitted that the tribunal de grande instance had no jurisdiction as such an action could only, in his view, be brought in the administrative courts.

After requesting the applicant to produce the full text of the statements attributed to the Minister and raising an objection that an action for defamation was time-barred, the Government Law Officer replied on 21 September 1984 and on 28 May 1985.

19. The applicant filed his submissions on 14 November 1984 and 5 April 1985. He requested the court to order two French television companies to hand over video recordings of the press conference of 29 December 1976 and produced press cuttings relating to it.

20. The court gave judgment on 8 January 1986 as follows:

"Admissibility of the action brought against the Prime Minister

Section 38 of the Act of 3 April 1955 provides that any action brought in the ordinary courts for a declaration that the State is owed or owes payment for reasons unconnected with taxation or with State property must, subject to exceptions provided for by law, be instituted by or against the Government Law Officer, failing which the proceedings shall be void.

It follows that Patrick Allenet de Ribemont's claim for reparation from the State for damage sustained on account of the statements attributed to the Minister of the Interior should have been lodged only against the Government Law Officer, who is the State's sole representative before the courts, and not against the Prime Minister, who accordingly must not remain a party to the proceedings.

Jurisdiction

The Paris tribunal de grande instance must be held to have jurisdiction in so far as the statements attributed to the Minister of the Interior can be linked with a police operation and are not dissociable from that operation.

The press conference of 29 December 1976, held by the Minister of the Interior, the Director of the Criminal Investigation Department and the Head of the Crime Squad to inform the press of the results of the police inquiries following the murder of Jean de Broglie, may be considered indissociable from the police operation that was then under way.

...

The statements complained of

...

Anyone who complains of any statements, whether defamatory or merely negligent within the meaning of Article 1382 of the Civil Code, must prove that the impugned statements were actually made. It is not for the court to make good any omissions by the parties or to supplement evidence they have adduced, so long as they have been afforded the opportunity of presenting all their documents and arguments freely and in accordance with the adversarial principle.

In this respect, since the plaintiff has been unable to obtain the video recording of the press conference in question and the Government Law Officer considers that he is not under any obligation to request the judge in charge of preparing the case for trial or the court to order the compulsory production of such evidence, judgment must be given on the basis of the evidence in the case file.

Patrick Allenet de Ribemont has produced press cuttings describing the press conference of 29 December 1976, some of which are dated the day after the conference or the days following ... The newspapers did not, however, report the statements allegedly made by the Minister of the Interior, as set out in the writ.

However, in publications several years after the event, journalists attributed to the Minister of the Interior remarks about Patrick Allenet de Ribemont's alleged role, and in Le Point of 6 August 1979, for instance, it is possible to read Michel Poniatowski's statements, reported as follows:

'Mr De Varga and Mr de Ribemont were the instigatorsof the murder. The organiser was DetectiveSergeant Simoné and the murderer was Mr Frèche'.

But, however carefully the journalists reported the statements in issue, the press articles relied on by Patrick Allenet de Ribemont cannot be accepted as the sole evidence in view of the objection raised by the defendant on this point.

It may further be observed, as a subsidiary point, that the publications at the time of the press conference in issue merely reported the remarks about Patrick Allenet de Ribemont's involvement in Jean de Broglie's murder allegedly made by Superintendent Ottavioli after the Minister of the Interior had spoken.

Accordingly, since the plaintiff has brought proceedings against the State solely on account of the remarks attributed to the Minister of the Interior, the action must be dismissed without there being any need to examine the submission that an action either for defamation - although the plaintiff has disputed that his action was for defamation - or for a breach of the secrecy of judicial investigations provided for in Article 11 of the Code of Criminal Procedure, is time-barred.

..."

(b) In the Paris Court of Appeal

21. Mr Allenet de Ribemont appealed to the Paris Court of Appeal on 19 February 1986, and the Government Law Officer cross-appealed on 19 March.

