(TRANSLATION)

THE FACTS

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

The applicant, a French national born in 1922, is currently unemployed and resides in Paris.

He is represented in the proceedings before the Commission by Mr. Jean and Ms. Corinne Imbach, lawyers practising in Strasbourg.

After he had passed the examination for trainee inspectors of direct taxes in 1949 and had subsequently been confirmed in the rank of inspector by order of 25 April 1951, the applicant was assigned to the office of the Director of Direct Taxation in the département of Moselle. Following his transfer to the Paris area on 1 July 1952, the applicant occupied successively, over a period of several years, the posts of examiner and divisional inspector in the former département of Seine-et-Oise and Seine.

The applicant was promoted to the rank of central inspector of taxes by order of 29 June 1964 and, after working for some months in various units answerable to the Directorate of Fiscal Services for Paris-West, the applicant was transferred on 1 September 1975, at his own request, to the top position in the Inspectorate of Direct Taxes of Arcueil (Val-de-Marne), a post which he occupied until he was suspended from his duties on 19 July 1978.

It appears that at the end of May 1978, the administration's attention was drawn to the professional conduct of the applicant in the context of an investigation by the customs authorities of a certain L., a director of companies and planning offices in Paris.

Having been asked to report without delay to the office of the Director of Fiscal Services, the applicant received from the latter, on 5 June 1978, a letter of the previous 23 May informing him of the opening of an administrative inquiry against him and temporarily relieving him of his duties, with no loss of remuneration or promotion entitlement.

Subsequently, the applicant was suspended from his duties by a Ministerial Decree of 10 July 1978 which took effect on 13 July 1978, the date of notification to the person concerned.

On 8 September 1978, following a complaint lodged with the Public Prosecutor at the Paris Regional Court (tribunal de grande instance), a criminal investigation was opened in respect of the applicant on the ground of acceptance of bribes by a civil servant.

The applicant was not charged with this offence by the investigating judge until 22 September 1978, that is to say four months after his suspension, and he was immediately remanded in custody.

The applicant's suspension was terminated by an order of 16 October 1978, having been rendered "purposeless", according to the administration, as a result of his imprisonment.

The applicant found it necessary to lodge two successive appeals with the Administrative Court of Paris, the first on 24 July 1978 and the second on 10 August 1978, in which he called for the annulment - on the grounds of *ultra vires* — of the decision of 23 May 1978 by the Director of Fiscal Services for Val-de-Marne and the Ministerial Decree of 10 July 1978 by which he had been suspended from his functions. The legal basis for the ministerial decision is Article 30 of the Order of 4 February 1959 laying down the general conditions of employment of civil servants. This Article lists the different possible disciplinary sanctions including, in sub-paragraph (j), "dismissal with suspension of pension rights".

In support of his first appeal, the applicant maintained *inter alia* that the decision of the Director of Fiscal Services for Val-de-Marne was nothing short of a suspension measure which that official had no authority to take.

In support of his second appeal the applicant also claimed that the Decree of 10 July 1978 had been signed by an authority lacking jurisdiction, in as much as the Director General of Taxes had no legal authority, according to the applicant, to delegate to the head of the personnel division of the General Directorate of Taxes,

who had signed the decision complained of, a prerogative which he did not possess in his own right and which he exercised by virtue of a ministerial delegation of signature.

Furthermore, the applicant argued that the two impugned decisions also deserved to be annulled because they made no reference to serious misconduct which, under the terms of Article 32 of the General Conditions of Employment of Civil Servants, was the only possible justification for a suspension measure.

Before the Administrative Court, the administration submitted that the applicant's two appeals should be rejected.

It was on the basis of the complaint lodged on 8 September 1978 by the Minister for the Budget, alleging acceptance of bribes by a civil servant, that the applicant was sentenced by the Paris Regional Court on 22 June 1979 to a term of imprisonment of three years, with 18 months suspended, and to payment of a fine of 30,000 FF, as well as deprivation for a period of 18 years of the rights enumerated in Article 42 of the Criminal Code. The applicant did not appeal against this judgment.

Following his release, the applicant was once again suspended from his duties by virtue of an order of 6 August 1979.

In a note dated 27 August 1979, the central administration had made known its decision to commence disciplinary proceedings against the applicant.

The disciplinary council, or more precisely joint administrative committee No. 2 of the external service of the General Directorate of Taxes, meeting as a disciplinary body, expressed its opinion on 30 October 1979. This opinion went against the applicant and the penalty of dismissal with suspension of pension rights was subsequently imposed on him by a Ministerial Decree of 4 December 1979, on the ground that he had been guilty of a dereliction of duty for financial gain.

The applicant lodged a third appeal on 4 February 1980, this time against the decision of 4 December 1979 by which the Minister for the Budget had ordered his dismissal with suspension of his pension rights. He alleged in particular that the disciplinary decision in question was based exclusively on the reasons for a decision by the criminal court whereas the applicant had always contested the facts found, that the said decision had also failed to take into account the autonomy of the disciplinary regulations applicable to civil servants and of criminal law and that the Minister had contented himself with merely referring to the opinion of the joint administrative committee.

