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

CASE OF DAUD v. PORTUGAL

(11/1997/795/997)

JUDGMENT

STRASBOURG

21 April 1998

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SUMMARY[1]

Judgment delivered by a Chamber

Portugal – conduct of criminal proceedings against an alien, in particular effectiveness of officially assigned legal assistance and quality of interpreting

I. ARTICLE 6 §§ 1 AND 3 (c) AND (e) OF THE CONVENTION

A. Legal assistance

Intended outcome of Article 6 § 3 (c) had not been achieved in the instant case as accused had not had benefit of practical and effective defence.

Necessary to ascertain whether it had been for relevant authorities, while respecting the fundamental principle of the independence of the Bar, to act so as to ensure that the applicant received the effective benefit of his right, which they had acknowledged – the manifest shortcoming on the part of an officially assigned lawyer and the refusal of applications made by applicant himself had required that the Lisbon Criminal Court should not have remained passive.

Conclusion: violation (unanimously).

B. Interpreting

No submissions made to Court by either the applicant or the Government or the Delegate of the Commission on question whether there had been a violation of Article 6 §§ 1 and 3 (e).

Conclusion: no need to rule on complaint (unanimously).

II. ARTICLE 50 OF THE CONVENTION

Non-pecuniary damage: sufficiently compensated by judgment.

Conclusion: finding of violation constituted sufficient just satisfaction (unanimously).

COURT'S CASE-LAW REFERRED TO

13.5.1980, Artico v. Italy; 9.4.1984, Goddi v. Italy; 19.12.1989, Kamasinski v. Austria; 28.8.1991, F.C.B v. Italy; 24.11.1993, Imbrioscia v. Switzerland

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

In the case of Daud v. Portugal[2],

Notes by the Registrar

2. The case is numbered 11/1997/795/997. 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

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 B[1], as a Chamber composed of the following judges:

Mr F. GÖLCÜKLÜ, *President*,
Mr C. RUSSO,
Mr I. FOIGHEL
Sir John FREELAND,
Mr M.A. LOPES ROCHA,
Mr L. WILDHABER,
Mr J. MAKARCZYK,
Mr J. CASADEVALL,
Mr P. VAN DIJK,

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

Having deliberated in private on 27 January and 30 March 1998,

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 20 January 1997 and by the Government of the Republic of Portugal ("the Government") on 31 March 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 22600/93) against Portugal lodged with the Commission under Article 25 by an Argentinian national, Mr Juan Carlos Daud, on 5 March 1993. The applicant died on 4 August 1995. On 23 January 1996 the Commission accepted that, as heir, the applicant's father, likewise named Juan Carlos Daud, had *locus standi* to take his son's place.

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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.

1. Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning States bound by Protocol No. 9.

The Government's application and the Commission's request referred to Articles 44 and 48 and to the declaration whereby Portugal recognised the compulsory jurisdiction of the Court (Article 46). The object of the application and 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 §§ 1 and 3 (c) and (e) of the Convention.

2. In response to the enquiry made in accordance with Rule 35 § 3 (d) of Rules of Court B, the applicant's father stated that he wished to take part in the proceedings and designated the lawyer who would represent him, namely Mr E.S. Romero of the Madrid Bar (Rule 31).

3. The Chamber to be constituted included *ex officio* Mr M.A. Lopes Rocha, the elected judge of Portuguese nationality (Article 43 of the Convention), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 § 4 (b)). On 21 February 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 F. Gölcüklü, Mr R. Macdonald, Mr C. Russo, Sir John Freeland, Mr L. Wildhaber, Mr K. Jungwiert and Mr P. van Dijk (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the Government, Mr A. Henriques Gaspar, the applicant's father's lawyer and the Delegate of the Commission, Mr I. Cabral Barreto, on the organisation of the proceedings (Rules 39 § 1 and 40). Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 17 September 1997 and the Government's memorial on 19 September 1997. On 1 December counsel for Mr Daud senior filed a claim for just satisfaction.