22. The applicant again requested that the videotapes should be handed over for showing.

23. On 7 May 1986 the judge in charge of preparing the case for hearing served notice on Mr Allenet de Ribemont to file his submissions, but without success. On 14 October 1986 he requested him to produce his documents by 30 October and to file any submissions by 14 November. On 19 November he sent a final notice before terminating the preparation of the case for trial. The Government Law Officer filed submissions on 28

November and the applicant on 9 December. On 21 December the parties were informed that the order certifying that the case was ready for hearing would be issued on 28 April 1987.

24. At the hearing of 17 June 1987 Mr Allenet de Ribemont requested an adjournment and, having duly been given leave by the court, filed further submissions on 8 July.

25. The Court of Appeal held another hearing on 16 September 1987 and gave judgment on 21 October 1987. It found against the applicant for the following reasons:

> "The preliminary objection of inadmissibility
>
> ...
>
> It is apparent from the arguments set out below addressing the analysis of the damage that this is an action to establish the State's liability on the ground that the judicial system has malfunctioned, rather than a civil action for defamation and/or breach of the secrecy of judicial investigations.
>
> The merits
>
> According to the appellant, Mr Poniatowski had made the following statement: 'Mr De Varga and Mr de Ribemont were the instigators of the murder. The organiser was Detective Sergeant Simoné and the murderer was Mr Frèche'. It was allegedly apparent from the series of statements made by Mr Poniatowski, or by Mr Ducret and Mr Ottavioli under his authority, that all those guilty had been arrested, the haul was complete and the case was solved. These three had allegedly maintained that the motive for the crime was a bank loan obtained by Mr de Broglie to enable Mr de Ribemont to acquire a controlling interest in the Rôtisserie de la Reine Pédauque company.
>
> However, as the court below rightly held, the press cuttings produced by Mr Allenet de Ribemont do not suffice to prove his allegations.
>
> Even supposing, however, that they had been proved, it would be necessary to establish whether the damage alleged by the appellant could be linked to the impugned statements.
>
> ...
>
> It has not been shown that the statements complained of, which were made during the judicial investigation, in themselves caused the alleged damage. In so far as this damage appears to be connected with the existence of criminal proceedings, it still cannot be held that the statements in issue affected the course of the case.
>
> In the absence of any causal link between the impugned statements - should their exact terms be established - and the damage claimed, it is unnecessary to consider the subsidiary application to have the recording produced.
>
> ..."

(c) In the Court of Cassation

26. Mr Allenet de Ribemont lodged an appeal on points of law, which the Court of Cassation (Second Civil Division) heard on 4 November 1988 and dismissed on 30 November 1988 on the following grounds:

> "The judgment [of the Paris Court of Appeal] has been challenged because it dismissed Mr Patrick Tancrède Allenet de Ribemont's appeal on the ground that the press cuttings he had produced did not suffice to prove his allegations. It is argued, however, firstly, that the Court of Appeal distorted the meaning of those press cuttings, which proved conclusively that statements had been made by the Minister of the Interior and indicated their exact terms; secondly, that it infringed Article 1382 of the Civil Code by refusing to take into consideration the non-pecuniary damage sustained by Mr Patrick Tancrède Allenet de Ribemont; and, lastly, that it breached Article 13 (art. 13) of the European Convention on Human Rights by denying fair reparation to a man whose reputation had been injured in statements heard by millions of television viewers.
>
> However, the Court of Appeal held in that judgment, adopting the reasoning of the court below, that the cuttings from the newspapers published on the day after the conference and on the following days did not report the statements allegedly made by the Minister of the Interior, as set out in the writ, but merely gave an account of remarks said to have been made by a police superintendent after the Minister had spoken, and that the remarks attributed to Mr Poniatowski, relating to Mr Patrick Tancrède Allenet de Ribemont's alleged role as instigator, had been reported in a publication that appeared only several years after the event.
>
> It was in the exercise of its unfettered discretion to assess the evidence before it that the Court of Appeal ruled, without distorting the meaning of the press cuttings, that they did not suffice to prove Mr Patrick Tancrède Allenet de Ribemont's allegations.
>
> In giving this reason alone - leaving aside the reasons criticised in the ground of appeal on points of law, which were subsidiary considerations - the Court of Appeal justified its decision in law.
>
> ..."

