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

CASE OF GAUTRIN AND OTHERS v. FRANCE

(38/1997/822/1025–1028)

JUDGMENT

STRASBOURG

20 May 1998

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SUMMARY[1]

Judgment delivered by a Chamber

France – no public hearing before Ile-de-France regional council and disciplinary section of National Council of ordre des médecins *and lack of impartiality of those bodies*

I. ARTICLE 6 § 1 OF THE CONVENTION

A. Applicability

Disciplinary proceedings in which what was at stake was right to continue to practise medicine as a private practitioner gave rise to "*contestations* (disputes) over civil rights".

B. Compliance

1. Publicity

(a) Government's preliminary objection (failure to exhaust domestic remedies)

Objection based on failure to appeal on points of law to *Conseil d'Etat* – appeal would not have been an "adequate" and "effective" remedy in case before Court as Decree no. 48-1671 of 26 October 1948 expressly precluded holding in public hearings before professional disciplinary bodies and it was *Conseil d'Etat*'s settled case-law that provisions of Article 6 § 1 were inapplicable to proceedings before them.

Conclusion: objection dismissed (unanimously).

(b) Merits of complaint

Recapitulation of Court's case-law.

It was not suggested that circumstances existed to permit dispensing with a public hearing – fact that hearing before *Conseil d'Etat* would have been in public was irrelevant.

Conclusion: violation (unanimously).

2. Impartiality

(a) Government's preliminary objections (failure to exhaust domestic remedies)

(i) Failure to exercise right of challenge

Remedy not "effective": complaint not of bias on part of any individual member of disciplinary bodies in question, but of "objective" bias of those bodies; right to challenge

1. This summary by the registry does not bind the Court.

could only be exercised in respect of individual members, impossible to challenge all members of the disciplinary section of the National Council of the *ordre des médecins*.

(ii) Failure to appeal on points of law

Objection had been raised before Commission: Government not estopped.

Remedy not "adequate": if *Conseil d'Etat* had quashed decision of disciplinary section of National Council of *ordre*, it would not have been bound to rule on merits of case – if it had remitted the case, it could only have done so to same body without there being any requirement that it be differently constituted; it would have been only after a second appeal on points of law that *Conseil d'Etat* would have been required to decide case finally.

Conclusion: objections dismissed (unanimously).

(b) Merits of complaint

Conferring duty of adjudicating on disciplinary offences on professional disciplinary bodies did not in itself infringe Convention – it was nevertheless necessary that either professional disciplinary bodies themselves complied with requirements of Article 6 § 1 or that they were subject to subsequent review by a judicial body that had full jurisdiction and did provide the guarantees of that Article.

There were two tests for assessing whether a tribunal was impartial. First consisted in seeking to determine personal conviction of a particular judge in a given case. Second – which was only one applicable in case before Court – consisted in ascertaining whether judge offered sufficient guarantees: Court verified whether applicants' fears were objectively justified.

There was a worrying connection between competitors of SOS Médecins and professional disciplinary bodies – composition of latter tended to justify applicants' fears.

Conclusion: violation (unanimously).

II. ARTICLE 50 OF THE CONVENTION

A. Damages

Pecuniary damage: Court could not speculate as to conclusions disciplinary bodies would have reached if breaches found had not occurred.

Non-pecuniary damage: judgment constituted sufficient just satisfaction.

B. Costs and expenses

Partial reimbursement ordered.

C. Other claims

Court had no jurisdiction.

Conclusion: respondent State to pay applicants specified sums (unanimously).

COURT'S CASE-LAW REFERRED TO

28.6.1978, König v. Germany; 23.6.1981, Le Compte, Van Leuven and De Meyere v. Belgium; 10.2.1983, Albert and Le Compte v. Belgium; 22.4.1994, Saraiva de Carvalho v. Portugal; 9.12.1994, Stran Greek Refineries and Stratis Andreadis v. Greece; 26.9.1995, Diennet v. France; 19.2.1998, Higgins and Others v. France

In the case of Gautrin and Others v. France[1],

The European Court of Human Rights, sitting, in accordance with Article 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 THÓR VILHJÁLMSSON, *President*,
Mr F. GÖLCÜKLÜ,
Mr F. MATSCHER,
Mr L.-E. PETTITI,
Mr C. RUSSO,
Mr A.B. BAKA,
Mr M.A. LOPES ROCHA,
Mr P. KŪRIS,
Mr U. LÕHMUS,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 23 February and 22 April 1998,

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

PROCEDURE

1. The case was referred to the Court by the French Government ("the Government") on 14 April 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in four applications (nos. 21257/93 to 21260/93) against the French Republic lodged with the European Commission of Human Rights ("the Commission") under Article 25 by 105 French nationals on 7 January 1993. The first application was lodged by Mr Norbert Gautrin, the second by Mr Jérôme Fillion, the third by Mr Dominique Mynard, and the fourth jointly by Ms Anne Allemandou, Mr Erick Altabe, Mr Jean-Jacques Assouline, Mr Stéphane Aszerman, Mr Alexandre Athea, Mr Michel

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Notes by the Registrar

1. The case is numbered 38/1997/822/1025–1028. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The third number indicates the case's position on the list of cases referred to the Court since its creation and the last two numbers indicate its position on the list of the corresponding originating applications to the Commission.

2. Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

Athouel, Mr Jean-Jacques Avrane, Mr Alain Batarec, Mr Richard Benichou, Mr Laurent Bennaim, Mr Gabriel Benzaquen, Mr Jean-Pierre Bertaud, Mr Jean-François Biffaud, Mr Pierre Bleichner, Mr Eric Bocquillon, Mr Jean-Claude Boerner, Mr Bernard Bonduelle, Mr Franck Boumandil, Mr Christophe Boyer, Mr Patrick Brasseur, Mr Jacques Bray, Mr Olivier Caste, Ms Sylvie Caupin, Mr Bruno Chaumont, Ms Claire Chauvin, Ms Françoise Choquet-Croydon, Mr Gilles Copin, Mr Patrick Coulonges, Ms Catherine Daluzeau, Mr Jean-Luc Daubigny, Mr Arnaud Delaye, Mr Jacques Denis, Mr Francis Diez, Mr Patrick Drosne, Ms Marie-Anne Duchateau, Mr Henri Dumora, Mr Loïc Etienne, Mr Roland Fally, Ms Lorraine Fouchet, Mr Pierre Fournier, Mr Denis François, Ms Agnès Frely, Mr Denis Gaildraud, Mr Bertrand Galichon, Mr Eric Gallois, Mr Jean Giffard, Mr Gérard Grangeret, Ms Patricia Guizol, Mr Jean-Claude Guzzo, Mr Michel Herouard, Ms Rolande Horowitz, Mr Eric Kohennof, Mr Gérard Lebars, Mr Jacques Lebas Delacour, Mr Dominique Lebrun, Mr Jean-Philippe Ledos, Mr Philippe Leminez, Mr Christian Lherault, Mr Jérôme Lichnierowicz, Mr Patrick Machain, Mr Denis Magny, Mr Henri-Pierre Mao, Mr Dominique Marsault, Ms Elisabeth Miailhe, Ms Annie Moan, Mr Nabil Nassar, Mr Jean-Yves Naudot, Mr Patrick Noblinski, Mr Denis Ovadia, Mr Jean-Claude Pessereau, Mr François Piot, Mr Marc Pisarik, Mr Alain Pras, Mr Jean-François Pret, Mr Jean-Marc Provini, Mr Louis-Marie Prudhomme, Mr Philippe Quenel, Mr Claude Raffour, Mr Patrick Rogel, Mr Thierry Rosier, Mr Joël Roth, Mr William Roussel, Mr Stéphane Rubinstein, Mr Abraham Sabbah, Mr Louis Schoonoed, Mr Gérard Sedletzki, Mr René Serieys, Mr Didier Serrano, Mr Serge Smadja, Mr Claude Sylvain, Mr Patrick Thibault, Mr Alex Toumson, Ms Nicole Tricoire-Goulier, Mr Marc Uzan, Mr Laurent Vassort, Mr Jérôme Vidal, Mr Jean-Louis Vincent, Mr Tan Vu, Mr Bernard Weill, Mr Jean-Paul Wellhoff, Mr Bruno Wilhelm and Mr Jean-Jacques Wolf.