5. On 28 November 1997 the Chamber had decided to dispense with a hearing in the case, having satisfied itself that the conditions for this derogation from its usual procedure had been met (Rules 27 and 40).

6. After fresh consultations on the organisation of the further proceedings, the President of the Chamber invited the Government and the applicant's representative to submit memorials in reply. Pursuant to the order made in consequence, the Agent of the Government submitted his observations on the applicant's claim under Article 50 of the Convention on 11 December 1997. Counsel for the applicant's father did not submit any comments. On 20 January 1998 the Secretary to the Commission sent the Registrar the observations of the Delegate.

7. In the meantime, on 1 December 1997, the Commission had produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

8. On 7 January 1998 Mr Bernhardt, who was unable to take part in the further consideration of the case, was replaced as President of the Chamber by Mr Gölcüklü (Rule 21 § 6, second sub-paragraph) and as a member of the Chamber by Mr J. Makarczyk, substitute judge (Rules 22 § 1 and 24 § 1). As Mr Macdonald and Mr Jungwiert were unable to take part in the deliberations on 30 March 1998, they were replaced by Mr J. Casadevall and Mr I. Foighel, substitute judges, respectively (Rules 22 § 1 and 24 § 1).

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. At the time of lodging his application with the Commission in 1993 Mr Daud, an Argentinian citizen born in 1944, was in prison at Vale de Judeus (Portugal). On 4 August 1995 he died in Caxias prison hospital.

10. On 10 March 1992 the applicant, as he arrived from Rio de Janeiro, was arrested at Lisbon Airport; he was carrying a false passport and a suitcase containing 1.5 kg of cocaine.

A. The preliminary inquiries

11. On 11 March 1992 the judge of the Lisbon Criminal Investigation Court (*tribunal de instrução criminal*) to whom the case had been allocated interviewed Mr Daud in the presence of an officially assigned lawyer and an interpreter, Mr C.M., an educational and welfare counsellor working in the police criminal investigation department. After verifying that the applicant had been arrested lawfully, the judge ordered that he should be detained pending trial.

12. On 9 July 1992 the Supreme Court (*Supremo Tribunal de Justiça*) refused an application for a writ of habeas corpus made by the applicant in person.

13. On 9 October 1992 the public prosecutor made his submissions. These were served on the lawyer on 12 October and on the applicant on the 13th.

14. On 15 October 1992 Mr Daud himself requested that a judicial investigation should be commenced. On 26 October the investigating judge, citing Article 92 § 1 of the Code of Criminal Procedure, refused the request, on the ground that it did not satisfy the minimum formal requirements laid down by law, in particular because it was written in Spanish.

15. On 16 November 1992 the file, together with the public prosecutor's submissions, was sent to the Third Division of the Lisbon Criminal Court (*tribunal criminal*).

B. The trial and appeal proceedings

1. In the Lisbon Criminal Court

16. In an order of 30 November 1992 that was served on Mr Daud on 9 December the judge in charge of the case set it down for hearing on 26 January 1993. He also ordered that the applicant should remain in detention pending trial.

17. In a letter of 15 December 1992, which was registered on 22 December, the applicant asked the court to hear a number of witnesses and to order an examination of the suitcase in issue, which he denied was his. He also sought the assistance of an interpreter other than Mr C.M. and asked to meet his officially assigned lawyer, who had not yet contacted him.

18. In an order of 22 December the judge in charge of the case, citing Article 92 § 1 of the Code of Criminal Procedure, declined to consider the application, on the grounds that it was "difficult to read", written in Spanish and unaccompanied by any translation.

19. On 14 January 1993 the officially assigned lawyer asked to be relieved of her duties on health grounds. On 18 January 1993 the judge assigned another lawyer, Ms C.G. Mr Daud was notified of that order on 23 January 1993.

20. The trial began on 26 January 1993 with an interpreter, Mr E.P., present and continued on 1 February 1993. At those hearings the court heard witnesses and, at the request of the officially assigned lawyer, formally identified the suitcase.