PROCEEDINGS BEFORE THE COMMISSION

27. Mr Allenet de Ribemont lodged his application with the Commission on 24 May 1989. He alleged that the statements made by the Minister of the Interior at the press conference of 29 December 1976 amounted to an infringement of his right to benefit from the presumption of innocence secured in Article 6 para. 2 (art. 6-2) of the Convention. He also complained, under Article 13 (art. 13), that he had not had an effective remedy enabling him to obtain redress for the damage he had allegedly sustained on account of those statements and, under Article 6 para. 1 (art. 6-

1), that the domestic courts had not been independent and that the proceedings in them had taken too long.

28. On 8 February 1993 the Commission declared the application (no. 15175/89) admissible as to the complaints based on disregard of the presumption of innocence and the length of the proceedings and the remainder of it inadmissible. In its report of 12 October 1993 (Article 31) (art. 31), the Commission expressed the unanimous opinion that there had been a violation of Article 6 paras. 1 and 2 (art. 6-1, art. 6-2). The full text of the Commission's opinion is reproduced as an annex to this judgment[3].

FINAL SUBMISSIONS TO THE COURT

29. In their memorial the Government asked the Court to "rule that there [had] been no violation of Article 6 paras. 1 and 2 (art. 6-1, art. 6-2) of the Convention".

30. The applicant requested the Court to "endorse the Commission's opinion of 12 October 1993" and "hold that there [had] been a violation of Article 6 paras. 1 and 2 (art. 6-1, art. 6-2) of the Convention".

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 PARA. 2 (art. 6-2) OF THE CONVENTION

31. Mr Allenet de Ribemont complained of the remarks made by the Minister of the Interior and the senior police officers accompanying him at the press conference of 29 December 1976. He relied on Article 6 para. 2 (art. 6-2) of the Convention, which provides:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

A. Applicability of Article 6 para. 2 (art. 6-2)

32. The Government contested, in substance, the applicability of Article 6 para. 2 (art. 6-2), relying on the Minelli v. Switzerland judgment of 25

[3] Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 308 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

March 1983 (Series A no. 62). They maintained that the presumption of innocence could be infringed only by a judicial authority, and could be shown to have been infringed only where, at the conclusion of proceedings ending in a conviction, the court's reasoning suggested that it regarded the defendant as guilty in advance.

33. The Commission acknowledged that the principle of presumption of innocence was above all a procedural safeguard in criminal proceedings, but took the view that its scope was more extensive, in that it imposed obligations not only on criminal courts determining criminal charges but also on other authorities.

34. The Court's task is to determine whether the situation found in this case affected the applicant's right under Article 6 para. 2 (art. 6-2) (see, mutatis mutandis, the Sekanina v. Austria judgment of 25 August 1993, Series A no. 266-A, p. 13, para. 22).

35. The presumption of innocence enshrined in paragraph 2 of Article 6 (art. 6-2) is one of the elements of the fair criminal trial that is required by paragraph 1 (art. 6-1) (see, among other authorities, the Deweer v. Belgium judgment of 27 February 1980, Series A no. 35, p. 30, para. 56, and the Minelli judgment previously cited, p. 15, para. 27). It will be violated if a judicial decision concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court regards the accused as guilty (see the Minelli judgment previously cited, p. 18, para. 37).