The Government's application referred to Articles 44 and 48 and to the declaration whereby France recognised the compulsory jurisdiction of the Court (Article 46). The object of the application 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 § 1 of the Convention.

2. With the exception of Mr Pret, who has died, the applicants stated, in response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, that they wished to take part in the proceedings. Mr Boyer and Mr Fillion have instructed Mr Julien, of the Clermont-Ferrand Bar, to represent them before the Court, and the other 102 applicants Ms Vally, of the Paris Bar (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), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 § 4 (b)). On 28 April 1997, in the presence of the Registrar, the President of the Court, Mr R. Ryssdal, drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr F. Matscher, Mr R. Macdonald, Mr C. Russo,

Mr M.A. Lopes Rocha, Mr P. Kūris and Mr U. Lõhmus (Article 43 *in fine* of the Convention and Rule 21 § 5). Subsequently, Mr Bernhardt, who was unable to take part in the further consideration of the case, was replaced as President of the Chamber by Mr Thór Vilhjálmsson (Rule 21 § 6) and Mr A.B. Baka was called on to complete the Chamber (Rule 22 § 1); as he was also unable to take part in the further consideration of the case, Mr Macdonald was replaced by Mr F. Gölcüklü (ibid.).

4. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, acting through the Registrar, had consulted the Agent of the Government, Mr M. Perrin de Brichambaut, the applicants' lawyers and the Delegate of the Commission, Mr J.-C. Soyer, on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the order made in consequence, the Registrar received the memorial of Mr Fillion and Mr Boyer on 21 November 1997, the Government's memorial on 24 November 1997 and the memorial of the other 102 applicants on 25 November 1997. The observations of the Delegate of the Commission were received by the registry on 12 January 1998.

5. Having regard to the opinions expressed by the applicants, the Government and the Delegate of the Commission and having satisfied itself that the condition for derogation from its usual procedure had been met (Rules 26 and 38), the Chamber decided to dispense with a hearing in the case and Mr Bernhardt gave the applicants and the Government leave to file observations on the content of the others' memorials.

6. The additional observations of the Government and of Mr Fillion and Mr Boyer were received by the registry on 21 January 1998 and those of the other applicants on 22 January 1998.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. Associations called "SOS Médecins", whose object is to provide emergency medical services on call to patients, have been set up in each *département*; they have formed regional associations which in turn are part of a national association known as "SOS Médecins, France". The applicants, who are medical practitioners in the Ile-de-France region, are all members of this organisation.

A. Background to the case

8. A number of doctors' unions and *département council*s of the *ordre des médecins* (Medical Association) lodged complaints with the professional disciplinary bodies against the members of those associations. They maintained, *inter alia*, that by using a flashing blue light without permission from the authorities and displaying the name "SOS Médecins" on their vehicles, in telephone directories and in advertising brochures, the members of the associations were contravening Article 23 of the Code of Professional Conduct, which prohibited advertising.

B. Proceedings instituted against the applicants

1. Before the regional council of the Ile-de-France ordre des médecins

9. On 2 March 1989 the National Union of Duty Doctors lodged a complaint against each of the applicants with the regional council of the Ile-de-France *ordre des médecins*. The French Federation of Paris General Practitioners did likewise on 20 March 1989.

It was alleged that the applicants had contravened Article 23 of the Code of Professional Conduct by displaying the name "SOS Médecins" on their vehicles and prescriptions.

10. On 28 January 1990 the regional council, composed of Dr Fenoll, chairman, and Dr Barkatz, Dr Bernard, Dr Boissin, Dr Castello, Dr Delamarche, Dr Gasch, Dr Groene-Richert, Dr Manheulle, Dr Pommey and Dr Sorrel-Dejerine, members, held that there had been a breach of Article 23 of the Code of Professional Conduct and suspended Dr Gautrin and Dr Mynard from practising medicine for two months and Dr Fillion and ninety-six other doctors for one month; the remaining six applicants received a reprimand.

2. Before the National Council of the ordre des médecins

11. The applicants appealed against those decisions to the disciplinary section of the National Council of the *ordre des médecins*.

12. On 25 March 1992 that section, chaired by Mr Coudurier, honorary member of the *Conseil d'Etat*, and composed of Dr Dusserre, Dr Jung, Dr Klepping, Dr Vergeylen, Dr Gatel and Dr Gilbert, members, upheld the decisions of the regional council as to the finding that there had been a breach of the Code of Professional Conduct, but reduced the penalties: Dr Gautrin and Dr Mynard were suspended from practising medicine for fifteen days, the doctors who had received a month's suspension were given a reprimand and those who had been reprimanded were given a warning only. The applicants were informed of the decision on 7 July 1992. They did not appeal to the *Conseil d'Etat*.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Code of Professional Conduct and advertising

13. Article 23 of the Code of Professional Conduct provided:

> "Medicine must not be practised as if it were a trade. Doctors shall not use any form of advertising or publicity, whether direct or indirect.
>
> No medical exhibition shall be held or demonstration performed unless their purpose is exclusively scientific or educational."

14. The Code of Professional Conduct was reformed by Decree no. 95-1000 of 6 September 1995. It now provides that any doctor participating in a duty, emergency or on-call doctor scheme "... shall be permitted, when carrying out his task, to affix a removable badge to his vehicle bearing the words 'doctor on emergency call', but no others..." and that the badge must be removed "... as soon as his role in the emergency is over..." (Article 78). The code also now sets out, among other things, the information which doctors are allowed to reproduce on their prescriptions and in directories available to the public (Articles 79–80).