The Administrative Court of Paris heard the three appeals and, in a decision of 20 March 1981, rejected them.

The applicant appealed against this decision to the Conseil d'Etat, which on 22 December 1982 gave a decision rejecting the applicant's appeal. This was notified on 2 February 1983.

Finally, in response to a request by the Commission for additional information on questions of fact, the parties provided the following details:

— the amounts deducted from the applicant's salary from the date of his establishment in the Civil Service to the date of his dismissal by Ministerial Decree of 4 December 1979 totalled 42.512.47 FF;

— if the applicant's dismissal had not been accompanied by the suspension of his pension rights, he would have been able to lay claim, on the date of his official disestablishment, to a pension for which the date of eligibility would have been deferred to his 60th birthday, on 20 August 1982. In view of his 36 years and 25 days of effective civilian and military service, together with an additional two years and nine months of active service benefit, the applicant would have obtained a pension equivalent to 68% of the salary indicated by the gross index of 780 on the salary scale, corresponding to the grade of Central Inspector of Taxes, 9th step.

At 20 August 1982, the pension in question would have been fixed at 89,604.96 FF *per annum*. It would have amounted to 114,441.28 FF *per annum* since 1 March 1987. His wife currently receives the sum of 4,768.38 FF per month, which is one half of the above-mentioned amount:

— the amount of the monthly pension to which the applicant would have been entitled (rate of 50%) at 1 September 1987 (the first day of the month following his 65th birthday), if he had been retroactively affiliated to the general social security scheme, would have been 3,782.63 FF.

COMPLAINTS

The applicant's complaints may be summarised as follows:

The applicant's principal allegation concerns the violation of Article 6, but he also alleges violations of Articles 7 and 8 of the Convention and Article 1 of Protocol No. 1.

He considers that he was not given a fair hearing by either the disciplinary authorities or the administrative courts, which did no more than ratify the decision taken by the criminal court, that is to say the Regional Court of Paris, in imposing a disciplinary sanction. In particular, the rights of the defence were not safeguarded.

The applicant relies on Articles 7 and 8 of the Convention and Article 1 of Protocol No. 1, inasmuch as this case involved the suspension of pension rights already acquired by the applicant. This suspension of pension rights can be defined as having the effect of an expropriation without compensation since it involves a deprivation of acquired rights with no reimbursement of paid contributions.

To sum up, the applicant is currently deprived of all means of support. He is not receiving any pension. In the eyes of the Administration, the applicant is practically deceased. His wife draws 50% of the pension which he ought to receive from the Administration.

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THE LAW

The applicant complains of the decision by which the Minister for the Budget ordered his dismissal, with suspension of pension rights, from the post he occupied within the tax administration, and alleges in this connection a violation of Article 6 para. 1 and Articles 7 and 8 of the Convention and of Article 1 of Protocol No. 1.

1. As regards the complaints based on Article 6 of the Convention, the applicant considers that he was denied a fair hearing by both the disciplinary authorities and the administrative courts which, he claims, confined themselves to relying on the reasons given in the judgment of the criminal court as a basis for the disciplinary sanction.

Before the Commission, the applicant has argued first of all that the disciplinary proceedings in this case constituted an extension of the criminal proceedings, inasmuch as the acceptance of bribes by a civil servant is an offence covered by Articles 117 *et seq.* of the Criminal Code and that he was brought before the criminal court on those grounds. Consequently, in the applicant's view, a case could indisputably be made out for the argument that the charges against him were criminal in nature.

In addition, the applicant has asserted that this was a dispute concerning civil rights and obligations, inasmuch as the decisions of the administrative courts which ruled on his appeal were decisive for his right to receive a pension, a right which he considers to be of a private nature, going beyond the bounds of a mere benefit, and thus constituting a civil right within the meaning of the above-mentioned provision of the Convention.

In the Government's view, the dispute is not covered by Article 6 of the Convention. On the one hand, it concerns disciplinary and administrative proceedings which incidentally gave rise to a criminal prosecution; on the other hand, a dispute concerning the dismissal of a civil servant falls outside the scope of the above-mentioned provision of the Convention, and the suspension of pension rights is merely intended to abolish a benefit granted by the State to its public servants in consideration of services rendered, without infringing a civil right.

On the assumption that Article 6 of the Convention applies to this case, the question which the Commission has to consider is whether the applicant was given a fair hearing within the meaning of that provision of the Convention.

The applicant complains essentially that the rights of the defence were disregarded since the disciplinary sanction imposed on him by Ministerial Decree was based solely and exclusively on the reasons given in the decision handed down by the criminal court. It is true — as is apparent from the decisions of the administrative courts, in particular the judgment of the Conseil d'Etat of 22 December 1982 — that the Decree by virtue of which the Minister for the Budget imposed on the applicant the sanction of dismissal with suspension of his pension rights is based on the fact that the Paris Regional Court found him guilty of accepting bribes in his capacity as a civil servant and convicted him on those grounds, this being a form of misconduct which at the disciplinary level is defined as dereliction of duty for financial gain.