However, the scope of Article 6 para. 2 (art. 6-2) is not limited to the eventuality mentioned by the Government. The Court held that there had been violations of this provision in the Minelli and Sekanina cases previously cited, although the national courts concerned had closed the proceedings in the first of those cases because the limitation period had expired and had acquitted the applicant in the second. It has similarly held it to be applicable in other cases where the domestic courts did not have to determine the question of guilt (see the Adolf v. Austria judgment of 26 March 1982, Series A no. 49, and the Lutz, Englert and Nölkenbockhoff v. Germany judgments of 25 August 1987, Series A nos. 123-A, 123-B and 123-C).

Moreover, the Court reiterates that the Convention must be interpreted in such a way as to guarantee rights which are practical and effective as opposed to theoretical and illusory (see, among other authorities, the Artico v. Italy judgment of 13 May 1980, Series A no. 37, p. 16, para. 33; the Soering v. the United Kingdom judgment of 7 July 1989, Series A no. 161, p. 34, para. 87; and the Cruz Varas and Others v. Sweden judgment of 20 March 1991, Series A no. 201, p. 36, para. 99). That also applies to the right enshrined in Article 6 para. 2 (art. 6-2).

36. The Court considers that the presumption of innocence may be infringed not only by a judge or court but also by other public authorities.

37. At the time of the press conference of 29 December 1976 Mr Allenet de Ribemont had just been arrested by the police (see paragraph 9 above). Although he had not yet been charged with aiding and abetting intentional homicide (see paragraph 12 above), his arrest and detention in police custody formed part of the judicial investigation begun a few days earlier by a Paris investigating judge and made him a person "charged with a criminal offence" within the meaning of Article 6 para. 2 (art. 6-2). The two senior police officers present were conducting the inquiries in the case. Their remarks, made in parallel with the judicial investigation and supported by the Minister of the Interior, were explained by the existence of that investigation and had a direct link with it. Article 6 para. 2 (art. 6-2) therefore applies in this case.

B. Compliance with Article 6 para. 2 (art. 6-2)

1. Reference to the case at the press conference

38. Freedom of expression, guaranteed by Article 10 (art. 10) of the Convention, includes the freedom to receive and impart information. Article 6 para. 2 (art. 6-2) cannot therefore prevent the authorities from informing the public about criminal investigations in progress, but it requires that they do so with all the discretion and circumspection necessary if the presumption of innocence is to be respected.

2. Content of the statements complained of

39. Like the applicant, the Commission considered that the remarks made by the Minister of the Interior and, in his presence and under his authority, by the police superintendent in charge of the inquiry and the Director of the Criminal Investigation Department, were incompatible with the presumption of innocence. It noted that in them Mr Allenet de Ribemont was held up as one of the instigators of Mr de Broglie’s murder.

40. The Government maintained that such remarks came under the head of information about criminal proceedings in progress and were not such as to infringe the presumption of innocence, since they did not bind the courts and could be proved false by subsequent investigations. The facts of the case bore this out, as the applicant had not been formally charged until two weeks after the press conference and the investigating judge had eventually decided that there was no case to answer.

41. The Court notes that in the instant case some of the highest-ranking officers in the French police referred to Mr Allenet de Ribemont, without any qualification or reservation, as one of the instigators of a murder and

thus an accomplice in that murder (see paragraph 11 above). This was clearly a declaration of the applicant's guilt which, firstly, encouraged the public to believe him guilty and, secondly, prejudged the assessment of the facts by the competent judicial authority. There has therefore been a breach of Article 6 para. 2 (art. 6-2).

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

42. Mr Allenet de Ribemont also complained of the length of the compensation proceedings he brought in the administrative and then in the ordinary courts. He relied on Article 6 para. 1 (art. 6-1) of the Convention, which provides:

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

43. The applicability of Article 6 para. 1 (art. 6-1) was not contested. Like the Commission, the Court notes that the proceedings in question concerned claims for compensation for the injury to his reputation which the applicant asserted he had sustained as a result of the statements complained of. Their purpose was thus to determine a civil right within the meaning of Article 6 para. 1 (art. 6-1).