B. The disciplinary rules governing the medical profession

15. It is compulsory for all doctors entitled to practise their profession in France to belong to the *ordre national des médecins*. This body ensures, among other things, that the principles of morality, probity and dedication essential to the practice of medicine are upheld and that all its members fulfil their professional duties and comply with the rules laid down in the Code of Professional Conduct. It discharges this function through *département* councils, regional councils and the National Council of the *ordre* (Articles 381 and 382 of the Public Health Code).

1. Procedure

(a) Before the professional disciplinary bodies

(i) The regional councils

16. The regional councils exercise disciplinary jurisdiction at first instance within the *ordre des médecins*. Cases may be brought before them by, among others, the *département* councils, and doctors' unions and individual registered medical practitioners within their territorial jurisdiction (Article L. 417 of the Public Health Code).

Regional councils may only deliberate validly if at least five of their members are present. Decisions are taken on a majority vote and must be reasoned (Articles 15 and 16 of Decree no. 48-1671 of 26 October 1948, as amended).

17. The regional council of the *ordre des médecins* for the Paris area is made up of twenty-six full members divided into two chambers and of thirteen substitute members; they are all elected by members of the *département* councils (Articles L. 398 et seq.). Each chamber elects a chairman from among its members (Article L. 401).

(ii) The disciplinary section of the National Council

18. The National Council of the *ordre des médecins* is composed of thirty-eight members, thirty-two of whom are directly elected by the *département* councils.

19. After each election of a proportion of its members (every two years) the National Council elects eight of its thirty-eight members to constitute a disciplinary section – chaired by a senior member of the *Conseil d'Etat* – with jurisdiction to hear appeals (Articles L. 404 to 408 and L. 411 of the Public Health Code). Substitute members are elected in the same way as full members (Article 21 of Decree no. 48-1671 of 26 October 1948, as amended, concerning, *inter alia*, the functioning of the disciplinary section).

The disciplinary section may only deliberate validly if, in addition to its chairman, at least four of its members are present. Where the number of members present is an even number, the youngest practitioner must withdraw (Article 24, first paragraph, of the Decree of 26 October 1948, as amended).

Appeals have, in principle, suspensive effect (Article L. 411 of the Public Health Code).

(b) In the *Conseil d'Etat*

20. An appeal on points of law against decisions of the disciplinary section lies to the *Conseil d'Etat* (Article 22 of the Decree of 26 October 1948, as amended, and Article L. 411 of the Public Health Code) "as provided in ordinary administrative law" (Article L. 411 *in fine* of the Public Heath Code).

Section 11 – which came into force on 1 January 1989 – of Law no. 87-1127 of 31 December 1987 reforming administrative proceedings provides:

"...

> If it quashes a decision by an administrative tribunal of last instance, the *Conseil d'Etat* may either remit the case to the same tribunal, which shall, unless the nature of the tribunal makes it impossible, be differently constituted, or remit the case to another tribunal of the same type, or determine the merits of the case itself where the interests of proper administration of justice warrant it.

Where a second appeal on points of law is brought in a case, the *Conseil d'Etat* shall give a final ruling on it."

21. At the time the events in the instant case occurred, the *Conseil d'Etat* held, following its settled case-law (extracts from its judgment of 29 October 1990 in the case of Diennet):

"...the provisions of Article 6 § 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms are not applicable to disciplinary tribunals, which do not hear criminal proceedings and do not determine civil rights and obligations. Mr Diennet accordingly cannot challenge the decision appealed against on the grounds that it contravened the provisions of Article 6 § 1 of the aforementioned Convention relating to the holding of hearings in public and the impartiality of tribunals.

... although section 11 of the Law of 31 December 1987 provides that a tribunal to which a case has been remitted by the *Conseil d'Etat* must, unless the nature of the tribunal makes it impossible, be differently constituted from the one that gave the original decision, the disciplinary section of the *ordre des médecins* was, having regard to its nature, entitled, for the purpose of hearing the case remitted to it by the *Conseil d'Etat* acting in its judicial capacity in a decision of 15 January 1988, to be constituted as it had been on 30 January 1985, when it had given its first ruling. The grounds of appeal based on an infringement of the principle of the impartiality of tribunals and on the statutory provisions previously cited must therefore fail.

..."

2. Penalties

22. The following penalties may be imposed on doctors found guilty of disciplinary offences: a warning; a reprimand; temporary or permanent disqualification from performing some or all of the medical duties carried out for or remunerated by the State, *départements*, municipalities, public corporations or private corporations promoting the public interest, or the medical duties carried out pursuant to welfare legislation; temporary disqualification from practising medicine (for a maximum of three years); and striking off the register of the *ordre*.

The first two penalties also entail loss of the right to be a member of a *département* council, a regional council or the National Council of the *ordre* for three years; the other penalties entail permanent loss of that right. A doctor who has been struck off cannot have his name entered in another register (Article L. 423 of the Public Health Code).

3. Right of challenge

23. A doctor against whom proceedings are brought may exercise a right of challenge before a regional council or the National Council, as laid down in Articles 341 to 355 of the New Code of Civil Procedure (Article L. 421 of the Public Health Code).

Article 341 of the New Code of Civil Procedure provides that a judge may be challenged:

"...

1. if he or his spouse has a personal interest in the dispute;

2. if he or his spouse is a creditor, debtor, heir presumptive or donee of one of the parties;

3. if he or his spouse is a blood relative or a relative by marriage of one of the parties or of the spouse of one of the parties up to the fourth degree inclusive;

4. if there have been or are still legal proceedings pending between him or his spouse and one of the parties or the spouse of one of the parties;

5. if the case has earlier come before him as a judge or arbitrator or if he has advised one of the parties;

6. if the judge or his spouse is responsible for administering the property of one of the parties;

7. if there is a relationship of subordination between the judge or his spouse and one of the parties or the spouse of one of the parties;

8. if it is common knowledge that friendship or enmity subsists between the judge and one of the parties;

..."

A party wishing to challenge a judge will be estopped from doing so unless he makes his challenge as soon as he becomes aware that a ground exists. "Under no circumstances" may a challenge be made after the hearing (Article 342 of the New Code of Civil Procedure). The challenge must "clearly set out the grounds and be accompanied by supporting evidence" (Article 344).