21. On 8 February 1993, the court sentenced the applicant to nine years' imprisonment for drug trafficking and using a false passport and made an order for costs against him.

2. In the Supreme Court

22. On the very same day that he was convicted, the applicant, represented by his officially assigned lawyer, appealed to the Supreme Court. In his pleadings, drawn up and submitted by Ms C.G., he complained that the court below had not acceded to his request for a judicial investigation. In his submission, the investigating judge had misinterpreted the relevant provisions of the Code of Criminal Procedure; his refusal to consider the request and the lack of an investigation rendered the proceedings null and void.

23. In a judgment of 30 June 1993 the Supreme Court, relying on Article 412 of the Code of Criminal Procedure, held that the appeal was inadmissible on account of an inadequate presentation of the grounds. The submissions did not indicate either the statutory provisions that had allegedly been contravened or the way in which, in the appellant's view, they should have been interpreted or applied.

II. RELEVANT DOMESTIC LAW

A. The Constitution

24. Article 20 of the Constitution provides:

> "1. Access to the law and to the courts to defend one's rights and legitimate interests is guaranteed to all. Justice cannot be refused for lack of financial resources.
>
> 2. Everyone is entitled, in accordance with the law, to information, legal advice and legal aid."

25. Article 32 § 3 of the Constitution provides:

> "Every person charged with a criminal offence is entitled to choose a legal representative and to be assisted by him in all procedural steps. The law shall lay down the circumstances in which and the stages at which such assistance is compulsory."

B. The Code of Criminal Procedure

26. The relevant provisions of the Code of Criminal Procedure are the following:

Article 62

> "1. The accused may instruct counsel at any stage of the proceedings.
>
> 2. Where it is provided by law that the accused must be represented and the accused has not appointed or does not propose to appoint a person to defend him, the judge shall assign one officially, preferably a member or trainee member of the Bar; but the officially assigned representative shall cease to have authority to act if the accused instructs counsel of his own choosing.
>
> …"

Article 63 § 2

"The accused may revoke any act carried out on his behalf by the person defending him, provided that he expressly declares that intention before any decision has been taken in respect of the act in question."

Article 64

"1. The assistance of a representative is compulsory

(a) when an accused in custody is first examined by the judge;

(b) during the investigation and at the hearing, except in proceedings which cannot entail a custodial sentence or a preventive measure;

(c) for any step in the proceedings if the accused is deaf, dumb or illiterate or does not know Portuguese, if he is under the age of 21 or if the issue of his lack of criminal responsibility or his diminished responsibility has been raised;

…

2. Other than in the cases provided for in the preceding paragraph, the court may, of its own motion or upon an application by the accused, assign a person to assist the accused where, having regard to the circumstances of the case, it considers that it is necessary or advisable that the accused should be assisted."

Article 66

"1. Where a representative is assigned officially, the accused shall be notified of the fact if he was not present at the material time.

2. The officially assigned representative may be excused from assisting the accused if he puts forward a ground that the court considers valid.

3. The court may replace the officially assigned representative at any time on an application by the accused that contains a valid ground.

4. Until such time as he is replaced, an officially assigned representative shall continue to act in respect of subsequent steps in the proceedings.

5. The representative shall always be remunerated for his services; the terms and the amount shall be determined by the court, within the limits laid down in a scale approved by the Ministry of Justice or, failing that, in the light of the fees normally paid for services of a similar nature and of equal importance.

Payment shall be the responsibility of, as the case may be, the accused, the *assistente*, the civil parties or the Ministry of Justice."

Article 67

"…

2. If the representative is replaced during the judicial investigation or the hearing, the court may, of its own motion or on an application by the new representative, grant a pause to enable the new representative to consult with the accused and study the file.

3. Instead of the pause mentioned in the preceding paragraphs the court may decide, where absolutely necessary, to adjourn the relevant step in the proceedings or the hearing, provided, however, that such an adjournment shall not exceed five days."

Article 92

"1. To be valid, all steps in the proceedings, whether written or oral, must be made in Portuguese.