A. Period to be taken into consideration

44. The end of the period to be taken into consideration was not disputed; the proceedings ended on 30 November 1988, when the Court of Cassation dismissed the applicant's appeal on points of law against the Paris Court of Appeal's judgment of 21 October 1987 (see paragraph 26 above).

45. The same is not true of the starting-point of the period.

In the Government's submission the proceedings in the administrative courts were not to be taken into account. Those courts had given no decision on the merits and had relinquished jurisdiction pursuant to the principle of the separation of administrative and judicial authorities, which obliged the administrative courts to reject arguments which they could not entertain without interfering in the working of the ordinary courts. Mr Allenet de Ribemont's lawyers could not have been unaware of this principle.

The applicant, on the other hand, maintained that the proceedings began with the application to the Paris Administrative Court, and that because of the dispute over jurisdiction the proceedings in the ordinary courts were a necessary continuation of the action in the administrative courts. In addition, it seemed so natural that the administrative courts should have jurisdiction in the case that the Prime Minister challenged the ordinary courts' jurisdiction in the Paris tribunal de grande instance.

46. Like the Commission, the Court accepts the applicant's argument. It notes that the issue of how jurisdiction is split between the administrative and the ordinary courts appears to be a very complex and difficult one in compensation proceedings, particularly those brought on account of remarks made by a member of the Government. Mr Allenet de Ribemont's lawyers cannot therefore be criticised for applying in the first instance to the administrative courts.

The period to be taken into consideration in order to determine whether the length of the proceedings was reasonable therefore began on 23 March 1977, when the non-contentious claim was lodged with the Prime Minister (paragraph 13 above - see, among other authorities, the Karakaya v. France judgment of 26 August 1994, Series A no. 289-B, p. 42, para. 29), and amounted to eleven years and approximately eight months.

B. Reasonableness of the length of the proceedings

47. The reasonableness of the length of proceedings is to be determined in the light of the circumstances of the case and with reference to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the competent authorities (see, among other authorities, the Katte Klitsche de la Grange v. Italy judgment of 27 October 1994, Series A no. 293-B, pp. 37-38, para. 51). On the latter point, the importance of what is at stake for the applicant in the litigation has to be taken into account (see, among other authorities, the Hokkanen v. Finland judgment of 23 September 1994, Series A no. 299-A, p. 25, para. 69).

1. Complexity of the case

48. The Commission, to whose opinion Mr Allenet de Ribemont referred, accepted that the proceedings he had brought were of some complexity, seeing that they concerned the State's liability.

49. In the Government's submission, the case had also raised the difficult question of the proof that the remarks made were negligent and that they had caused the damage alleged. In addition, there had been procedural complications, to which the applicant had contributed.

50. The Court considers that even though the case was complex for the foregoing reasons, its complexity cannot entirely justify the length of the proceedings complained of.

2. Conduct of the applicant

51. Mr Allenet de Ribemont contended that he could not be held responsible for the slowness of the proceedings.

52. The Government maintained that, on the contrary, he had lengthened the proceedings by nearly six years. He waited for eleven months before replying to the pleadings of the Minister of Culture and the Minister of the Interior in the Administrative Court proceedings, seven months after the registration of his appeal to the Conseil d'Etat before filing his full pleadings, nine months after the Conseil d'Etat's judgment dismissing his appeal before applying to the ordinary courts, and ten months, punctuated by several interventions by the judge preparing the case for hearing, before filing his submissions to the Court of Appeal. He also caused a three-month delay by requesting an adjournment of the case in the Court of Appeal.

Moreover, by not applying to the civil courts immediately after the Paris Administrative Court's ruling that it had no jurisdiction, as he was entitled to do in French law, the applicant had prolonged the proceedings by approximately two years and seven months, that is to say the time which elapsed between that ruling and the judgment of the Conseil d'Etat.

53. Like the Commission, the Court finds that Mr Allenet de Ribemont's conduct delayed the proceedings to a certain extent.