On receipt of a challenge, the judge concerned shall "withdraw" until the question has been decided (Article 346). He has eight days in which to inform the court in writing whether he accedes to the request that he stand down – in which eventuality he shall be replaced immediately – or, if he does not propose to stand down, of the reasons for his resisting the challenge (Articles 347 and 348); in the latter eventuality, or if he does not reply, the challenge is "decided as soon as possible by a court of appeal or, if made against a member of a lay tribunal, by the president of the court of appeal, from whose decision no appeal shall lie" (Article 349). If the challenge is upheld, the judge is replaced (Article 352); if it is rejected, the challenger may be ordered to pay a civil fine of between 100 and 10,000 French francs without prejudice to any claim for damages that may be made (Article 353).

To prevent an estoppel arising, challenges against more than one judge shall be made together unless a ground for challenge subsequently comes to light (Article 355).

A challenge against all the judges of a chamber or a court of appeal is equivalent to an application for transfer of the case to another tribunal of the same type on grounds of bias (Rouen Court of Appeal, 12 July 1973, *Gazette du Palais* 1974, 43). No such application may be made in respect of the disciplinary section of the National Council of the *ordre des médecins* as there is no other body of that type to whom the case can be transferred (*Conseil d'Etat*, 3 May 1957, Sieur Nemegyei, *Recueil*, pp. 279–80).

24. Article 18 of Decree no. 48-1671 of 26 October 1948, as amended, provides, *inter alia*:

> "Members of regional councils may be challenged for the reasons set out in Article [L.731-1 of the Judicature Code]. Challenges shall be made at least three days before the hearing starts. Members of the council who are related by blood or marriage up to the fourth degree inclusive to another member of the council or to the doctor ... concerned, members of regional councils who individually or as part of a group have occupational interests in common with each other or with the practitioner concerned, and any member who initiated the complaint that led to the disciplinary proceedings shall be precluded from hearing the challenge."

The grounds for challenge set out in Article L. 731-1 of the Judicature Code are the same as those set out in Article 341 of the New Code of Civil Procedure.

4. Holding of proceedings in public

(a) The rules applicable at the material time

25. Article 15, second paragraph, and Article 26, seventh paragraph, of Decree no. 48-1671 of 26 October 1948, as amended, provided:

> "Hearings shall not be held in public and the deliberations shall remain secret."

While the decisions of the disciplinary bodies of the *ordre des médecins* contained the names of the members who were present, they were recorded in a special register to which third parties did not have access and were not published. They were notified to certain individuals and institutions only (Articles 17 and 28 of the decree).

(b) The present rules

26. Those rules were amended by Decree no. 93-181 of 5 February 1993.

Hearings before a body of the *ordre* sitting to determine disciplinary charges are now held in public. However, the chairman of the body in

question may, of his own motion or on an application by one of the parties or by the person whose complaint has led to the case being brought before a regional council, exclude the public from all or part of the hearing in the interests of public order or where respect for private life or medical confidentiality so justifies (Articles 13, 15 and 26 of the Decree of 26 October 1948, as amended by the Decree of 5 February 1993).

Decisions are now made public, but the bodies in question may decide not to include in the certified copies any details – such as surnames – which might be incompatible with respect for private life or medical confidentiality (Articles 13 and 28 of the Decree of 26 October 1948, as amended by the Decree of 5 February 1993).

PROCEEDINGS BEFORE THE COMMISSION

27. The applicants applied to the Commission on 7 January 1993. They complained of two breaches of Article 6 § 1 of the Convention in that, firstly, the hearings before the regional council of the Ile-de-France *ordre des médecins* and the National Council of the *ordre* had not been held in public and, secondly, those bodies had not been impartial. They complained also of a breach of their right to be presumed innocent, as guaranteed by Article 6 § 2, and of Article 13, in that they had not had an effective remedy before a national authority.

28. On 27 November 1995 the Commission declared the applications (nos. 21257/93 to 21260/93) admissible as regards the complaints under Article 6 § 1. In its report of 26 November 1996 (Article 31), it expressed the unanimous opinion that there had been a violation of Article 6 § 1 in respect of both complaints. The full text of the Commission's opinion is reproduced as an annex to this judgment[1].

FINAL SUBMISSIONS TO THE COURT

29. In their memorial Mr Fillion and Mr Boyer asked the Court to

"declare the applications admissible and well-founded;

1. *Note by the Registrar*. For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is obtainable from the registry.

hold that Article 6 § 1 of the Convention has been infringed in that the applicants did not have the right to:

(a) have their case heard in public (which the French Government do not contest);

(b) an independent and impartial tribunal;

(c) an effective remedy before a judicial body of full jurisdiction able to provide a legal solution within a reasonable time".

30. The other applicants asked

"the Court to reject the French Government's arguments and, consequently, to grant their requests as set out in their memorial".

31. The Government asked the Court to

"dismiss the applications...

(a) as the Government's primary submission, for failure to exhaust domestic remedies;

(b) in the alternative, in so far as it concerned the lack of impartiality of the disciplinary section of the National Council of the *Ordre des médecins*".

AS TO THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION

32. The applicants complained that their cases had not been heard in public by an impartial tribunal. They relied on Article 6 § 1 of the Convention, which provides:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a ... public hearing ... by an independent and impartial tribunal... 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. Applicability of Article 6 § 1

33. It is clear from the Court's settled case-law that disciplinary proceedings in which what is at stake – as in the instant case, regard being had to the penalties the professional disciplinary bodies could impose – is the right to continue to practise medicine as a private practitioner give rise to "*contestations* (disputes) over civil rights" within the meaning of Article 6 § 1 (see, among other authorities, the König v. Germany judgment of 28 June 1978, Series A no. 27, pp. 29–32, §§ 87–95; the Le Compte, Van Leuven and De Meyere v. Belgium judgment of 23 June 1981, Series A no. 43, pp. 19–23, §§ 41–51; the Albert and Le Compte v. Belgium judgment of 10 February 1983, Series A no. 58, pp. 14–16, §§ 25–29; and the Diennet v. France judgment of 26 September 1995, Series A no. 325-A, p. 13, § 27).

It was, moreover, not disputed before the Court that Article 6 § 1 was applicable to the circumstances of this case.

B. Compliance with Article 6 § 1

1. Publicity of proceedings before professional disciplinary bodies

34. The applicants maintained that there had been a breach of Article 6 § 1 because the proceedings before the professional disciplinary bodies had not been held in public.

(a) The Government's preliminary objection

35. The Government maintained, as they had previously done before the Commission, that the applicants could not be considered to have exhausted domestic remedies as required by Article 26 of the Convention as they had not lodged that complaint with the *Conseil d'Etat*.

They did not dispute that at the material time it was the highest administrative appeal court's settled case-law that Article 6 § 1 of the Convention was inapplicable to professional disciplinary bodies, but stated that there was a trend within that court towards "revising its position conceptually" bringing it in line with the Court's case-law. Consequently, it could not be said that an appeal to the *Conseil d'Etat* would have been "bound to fail". In support of that argument, the Government referred to the *Conseil d'Etat*'s *Département de l'Indre* judgment of 29 July 1994, in which it had quashed a decision reached after a hearing by a "specialised body of the same sort as the disciplinary section of the National Council of the *ordre des médecins*" that had not been held in public.