2. Where a person who cannot understand or speak Portuguese has to take part in proceedings, an appropriate interpreter shall be appointed free of charge…

3. An interpreter shall likewise be appointed if it proves necessary to translate a document in a foreign language which is not accompanied by a certified translation.

…"

Article 98 § 1

"An accused, even if at liberty, may submit observations, pleadings or applications at any stage of the proceedings, even if they are not signed by his representative, provided that they relate to the subject matter of the proceedings or are intended to protect his fundamental rights. Such observations, pleadings or applications shall always be placed in the case file."

Article 286

"1. The purpose of the judicial investigation shall be to provide judicial confirmation of the indictment or of the decision whereby proceedings in the case have been discontinued, so that the case may go to trial or not.

2. The judicial investigation shall be optional…"

Article 287

"1. A judicial investigation may be applied for within five days from the serving of the indictment or of the decision to discontinue the proceedings

(a) by the accused, in relation to facts covered by the indictment drawn up by the public prosecutor's office, or by the *assistente* if the criminal proceedings have been brought by the latter;

(b)…

2. Such an application may only be dismissed if it is out of time, if the judge has no jurisdiction or if a judicial investigation is statutorily inadmissible.

3. The application shall not have to satisfy any formal requirements but it must contain a summary of the reasons of fact and law for challenging the indictment or the failure to bring an indictment, together with, if appropriate, some indication either of the judicial investigation measures which the applicant would like to see taken and of any evidence not considered during the preliminary inquiries or of facts which it is hoped to prove by such means."

Article 412

"1. The pleadings shall set forth in detail the grounds of appeal and end with submissions, set out point by point, in which the appellant summarises the reasons for his appeal.

2. If the reasons concern the law, the submissions shall also indicate the following, failing which the appeal shall be dismissed:

(a) the legal provisions that have been infringed;

…"

C. Legislative Decree no. 387-B/87 of 29 December 1987

27. The relevant provisions of Decree no. 387-B/87 of 29 December 1987 are the following:

Article 42

"The appointment of an officially assigned representative and his withdrawal, replacement and remuneration shall be governed by the Code of Criminal Procedure…"

Article 43

"The judicial authority responsible for assigning the representative shall request the Bar Council competent for the district concerned to nominate a member or trainee member of the Bar for official assignment; where it considers it appropriate, it may ask the Bar to nominate only a member of the Bar.

The Bar Council shall make the required nomination within five days.

Where no such nomination is made …, the judicial authority may appoint a representative as it sees fit."

PROCEEDINGS BEFORE THE COMMISSION

28. Mr Daud applied to the Commission on 5 March 1993. Relying on Article 6 §§ 1 and 3 (c) and (e) of the Convention, he complained that he had not had a fair hearing, owing, in particular, to the inadequate legal assistance he had received, the shortcomings of his officially assigned lawyer, the refusal of his application for a judicial investigation and his application to bring evidence and the poor quality of the interpreting at the hearing. He also complained that the Portuguese authorities had made him pay the costs of the interpreting and that they had interfered with the exercise of his right to respect for his correspondence with the Commission.

29. On 28 June 1995 the Commission declared the complaint concerning the fairness of the proceedings admissible and the remainder of the application (no. 22600/93) inadmissible. In its report of 2 December 1996 (Article 31), it expressed the opinion by twenty-six votes to three that there had been a violation of Article 6 § 3 (c) taken together with Article 6 § 1 but not of Article 6 § 3 (e) taken together with Article 6 § 1 (twenty-seven votes to two) . The full text of the Commission's opinion and of the two dissenting opinions contained in the report is reproduced as an annex to this judgment[11].

FINAL SUBMISSIONS TO THE COURT

30. In their memorial the Government asked the Court to hold that there had not been a violation of Article 6 § 3 (c) of the Convention.

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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.