It has already stated that, owing to the difficulty of determining exactly which hierarchy of courts had jurisdiction in the case, the applicant cannot be criticised for first applying to the administrative courts (see paragraph 46 above). That is true not only of the application to the court of first instance but also of the application to the appellate court, the latter being a consequence of the former, so that responsibility for the lapse of two years and seven months between the Paris Administrative Court's judgment (13 October 1980) and the Conseil d'Etat's judgment (27 May 1983) cannot be ascribed to Mr Allenet de Ribemont alone.

Accordingly, even supposing that the applicant could be held responsible for a delay of approximately three years and four months, there would still remain approximately eight years.

3. Conduct of the national authorities

54. Mr Allenet de Ribemont referred to the Commission's opinion regarding the conduct of the national authorities. He submitted, however, that those authorities' refusal to grant his application for production of the video recording that would have enabled him to substantiate his allegations had contributed to the delay complained of.

55. The Government maintained that the national authorities had conducted themselves in such a way as to expedite the proceedings. In the Paris Court of Appeal in particular, the judge in charge of preparing the case for hearing had issued frequent reminders to the applicant in order to obtain the submissions he had been slow to produce. In addition, the only periods of inactivity imputed by the Commission to the authorities occurred during

the proceedings in the administrative courts, which, it was submitted, were not to be taken into account in this case.

56. Like the Commission, the Court notes that there were several periods of inactivity for which the national authorities were responsible. The first of these, during the proceedings in the Paris Administrative Court, lasted eight months, between the filing of pleadings by Mr Allenet de Ribemont on 24 May 1978 and the dispatch of the case file to the Minister of Culture on 23 January 1979 (see paragraph 14 above). A second period, of nine months and two weeks, elapsed during the proceedings in the Conseil d'Etat between the filing of the applicant's full pleadings on 1 July 1981 and the Minister of the Interior's reply on 13 April 1982 (see paragraph 16 above). In addition, during the proceedings in the tribunal de grande instance the Prime Minister and the Government Law Officer did not file their submissions until seven and six months respectively after the proceedings had been brought against them (see paragraph 18 above).

Moreover, the administrative and judicial authorities constantly blocked production of the video recording which would have enabled Mr Allenet de Ribemont to prove what had been said at the press conference; the administrative authorities took certain steps that delayed the proceedings, such as sending the case file to the Minister of Culture, and did not produce the recording even though it was in their possession, while the judicial authorities refused to order production although the applicant could not secure this by his own means. The Court is in no doubt that this was the main cause of the slow progress of the proceedings.

As regards more particularly the way in which the courts dealt with the case, the Court notes that it took no less than five years and eight months for the administrative courts to rule that they had no jurisdiction, and that although the judge in charge of preparing the case for hearing in the Court of Appeal did indeed make an effort to expedite the proceedings, it does not appear from the file that any judge did so in the other ordinary courts.

C. Conclusion

57. The complexity of the case and the applicant's conduct are not in themselves sufficient to explain the length of the proceedings. The overall delay was essentially due to the way in which the national authorities handled the case, particularly their refusal to grant Mr Allenet de Ribemont's requests for production of the vital piece of evidence. Regard being had to the importance of what was at stake for the applicant, and even though the proceedings in the Court of Appeal and the Court of Cassation, taken separately, do not appear excessively long, a total lapse of time of approximately eleven years and eight months cannot be regarded as reasonable. There has accordingly been a breach of Article 6 para. 1 (art. 6-1).

III. APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

58. 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."

A. Damage

59. Mr Allenet de Ribemont first sought compensation for pecuniary damage. He claimed that the statements in issue had caused his insolvency and ruin and had made it impossible for him to find work again. His bank had withdrawn the overdraft facility it had previously granted him and had refused to pay the cheques he signed. On 14 March 1979, when setting aside the contract between the applicant and Mr de Broglie, the Paris tribunal de grande instance had ordered immediate payment of part of the sums owed by the applicant and had made the statutory interest payable from the day of Mr de Broglie's death, so that a substantial sum was still due to his heirs. Lastly, at the time when the compulsory winding-up of the "Rôtisserie de la Reine Pédauque" restaurant was ordered by the court, on 7 February 1977, the applicant was in prison charged with aiding and abetting murder.