36. The applicants submitted that an appeal on points of law would have been pointless, because in 1992, notwithstanding the Court's case-law on the subject, it was the *Conseil d'Etat*'s settled case-law that Article 6 § 1 did not apply to disciplinary bodies. In that connection, the judgment of 29 July 1994 cited by the Government was not relevant as it concerned a social-security tribunal, not a disciplinary body (the *Conseil d'Etat* did indeed accept that disputes concerning social security were "civil" in nature).

37. In its decision on the admissibility of the applications, the Commission dismissed this objection on the ground that in view of the *Conseil d'Etat*'s settled case-law an appeal on points of law would have been "definitely bound to fail". The Delegate added that at the material time it was expressly laid down by statute that medical disciplinary hearings were not to be heard in public.

38. The Court reiterates that Article 26 requires persons wishing to make an application to the Strasbourg institutions to have prior recourse to such domestic remedies as are "adequate" and "effective".

However, at the material time, firstly, Decree no. 48-1671 of 26 October 1948 expressly precluded holding in public hearings before the regional councils of the *ordre des médecins* and the disciplinary section of the National Council of the *ordre* and, secondly, it was the *Conseil d'Etat*'s settled case-law that the provisions of Article 6 § 1 of the Convention were inapplicable to proceedings before those bodies (see paragraphs 21 and 25 above). In those circumstances, an appeal on points of law based on that complaint would not have been an "adequate" and "effective" remedy.

The objection must consequently be dismissed.

(b) Merits of the complaint

39. The applicants submitted that the fact that hearings before disciplinary bodies were not held in public amounted to a violation of Article 6 § 1.

40. The Government acknowledged that Decree no. 48-1671 of 26 October 1948 – which was in force at the material time – expressly excluded a public hearing. They nonetheless maintained that if the applicants had appealed to the *Conseil d'Etat* they would have had a hearing that complied with the requirements of Article 6 § 1.

41. The Commission noted that neither matters of professional secrecy nor the protection of the private life of the applicants or of their patients was involved, deduced therefrom that the applicants had a right to have their case heard in public and concluded that there had been a violation of Article 6 § 1.

42. The Court reiterates that the holding of court hearings in public constitutes a fundamental principle enshrined in Article 6 § 1. This public character protects litigants against the administration of justice without public scrutiny; it is also one of the means whereby people's confidence in the courts can be maintained. By rendering the administration of justice

transparent, publicity contributes to the achievement of the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention (see, for example, the Diennet judgment cited above, pp. 14–15, § 33).

Article 6 § 1 does provide that the press and public may, in certain circumstances, be excluded from all or part of the trial. However, it has not been suggested that either of the exceptions referred to in that provision applied in the present case.

Having regard to its conclusions in paragraph 38 above, the Court considers that the fact that the applicants would have had a hearing in public if they had appealed to the *Conseil d'Etat* is irrelevant (ibid., p. 15, § 34).

43. Consequently, there has been a breach of Article 6 § 1 in that the applicants' case was not heard "in public" by the Ile-de-France regional council of the *ordre des médecins* or by the disciplinary section of the National Council of the *ordre*.

2. Impartiality of the professional disciplinary bodies

(a) The Government's preliminary objections

44. In the Government's submission, as the applicants had not exercised their right of challenge before the professional disciplinary bodies and their right to complain to the *Conseil d'Etat* that those bodies were not impartial, they had not exhausted domestic remedies.

(i) Objection based on failure to exercise the right of challenge

45. As they had done before the Commission, the Government maintained that the applicants could have challenged the members of the professional disciplinary bodies whom they suspected of bias. Article L. 421 of the Public Health Code taken together with Article 341 of the New Code of Civil Procedure provided such a possibility, in particular with respect to members having "a personal interest in the dispute" or before whom "the case ha[d] earlier come ... as a[n] ... arbitrator or [members having] advised one of the parties". Article 18 of Decree no. 48-1671 of 26 October 1948 added that "members ... who individually or as part of a group have occupational interests in common with each other" could be challenged. The Government referred in particular to a decision of the disciplinary section of the National Council of 22 June 1977 in which it had quashed a decision of a regional council on the ground that one of its members, in respect of whom a challenge had been filed, had failed to stand down even though the challenge had been founded.

The Government underlined that the applicants could not have been unaware of the composition of the disciplinary section since its members had been elected in June 1989 and their term in office – which should have ended on 17 June 1991 – had been extended until 31 December 1992 by a law of 17 June 1991. Even if it was accepted, for the sake of argument, that before the hearing the applicants had not been certain of the identity of the members of the bodies concerned, it would have been open to them to exercise their right of challenge at the hearing. The Government added that the fact that the hearing was not held in public and that disciplinary proceedings were confidential did not prevent either the applicants or their counsel being present at the hearing and therefore exercising their right of challenge. Furthermore, if the disciplinary section had rejected their challenges, they could have appealed on points of law to the *Conseil d'Etat* on the basis of that refusal.

46. The applicants pointed out that the right of challenge was "illusory and theoretical" before the professional disciplinary bodies. A challenge would have had to have been made before deliberations in the case began, contain a detailed indication of the grounds for challenge and be accompanied by supporting evidence. Yet the confidential nature of the proceedings before the professional disciplinary bodies had prevented the applicants from finding out in such a brief period facts capable of founding a challenge; as they did not have access to previous decisions of those bodies it was not possible for them to establish whether a member of the body that was to hear their case had been a party in or was connected to a party in a similar case. In those circumstances, it was in reality up to the suspect members themselves to stand down.

In any event, even if they had exercised their right of challenge, that would not have put an end to the "conflict of interest" complained of because the *Conseil d'Etat* had held that "a regional council is properly constituted to rule on a complaint by a doctors' trade-union even if it includes three members of that union who cannot be regarded as being the complainants" (*Conseil d'Etat*, Colombel judgment of 16 December 1960). Furthermore, lack of impartiality was not a statutory ground for challenge; moreover, the case-law referred to by the Government did not in any way show that such a ground would be likely to succeed before the disciplinary section of the National Council of the *ordre* or before the *Conseil d'Etat*.

Lastly, only the individual members of the disciplinary body could be challenged, not the entire body itself; in order to challenge the disciplinary body as a whole it would have been necessary to apply for a transfer on grounds of bias, a remedy that was excluded before the disciplinary section of the National Council of the *ordre des médecins*.

47. In its decision on the admissibility of the applications, the Commission dismissed that objection. In its view, in order to exercise their right of challenge the applicants had to have the opportunity of knowing, before the hearing, the possible grounds for challenge. However, the fact that the hearing was not held in public and the resultant secrecy of the disciplinary proceedings meant that the applicants could not know for certain whether grounds for challenging any of the members of the National Council existed.