31. The applicant's representative asked the Court to hold that there had been a violation of Article 6 § 3 (c) taken together with Article 6 § 1 and to assess the compensation to which the family of the late Juan Carlos Daud was entitled for the damage sustained.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (c) AND (e) OF THE CONVENTION

32. Mr Daud complained that he had been denied a fair trial on account of inadequate legal assistance, the shortcomings of his officially assigned lawyers and the refusal of his application for a judicial investigation and of his application to submit evidence. He also criticised the quality of the interpreting during the proceedings. In support of his complaints he relied on paragraphs 1 and 3 (c) and (e) of Article 6 of the Convention, which provide:

> "1. In the determination of … any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law…
>
> …
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> …
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> …
>
> (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

33. As the requirements of paragraph 3 of Article 6 are to be seen as particular aspects of the right to a fair trial guaranteed by paragraph 1, the Court will examine the applicant's complaints successively under sub-paragraphs (c) and (e) of paragraph 3 without isolating that paragraph from the common core to which it belongs (see, among many other authorities,

the Artico v. Italy judgment of 13 May 1980, Series A no. 37, p. 15, § 32, and the F.C.B. v. Italy judgment of 28 August 1991, Series A no. 208-B, p. 20, § 29).

A. Legal assistance

34. In the applicant's submission, the lawyers assigned to him by the Portuguese authorities by way of legal assistance, particularly the first one, did not provide him with effective legal assistance in preparing and conducting his defence, so that he was obliged to apply in person, but unsuccessfully, to the investigating judge and subsequently to the Criminal Court. The refusal to initiate judicial investigation proceedings had seriously infringed his rights. Seeing that he was a foreigner, he should have been given appropriate assistance.

35. The Commission agreed in substance.

36. The Government, on the other hand, maintained that the obligation to provide legal assistance had been discharged by appointing and replacing the officially assigned lawyers and paying their fees. A replacement had been appointed as soon as the circumstances had required. The applicant had never informed the judge of any shortcomings on the part of his representative or asked for a different one. The second lawyer, appointed on 18 January 1993, had not sought any extra time to study the file. The authorities could not go beyond appointing counsel and replacing him if the defence was manifestly inadequate. They could never aim to rectify any technical or procedural errors. Lastly, the domestic courts' refusal of the applicant's requests and, more particularly, the lack of any judicial investigation had in no way impaired the fairness of the trial, as the defendant had been able to adduce the same evidence at the trial as he would have been able to do during a judicial investigation.

37. The Court will consider together, as the Commission did, the general complaint concerning the lack of adequate legal assistance and the more particular complaint that Mr Daud's applications were refused by the investigating judge and the court (see paragraphs 14 and 18 above).

38. The Court reiterates that the Convention is designed to "guarantee not rights that are theoretical or illusory but rights that are practical and effective, and that assigning counsel does not in itself ensure the effectiveness of the assistance he may afford an accused" (see the Imbrioscia v. Switzerland judgment of 24 November 1993, Series A no. 275, p. 13, § 38). "Nevertheless, a State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal aid purposes... It follows from the independence of the legal profession from the State that the conduct of the defence is essentially a matter between the defendant and his counsel, whether counsel be appointed under a legal aid scheme or be privately financed... [T]he competent national

authorities are required under Article 6 § 3 (c) to intervene only if a failure by legal aid counsel to provide effective representation is manifest or sufficiently brought to their attention in some other way" (Kamasinski v. Austria judgment of 19 December 1989, Series A no. 168, p. 33, § 65).

39. In the instant case the starting-point must be that, regard being had to the preparation and conduct of the case by the officially assigned lawyers, the intended outcome of Article 6 § 3 was not achieved. The Court notes that the first officially assigned lawyer, before reporting sick, had not taken any steps as counsel for Mr Daud, who tried unsuccessfully to conduct his own defence. As to the second lawyer, whose appointment the applicant learned of only three days before the beginning of the trial at the Criminal Court, the Court considers that she did not have the time she needed to study the file, visit her client in prison if necessary and prepare his defence. The time between notification of the replacement of the lawyer (23 January 1993 – see paragraph 19 above) and the hearing (26 January 1993 – see paragraph 20 above) was too short for a serious, complex case in which there had been no judicial investigation and which led to a heavy sentence. The Supreme Court did not remedy the situation, since in its judgment of 30 June 1993 it declared the appeal inadmissible on account of an inadequate presentation of the grounds (see paragraph 23 above).