The applicant also complained of injury to his reputation and that of his family; this had caused him non-pecuniary damage that was both considerable - because of the circumstances in which the statements had been made, the status of those who had made them and the fact that Mr de Broglie was an internationally known figure - and lasting, in spite of the discharge order made on 21 March 1980.

Mr Allenet de Ribemont assessed the damage he had sustained at FRF 10,000,000 in total.

60. In the Government's submission, the applicant had not established any direct causal link between the alleged breach of Article 6 para. 2 (art. 6-2) and the deterioration in his financial situation. As for non-pecuniary damage, the finding of a breach of the Convention would constitute sufficient just satisfaction.

61. The Delegate of the Commission considered that there was very little justification for the sums claimed by the applicant in respect of pecuniary damage, in the absence of any connection with the statements made by the Minister of the Interior and the senior police officers. On the other hand, he was of the view that the seriousness of the accusations and the national authorities' persistent refusal to produce the videotape of the press conference had caused non-pecuniary damage calling for far more

than token compensation. He left it to the Court to assess the damage sustained on account of the excessive length of the proceedings.

62. The Court does not accept Mr Allenet de Ribemont's reasoning with regard to pecuniary damage. It considers, nevertheless, that the serious accusations made against him at the press conference of 29 December 1976 certainly diminished the trust placed in him by the people he did business with and thus made it difficult for him to pursue his occupation. It therefore finds the claim for compensation in respect of pecuniary damage to be justified in part.

Moreover, it agrees with the Delegate of the Commission that the applicant indisputably sustained non-pecuniary damage on account of the breach of Article 6 para. 1 (art. 6-1) and especially Article 6 para. 2 (art. 6-2). Although the fact that Mr de Broglie was well known, the circumstances of his death and the stir it caused certainly gave the authorities good reason to inform the public speedily, they also made it predictable that the media would give extensive coverage to the statements about the inquiry under way. The lack of restraint and discretion vis-à-vis the applicant was therefore all the more reprehensible. Moreover, the statements in issue were very widely reported, both in France and abroad.

Taking into account the various relevant factors and making its assessment on an equitable basis, as required by Article 50 (art. 50), the Court awards Mr Allenet de Ribemont a total sum of FRF 2,000,000.

B. Guarantee

63. The applicant also asked the Court to hold that the State should guarantee him against any application for enforcement of the judgment delivered by the Paris tribunal de grande instance on 14 March 1979 or, failing that, to give him leave to seek an increase in the amount of just satisfaction at a later date.

64. The Delegate of the Commission did not express an opinion on this point.

65. Like the Government, the Court points out that under Article 50 (art. 50) it does not have jurisdiction to issue such an order to a Contracting State (see, mutatis mutandis, the Idrocalce S.r.l. v. Italy judgment of 27 February 1992, Series A no. 229-F, p. 65, para. 26, and the Pelladoah v. the Netherlands judgment of 22 September 1994, Series A no. 297-B, pp. 35-36, para. 44). It further considers that the question of just satisfaction is ready for decision.

C. Costs and expenses

66. Lastly, Mr Allenet de Ribemont sought FRF 270,384.28 for costs and expenses incurred before the Convention institutions, broken down as

follows: FRF 211,500 in fees, FRF 16,480 in costs and FRF 42,404.28 in value-added tax (VAT).