48. The Court notes that the applicants complained not of bias on the part of any individual member of the disciplinary bodies hearing their cases, but of the "objective" bias of those bodies (see paragraphs 52 and 59 below).

The right of challenge may only be exercised in respect of individual members of the tribunal, not in respect of the tribunal as a whole. Had the applicants had recourse to that procedure in the instant case on the basis of the complaint referred to above, they would have had to challenge all the members of the disciplinary bodies concerned, which would have been equivalent to applying for transfer of the case to another tribunal of the same type on grounds of bias; under the *Conseil d'Etat*'s case-law, however, no such application may be made in respect of the disciplinary section of the National Council of the *ordre des médecins* (see paragraph 23 above). It follows that in any event the exercise by the applicants of their right of challenge would not have constituted an "effective" remedy. The objection must therefore be dismissed.

(ii) Objection based on failure to appeal on points of law

49. The Government submitted that the applicants could have appealed on points of law and, regardless of any challenge made before the tribunal hearing the case, complained to the *Conseil d'Etat* that "the tribunal was not properly constituted". The *Conseil d'Etat* could have quashed the decision of the disciplinary section and either ruled on the merits of the case itself, or remitted it to the same disciplinary section to decide, possibly with a differently composed bench.

The Government maintained that they had raised this objection before the Commission, but that the Commission had not ruled on it.

50. Like the Delegate of the Commission, the applicants submitted that the Government were estopped from raising this objection before the Court as they had not done so before the Commission.

The applicants added that in any event the issue of whether a tribunal was "properly constituted" did not concern the tribunal's impartiality, but compliance with the rules governing the organisation of courts and tribunals – such as whether or not they should sit as a bench – that were not in issue here. As for bringing an appeal on points of law on the basis of Article 6 § 1 of the Convention, they considered that it would have been pointless

because in 1992, notwithstanding the case-law of the European Court of Human Rights on the subject, it was the *Conseil d'Etat*'s settled case-law that that provision was inapplicable to disciplinary bodies. Furthermore, because of the confidential nature of the proceedings before the disciplinary bodies of the *ordre*, the applicants would not have been able to learn of some of the grounds that could have been raised on appeal, such as the "interest" of some of the members of those bodies, until after the time-limit for appealing had expired. Further still, when the *Conseil d'Etat* quashed a decision of the disciplinary section it was not bound to rule on the merits of the case and could remit it to the same disciplinary section, which was a single entity; it would have been only after a second appeal on points of law that the *Conseil d'Etat* would have decided the case finally. That system itself did not satisfy the requirements of Article 6 § 1, which also embodied the right of individuals to have their case heard within a "reasonable time". Lastly, as such appeals had no suspensive effect, they could not be described as "effective".

51. The Court reiterates that it takes cognisance of preliminary objections in so far as the State in question has already raised them, at least in substance and with sufficient clarity, before the Commission and that when a State relies on the exhaustion rule, it must indicate with sufficient clarity the effective remedies to which the applicants have not had recourse (see, among many other authorities, the Stran Greek Refineries and Stratis Andreadis v. Greece judgment of 9 December 1994, Series A no. 301-B, p. 77, §§ 32 and 35).

In the present case, in the section of their observations to the Commission dealing with exhaustion of domestic remedies, the Government submitted:

> "It should be remembered that none of the applicants appealed on points of law to the *Conseil d'Etat*... 1. Firstly, it is incorrect to say that an appeal to the *Conseil d'Etat*, which hears appeals on points of law against decisions of the disciplinary section of the National Council of the *ordre des médecins* ... does not constitute an adequate legal remedy for the hearing of their complaints... 2. Secondly, it should be recalled that the practice of the *Conseil d'Etat* has been, for a long time and under its settled case-law, to hear complaints of a lack of impartiality on the part of professional disciplinary bodies... It thus scrutinises their independence and impartiality in a way that is wholly consistent with the review effected by the Strasbourg institutions under Article 6 § 1 of the Convention... However, even before complaining to the *Conseil d'Etat* that certain members of the councils of the *ordre* were not impartial, the applicants should have exercised their right to challenge one or more members of those councils, seeing that they had doubts on that score... Had the applicants exercised their right to challenge the members of the disciplinary body, they could, if their challenge was rejected, have raised that issue again in their appeal to the *Conseil d'Etat*. In these circumstances, the French Government consider that the applicants, who failed to exercise their right to challenge those members of the disciplinary bodies they suspected of bias and to bring that complaint before the *Conseil d'Etat*, which had jurisdiction to hear it, have not satisfied the requirement of exhaustion of domestic remedies..."

It is clear that even though it did not use the words "irregularity in the constitution of the tribunal", the Government did raise before the Commission the applicants' failure to lodge with the *Conseil d'Etat*, regardless of whether or not the right of challenge had been exercised before the disciplinary bodies of the *ordre des médecins*, their complaint that those bodies were not impartial. The Government are therefore not estopped from now raising this objection.

As to the merits of the objection, the Court notes that if the *Conseil d'Etat* had quashed the decision of the disciplinary section of the National Council of the *ordre*, it would not have been bound to rule on the merits of the case. If, however, it had remitted the case, it could only have done so to the same body without there being any requirement that it be differently constituted; it would only have been after a second appeal on points of law that the *Conseil d'Etat* would have been required to decide the case finally (see paragraphs 20–21 above). In other words, in order to have their complaint decided by a "tribunal" other than the very one whose impartiality they challenged, the applicants would in all likelihood have had to appeal twice to the *Conseil d'Etat*. In the circumstances, it cannot be maintained that such a remedy would, in the instant case, have been "adequate". Consequently, the objection must be dismissed.

(b) Merits of the complaint

(i) Arguments of those appearing before the Court

52. The applicants complained that the members of the regional councils and the National Council – which elected a disciplinary section from among its members – were elected by the *département* councils of the *ordre*, which participated in the management of associations providing on-call and duty medical assistance; the latter were competitors of SOS Médecins and, moreover, doctors' unions were also involved in them. As a result those bodies were naturally hostile towards the applicants and had common interests with the complainant unions that were irreconcilable with the requirements of Article 6 § 1.

53. The applicants were particularly critical of the fact that Dr Boissin, Dr Gasch and Dr Barkatz had been on the regional council.

In 1990 Dr Boisson had (as a representative of the Paris *département* council) been on the board of an association that was a direct competitor of SOS Médecins ("Garde médicale de Paris") with, *inter alia*, Dr Aghulon, the vice-chairman of one of the complainant unions and Dr Liwerant, treasurer of that union and chairman of the board of Garde médicale de Paris; moreover, the Paris *département* council had granted a loan to that association.