Mr Daud consequently did not have the benefit of a practical and effective defence as required by Article 6 § 3 (c) (see the Goddi v. Italy judgment of 9 April 1984, Series A no. 76, p. 11, § 27).

40. The Court must therefore ascertain whether it was for the relevant authorities, while respecting the fundamental principle of the independence of the Bar, to act so as to ensure that the applicant received the effective benefit of his right, which they had acknowledged.

41. The Court notes, firstly, that the application for a judicial investigation made by the applicant on 15 October 1992 was refused by the investigating judge on the principal ground that it was written in Spanish (see paragraphs 9–10 and 14 above). The application of 15 December, in which the applicant asked the court to carry out certain investigative measures, was refused by the judge in charge of the case for the same reason (see paragraphs 17 and 18 above). Those refusals themselves did not affect the fairness of the trial, since the various investigative measures sought by the applicant were carried out during the trial.

42. In his letter of 15 December 1992, after more than eight months had elapsed, the applicant also asked the court for an interview with his lawyer, who had still not contacted him (see paragraph 17 above). Because the letter was written in a foreign language, the judge disregarded the request. Yet the request should have alerted the relevant authorities to a manifest shortcoming on the part of the first officially assigned lawyer, especially as

the latter had not taken any step since being appointed in March 1992. For that reason, and having regard to the refusal of the two applications made during the same period by the defendant himself, the court should have inquired into the manner in which the lawyer was fulfilling his duty and possibly replaced him sooner, without waiting for him to state that he was unable to act for Mr Daud. Furthermore, after appointing a replacement, the Lisbon Criminal Court, which must have known that the applicant had not had any proper legal assistance until then, could have adjourned the trial on its own initiative. The fact that the second officially assigned lawyer did not make such an application is of no consequence. The circumstances of the case required that the court should not remain passive.

43. Taken as a whole, these considerations lead the Court to find a failure to comply with the requirements of paragraph 1 in conjunction with paragraph 3 (c) of Article 6 from the stage of the preliminary inquiries until the beginning of the hearings before the Lisbon Criminal Court. There has therefore been a violation of those provisions.

B. Interpreting

44. In his application to the Commission the applicant complained also of the poor quality of the interpreting during the proceedings.

45. The Court notes that no submissions were made to it by either the applicant or the Government or the Delegate of the Commission on the question whether there had been a violation of paragraph 1 in conjunction with paragraph 3 (e) of Article 6. It does not deem it necessary to consider the issue of its own motion.

II. APPLICATION OF ARTICLE 50 OF THE CONVENTION

46. 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."

47. The applicant's father sought 21,700,000 escudos in respect of non-pecuniary damage sustained by his son on account of the breach of Article 6 § 3 (c).

48. The Government considered that the claim was unfounded, as there was no causal link between any violation and the damage pleaded. A

finding of a violation would in itself constitute sufficient just satisfaction.

49. The Delegate of the Commission submitted that in dealing with this claim, the Court should be guided by the principles it had identified in the Artico judgment (see the judgment cited above, pp. 21–22, §§ 47–48).

50. The Court holds that the non-pecuniary damage is sufficiently compensated by the finding of a violation.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of paragraph 1 in conjunction with paragraph 3 (c) of Article 6 of the Convention;

2. *Holds* that it is unnecessary to determine whether there has been a violation of paragraph 1 in conjunction with paragraph 3 (e) of Article 6 of the Convention;

3. *Holds* that the present judgment in itself constitutes sufficient just satisfaction for the non-pecuniary damage sustained.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 21 April 1998.

Signed: Feyyaz GÖLCÜKLÜ
President

Signed: Herbert PETZOLD
Registrar