67. The Government and the Delegate of the Commission left this matter to the Court's discretion.

68. Making its assessment on an equitable basis, the Court awards the applicant FRF 100,000 plus VAT.

FOR THESE REASONS, THE COURT

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

2. Holds unanimously that there has been a breach of Article 6 para. 1 (art. 6-1) of the Convention;

3. Holds by eight votes to one that the respondent State is to pay the applicant, within three months, 2,000,000 (two million) French francs for damage;

4. Holds unanimously that the respondent State is to pay the applicant, within three months, 100,000 (one hundred thousand) French francs, plus value-added tax, for 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 10 February 1995.

Rolv RYSSDAL
President

Herbert PETZOLD
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of Rules of Court A, the partly dissenting opinion of Mr Mifsud Bonnici is annexed to this judgment.

R. R.
H. P.

PARTLY DISSENTING OPINION OF JUDGE MIFSUD BONNICI

1. I agree with the majority that there has been a breach of Article 6 para. 1 (art. 6-1) of the Convention, and also that the sum of FRF 100,000, plus VAT, should be paid to the applicant for his costs and expenses.

2. I dissent, however, from the proposition that there has been a breach of Article 6 para. 2 (art. 6-2) of the Convention.

This judgment affirms for the first time that the fundamental right that "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law" - "may be infringed not only by a judge or court but also by other public authorities" (paragraph 36). This is the main principle affirmed by this judgment.

3. In the preceding paragraph 35, it is said: "the Court reiterates that the Convention must be interpreted in such a way as to guarantee rights which are practical and effective as opposed to theoretical and illusory".

4. My dissent arises from the consideration that this extended interpretation of the presumption of innocence cannot be guaranteed in a practical and effective way. When the violation is committed by the public authorities before the trial of the person charged with a criminal offence, no practical and effective remedy for that violation is afforded if that remedy is sought as soon as the violation takes place. In the instant case, the Court is finding a violation which occurred in 1976, and therefore it can accord a financial remedy. But this is clearly not a practical and effective remedy which can be applied satisfactorily if the violation is established before the trial takes place.

5. To illustrate the difficulty, I wish to refer to a Maltese case.

On 13 April 1972 a bomb exploded on the roof of a house and Giuseppina Formosa, the housewife residing in the property, was torn to bits.

On 28 April 1972 the Commissioner of Police, the Head of the Police Corps, together with four of his officers, called a press conference. This dealt with the general problem of delinquency, the state of the police force and similar matters, and then the Commissioner proceeded to say that the line of investigation pursued in the Formosa bomb case had proved to be fruitful; that Emmanuel Formosa, the husband of the victim, had confessed; that he was going to be charged before the inquiring magistrate on the next day and that the husband had asked for the protection of the police as he was afraid of the reaction of his wife’s brothers.

6. Formosa filed an application in the civil court alleging, among other things, the violation of his fundamental right guaranteed by the Maltese Constitution (Article 39 [5]): "Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty."

The application was heard expeditiously by the court and rejected on 5 May 1972. On appeal, the Constitutional Court on 16 April 1973 confirmed the first judgment (DEC. KOST. 1964-1978 GH.ST.LIGI. p. 343). Formosa was afterwards tried and convicted of the homicide of his wife, on 13 July 1973.

7. These facts are very similar to those of the instant case. The difference lies in the fact that in the Maltese case the matter was heard and decided before the criminal trial took place while in the instant case the Court is dealing with the matter after all has been said and done.

8. The reasons for arriving at the conclusions reached by the Maltese courts in not finding a violation are not convincing. There is no consideration of the problem as to whether the guarantee covers only the operations of the judge and the court or whether it also extends to other public authorities. But from them it clearly transpires that if one admits the extension - now affirmed in this judgment - there is no effective and practical remedy for the violation which a court can apply before the actual criminal trial is heard, once the constitutional mechanism of the domestic law is such that the proceedings on the violation can be heard and concluded before the trial and not after.

9. In so far as the Court has laid down such an important principle which may have a substantial impact in the field of criminal procedural law in the various Contracting States, but has not tackled the problem of the practical and efficient remedy for the affirmed violation, I have not found it possible to follow the majority on the point.