Dr Gasch had been a member of the "Union-93" union and of the Seine-Saint-Denis *département* council, which had combined to set up "SUR-93", a company providing emergency medical assistance that was a direct competitor of SOS Médecins.

Dr Barkatz was vice-chairman of the Seine-et-Marne *département* council, whose chairman, Dr Goldstein, had made hostile remarks about SOS Médecins on a number of occasions (in particular, at the twelfth general meeting of the *ordre* on 28 May 1988).

54. The applicants had also criticised the fact that Dr Gatel, Dr Vergeylen and Dr Gilbert had been members of the disciplinary section of the National Council.

Dr Gatel was general secretary and later chairman of the Rhône *département* council of the *ordre des médecins* when it had, for infringements similar to those alleged to have been committed by the applicants, lodged a complaint and instituted proceedings against the chairman of SOS Lyon Médecins. In addition, while the proceedings against the applicants were pending before the disciplinary section of the National Council of the *ordre*, he had been chairman within the National Council of the Committee for the Provision of Medical Assistance and Emergency Care and had, in that capacity, lodged a report in which, *inter alia*, the need for a ban on advertising on vehicles and on the use of commercial acronyms had been stressed (the report was unanimously adopted by the National Council of the *ordre* during its session on 28 and 29 April 1989). Lastly, at the National Council's 183rd session on 27–29 June 1991 – which was also attended by Dr Vergeylen –, Dr Gatel had presented a report on "the state of relations with organisations providing emergency care" and had commented on the fact that members of some *département* associations continued to display the name "SOS Médecins" on their vehicles.

Dr Vergeylen had been vice-chairman of the Val-de-Marne *département* council, which had granted subsidies to a competitor of SOS Médecins called "ASSUM-94", one of whose directors was also chairman of the Val-de-Marne *département* council.

Dr Gilbert had been chairman and later vice-chairman of the Isère *département* council, which was one of the founder members of an association providing emergency medical care in Grenoble, the "AMUAG".

55. The Government argued that the issue of impartiality only arose in respect of the disciplinary section of the National Council since, under the Court's own case-law, Article 6 § 1 did not require the Contracting States to organise each stage of proceedings before the "tribunals" so that they complied with the provisions of that Article.

They submitted that only the objective impartiality of the disciplinary section was in issue. In that connection, although appearances could be very important, it was necessary to avoid applying that theory too restrictively and to determine whether the applicants' fear "could be considered to have been objectively justified".

The Government observed that Dr Gatel had not been a complainant in the applicants' case, that the applicants' allegations against him concerned another case and that they had ascribed to him fraudulent intentions in exaggerated fashion. In addition, as the National Council was composed of seven members and chaired by a senior member of the *Conseil d'Etat*, even if the allegation of bias on the part of Dr Gatel had been founded, it should not be over-estimated to the point of considering him able to influence a decision taken as a bench.

Calling into question Dr Vergeylen's impartiality solely because he was a member of a *département* council of the *ordre* that subsidised a rival association would mean criticising the very principles governing the composition of the disciplinary section. It is apparent from the Court's case-law that the fact that a tribunal has lay members does not raise a presumption that it is biased. Competition between doctors and doctors' associations was in any event inevitable.

56. The Commission pointed out that Article 6 § 1 of the Convention did not oblige the Contracting States to submit "*contestations*" (disputes) over civil rights and obligations to a procedure that was at each stage conducted before a "tribunal" meeting the various requirements of that Article. Accordingly, it examined only the question of impartiality – from the objective standpoint, which was the only one in issue – of the disciplinary section of the National Council of the *ordre des médecins*. In that connection, it considered that, having regard to the confidence which, in a democratic society, tribunals must inspire in the public, the fact that Dr Gatel had been one of the seven members of the disciplinary section sufficed objectively to justify the applicants' doubts as to its impartiality. There had therefore been a breach of Article 6 § 1.

(ii) The Court's assessment

57. The Court reiterates that, even in instances where Article 6 § 1 of the Convention is applicable, conferring the duty of adjudicating on disciplinary offences on professional disciplinary bodies does not in itself infringe the Convention. Nonetheless, in such circumstances the Convention calls for at least one of the following two systems: either the professional disciplinary bodies themselves comply with the requirements of that Article, or they do not so comply but are subject to subsequent review by a judicial body that has full jurisdiction and does provide the guarantees of Article 6 § 1 (see the Albert and Le Compte judgment cited above, p. 16, § 29).

It is therefore necessary in the present case to verify whether the regional council of the Ile-de-France *ordre des médecins* was "impartial" within the meaning of Article 6 § 1 and, if it was not, whether the disciplinary section of the National Council of the *ordre* was "impartial".

58. There are two tests for assessing whether a tribunal is impartial within the meaning of Article 6 § 1: the first consists in seeking to determine the personal conviction of a particular judge in a given case and the second in ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect (see, among other authorities, *mutatis mutandis*, the Saraiva de Carvalho v. Portugal judgment of 22 April 1994, Series A no. 286-B, p. 38, § 33).

The applicants, the Government and the Commission agreed that only the second of those tests was relevant in the instant case. When applied to a body sitting as a bench, it means determining whether, quite apart from the personal conduct of any of the members of that body, there are ascertainable facts which may raise doubts as to its impartiality. In this respect even appearances may be of some importance. It follows that when it is being decided whether in a given case there is a legitimate reason to fear that a particular body lacks impartiality, the standpoint of those claiming that it is not impartial is important but not decisive. What is decisive is whether the fear can be held to be objectively justified (ibid., p. 38, § 35).

59. The applicants practise medicine in the Ile-de-France region and are members of SOS Médecins, an organisation which aims to provide emergency medical services on call to patients (see paragraph 7 above). In that region, other associations, in which a number of doctors' unions and *département* councils of the *ordre* are involved, are also active in that sector, examples being Garde médicale de Paris, SUR-93 and ASSUM-94.

The regional council of the Ile-de-France *ordre des médecins*, with whom complaints had been lodged by two doctors' unions, and subsequently the disciplinary section of the National Council, had to decide whether, by displaying the name "SOS Médecins" on their vehicles and prescriptions, the applicants had contravened Article 23 of the Code of Professional Conduct prohibiting advertising (see paragraph 9 above). It is nonetheless probable that, as the applicants maintained, the dispute was not simply an issue of compliance with the Code of Professional Conduct, since it had arisen in the context of competition between SOS Médecins and the other associations providing emergency care referred to above. The Court notes that the members of the regional council and thirty-two of the thirty-eight members of the National Council – from among whose members the disciplinary section is elected – are practitioners directly appointed by the *département* councils (see paragraphs 17–19 above). As a result, those two bodies had a worrying connection with the competitors of SOS Médecins and it is understandable that the applicants suspected the members of those bodies of bias.