However, there is nothing in the file to suggest that the procedural guarantees set out in Article 6 of the Convention were not respected in the criminal proceedings. Moreover, the applicant does not dispute this fact before the Commission, nor did he dispute it in the domestic proceedings as he could have done by lodging an appeal against the judgment of the Paris Regional Court which had found him guilty and convicted him.

The Commission notes in this regard that certain States — such as France — recognise the principle of the "binding effect of a judgment delivered by a criminal court". According to this principle, in a "non-criminal" dispute based on the same facts as the criminal proceedings, the civil court must abide by the findings of the criminal court, when such findings constituted the "necessary support" for the latter's decision. In the present case, therefore, the Commission sees no grounds for criticism of the fact that the administrative court applied this principle.

The Commission concludes from this that the fact that the administrative courts based themselves on the existence of material facts established in the context of uncontested criminal proceedings cannot infringe the principle of a fair hearing as defined in Article 6 para. 1 of the Convention. Moreover, there is nothing in the file to support the contention that the principle of a fair hearing was disregarded in the proceedings before the administrative courts.

It follows that the applicant's complaints on this point are manifestly ill-founded and must be rejected in accordance with Article 27 para. 2 of the Convention.

2. The applicant also maintains that the suspension of pension rights can be defined as having the effect of an expropriation without compensation, inasmuch as it involves a deprivation of acquired rights with no reimbursement of paid contributions. He alleges that this deprivation amounts to a deprivation of property, and in this regard he relies on Article 1 of Protocol No. 1, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public

interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

In the present case, the applicant was deprived of his pension rights on the basis of Article L58 of the Code on civilian and military retirement pensions, which provides that "the right to obtain or benefit from a pension or disablement annuity shall be suspended: by dismissal with suspension of pension rights".

According to the Government, the deprivation of pension rights does not mean that the applicant was partially dispossessed of his property.

In the light of the arguments developed by the Government, it has to be noted that, in the absence of dependants, the administration is obliged to take steps *ex officio* to secure the retroactive affiliation of a former civil servant to the general social security scheme. In short, the procedure in such a case is one of transfer from one social welfare scheme to another. However, if the penalised civil servant has dependants, Article L60 of the pensions code provides that, during the period of suspension, they should receive a pension equivalent to 50% of that which the person concerned would have drawn, for the sake of ensuring their subsistence. It should be noted in this connection that the benefit received by the dependent person is a direct offshoot of the rights acquired by the penalised civil servant.

This rule has worked to the benefit of the applicant's wife who is currently receiving a pension on account of her husband.

The applicant vigorously disputes the point of view expressed by the Government, as he considers that he has been deprived of his possession. He emphasises that a pension cannot today be considered as a benefit awarded at the end of a career. In his view, it is a contractual entitlement, the basis of which lies in the contract under which the civil servant is bound not to engage in any other activity, the contributions paid and the deductions from salary.

The question whether the pension entitlement may be considered a possession within the meaning of Article 1 of Protocol No. 1 has already been examined by the Commission in earlier cases (cf. No. 4130/69, Dec. 20.7.71, Yearbook 14 pp. 224, 250). In that case, however, the Commission had concluded that Article 1 of Protocol No. 1 was inapplicable because, under the domestic legislation, a person did not have, at any given moment, an identifiable share in the fund claimable by him.

The present case concerns a civil servant employed by the French administration whose pension is defined as a contractual right. However, this right is not unconditional.

Indeed, the right of civil servants to obtain a pension may be suspended under certain conditions listed in the pensions code applicable to them, including cases where a civil servant is found guilty of offences connected with the exercise of his duties.

It follows that the right to obtain a pension is a conditional right and that any civil servant may expect this right to be withdrawn when he is convicted of one of the above-mentioned offences.

In this connection, the Commission refers, *mutatis mutandis*, to the reasoning it has adopted on several occasions in cases concerning the withdrawal of licences to engage in certain economic activities. It has found that the granting of such licences is often made subject to certain conditions and that they may be withdrawn if those conditions cease to be fulfilled, without prejudice to the property right of the licence-holder. In the Commission's view, the licence-holder cannot be considered to have a legitimate and reasonable expectation of pursuing his activities if the conditions for the grant of the licence are no longer fulfilled and if the withdrawal is effected in accordance with the legislation in force at the time the licence was granted (cf. No. 10438/83, Dec. 3.10.84, D.R. 41 p. 170; and No. 10426/83, Dec. 5.12.84, D.R. 40 p. 234).

The Commission considers that a similar line of reasoning is applicable to the present case. The applicant was convicted of an offence which, under the statutory provisions in force throughout the period of the applicant's service, could have given rise to the withdrawal of his pension entitlement. In view of the conditions attached to that entitlement, its suspension does not therefore interfere with any property right protected under Article 1 of Protocol No. 1.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 27 para. 2 of the Convention.

3. Finally, as to the remainder of the application, namely the alleged violation of Articles 7 and 8 of the Convention, the Commission notes that the applicant puts forward no argument capable of supporting his complaints. Consequently, the remainder of the application must be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.