The fact that Dr Boissin and Dr Gasch and, to a lesser extent, Dr Barkatz, were members of the regional council tends to justify the applicants' fears as regards that body. It is clear from the case file that Dr Boissin had in 1990, as a representative of the Paris *département* council, been on the board of Garde médicale de Paris and Dr Gasch a member of the Seine-Saint-Denis *département* council, which had been one of the founders of SUR-93. Dr Barkatz had been vice-chairman of the Seine-et-Marne *département* council, whose chairman, at the twelfth general meeting of the *ordre* on 28 May 1988, when referring to the use of the name "SOS Médecins" had stressed "the concern of colleagues who do not accept the discrimination against them and the economic harm caused them by the fact that the use of a well-publicised name enable[s] patients to be enticed away".

The fact that Dr Gatel, Dr Vergeylen and Dr Gilbert were on the disciplinary section of the National Council of the *ordre* tends to justify the applicants' fears as regards that body also. Dr Gatel was general secretary and later chairman of the Rhône *département* council of the *ordre des médecins* when, for infringements similar to those alleged against the applicants, it lodged a complaint and instituted proceedings against the chairman of SOS Lyon Médecins. In addition, while the proceedings against the applicants were pending before the disciplinary section of the National Council of the *ordre*, he had been chairman of the Committee for the Provision of Medical Assistance and Emergency Care at the National Council and had, in that capacity, lodged a report in which, among other things, the need for a ban on advertising on vehicles and the use of commercial acronyms had been stressed. Lastly, at the National Council's 183rd session on 27–29 June 1991 – which was also attended by Dr Vergeylen –, Dr Gatel had presented a report on "the state of relations with organisations providing emergency care" and had said, in particular:

> "While there is less cause for dispute, differences of opinion remain...: the name 'SOS Médecins' still appears on the association's vehicles in some *départements*; it should be replaced by the generic terms 'doctor', 'doctor on call' or 'doctor on emergency' recommended by the judicial and ministerial authorities; ... The Council is satisfied with the nature of its relations with the organisations providing emergency services, but considers that it must remain very vigilant as to the evolution of those relations and their repercussions at local level."

Dr Vergeylen was vice-chairman of the Val-de-Marne *département* council, which had been a founder member of ASSUM-94, one of whose directors was also chairman of the Val-de-Marne *département* council. Dr Gilbert was chairman and later vice-chairman of the Isère *département*

council, which was one of the founder members of an association providing emergency medical care in Grenoble, the AMUAG.

60. Consequently, regard being had mainly to the special context and special nature of the dispute the professional disciplinary bodies had to decide, neither the Ile-de-France regional council of the *ordre des médecins*, nor the disciplinary section of the National Council of the *ordre* was an "impartial" tribunal within the meaning of Article 6 § 1. In short, there has been a violation of that provision.

II. APPLICATION OF ARTICLE 50 OF THE CONVENTION

61. Article 50 of the Convention provides:

> "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. Damages

62. Dr Fillion and Dr Boyer each sought payment of 220,000 French francs (FRF) for non-pecuniary damage or, in the alternative, an order for measures to be taken that would provide publicity for the Court's judgment; Dr Boyer also claimed FRF 20,000 as compensation for the fact that, as a consequence of the decision of the disciplinary section of the National Council, he had been barred from standing in elections to the bodies of the *ordre* for a period of three years. The two doctors added that the Paris *tribunal de grande instance* had on 5 March 1994 ordered them to pay damages on the basis of the finding of the disciplinary section of the National Council of the *ordre* that they had been in breach of disciplinary rules; as, in their submission, that order had been made "solely as a result" of the disciplinary section's decision, they claimed FRF 1,500 each as reparation for the damage they had sustained.

The 100 doctors who had been given a reprimand claimed FRF 50,000 for non-pecuniary damage and FRF 30,000 for damage to their reputation. Dr Gautrin and Dr Mynard considered that the fact that they had been suspended from practising medicine should be taken into account and claimed a total of FRF 105,000.

63. Neither the Government nor the Commission expressed a view.

64. The Court cannot speculate as to the conclusions the disciplinary bodies would have reached if the breaches found had not occurred; it is therefore necessary to dismiss the claims for pecuniary damage.

As to the alleged non-pecuniary damage, the conclusions reached in paragraphs 43 and 60 above constitute sufficient just satisfaction for it.

B. Costs and expenses

65. Dr Fillion claimed FRF 13,650 (comprising FRF 4,500 for legal costs incurred before the domestic courts, FRF 3,000 for legal costs incurred before the Commission up to December 1994 and FRF 6,150 for legal costs incurred before the Court), plus, as compensation for the time he had spent and costs he had incurred in representing himself before the Commission as from December 1994, the sum of FRF 128,442.

Dr Boyer claimed FRF 16,030 as compensation for the time he had spent in defending his interests and for reimbursement of his legal costs before the Court – being FRF 10,000 for the former and FRF 6,030 for the latter.

The other 102 applicants requested FRF 15,000 each.

66. Neither the Government nor the Commission expressed a view.

67. The Court considers it reasonable to award FRF 13,650 to Dr Fillion and FRF 6,030 to Dr Boyer. As the other applicants whose names appear in paragraph 1 above (with the exception of Dr Pret – see paragraph 2 above) were represented before the Strasbourg institutions by the same lawyer, the Court awards them jointly FRF 50,000.

C. Other claims

68. Dr Fillion and Dr Boyer sought "removal" of the disciplinary penalty that had been imposed and official records of it, "authorisation" to use the words "SOS Médecins" on their vehicles and changes to the legislation applicable to professional disciplinary bodies and to the Code of Professional Conduct for Medical Practitioners.

69. Neither the Government nor the Commission expressed a view.

70. The Court reiterates that it is not empowered under Article 50 to order the measures sought by the applicants (see, for example and *mutatis mutandis*, the Higgins and Others v. France judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 61, § 50).

D. Default interest

71. According to the information available to the Court, the statutory rate of interest applicable in France at the date of adoption of the present judgment is 3.36% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objections;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in that the applicants' case was not heard in public;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in that the applicants' case was not heard by an impartial tribunal;

4. *Holds* that the present judgment in itself constitutes sufficient just satisfaction for any alleged non-pecuniary damage;

5. *Holds*
   (a) that the respondent State is to pay, within three months, for costs and expenses:
      (i) 13,650 (thirteen thousand six hundred and fifty) French francs to Dr Fillion;
      (ii) 6,030 (six thousand and thirty) French francs to Dr Boyer; and
      (iii) 50,000 (fifty thousand) French francs jointly to the other 102 applicants;
   (b) that simple interest at an annual rate of 3.36% shall be payable on those sums from the expiry of the above-mentioned three months until settlement;

6. *Dismisses* the remainder of the claims for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 20 May 1998.

Signed: Thór VILHJÁLMSSON
President

Signed: Herbert PETZOLD
Registrar