



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

**CASE OF PIERRE-BLOCH v. FRANCE**

**(120/1996/732/938)**

JUDGMENT

STRASBOURG

21 October 1997

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SUMMARY<sup>1</sup>

Judgment delivered by a Chamber

*France – proceedings before the Constitutional Council, sitting as body that adjudicates election disputes in respect of members of Parliament*

## I. ARTICLE 6 § 1 OF THE CONVENTION

Fact that proceedings have taken place before a constitutional court does not suffice to remove them from ambit of Article 6 § 1 – it had to be ascertained whether the ones in the instant case had related to “the determination of ... civil rights and obligations” or of a “criminal charge”.

**A. Whether there had been a “*contestation*” (dispute) over “civil rights and obligations”**

Not in issue that there had been a “*contestation*”.

The right to stand for election to the National Assembly and keep one’s seat was a political one and not a “civil” one, so that disputes relating to the arrangements for the exercise of it lay outside the scope of Article 6 § 1 – the pecuniary interests also at stake in the proceedings did not make them “civil” ones.

**B. Whether there had been a “criminal” charge**

Not disputed that there had been a “charge” – Court applied the three criteria laid down in its case-law in order to determine whether the “charge” had been a criminal one.

*1. Legal classification of offence in French law and very nature of it*

Relevant provisions belonged not to French criminal law but to financing and capping of election expenditure and therefore to electoral law – nor could breach of a legal rule governing such a matter be described as “criminal” by nature.

*2. Nature and degree of severity of penalty*

*Disqualification*: penalty directly one of the measures designed to ensure proper conduct of parliamentary elections and thus lay outside the “criminal” sphere – limited to a period of one year from date of election and applicable only to election in question.

*Obligation to pay Treasury a sum equal to amount of excess*: related to amount by which Constitutional Council had found ceiling to have been exceeded, a fact which appeared to show that it was in the nature of a payment to community of sum of which the candidate had improperly taken advantage to seek votes of his fellow citizens and that it formed part of measures designed to ensure proper conduct of parliamentary elections – differed in several respects from criminal fines in the strict sense.

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

*Penalties provided in Article L. 113-1 of Elections Code:* not in issue, as no proceedings had been brought against applicant on that basis.

*Conclusion:* Article 6 § 1 not applicable (seven votes to two).

## II. ARTICLE 14 OF THE CONVENTION

Complaint of discrimination on the ground of political opinions not reiterated by applicant either in his memorial or at hearing – furthermore, no issue can in principle arise under Article 14 taken in isolation.

*Conclusion:* unnecessary to rule on complaint (unanimously).

## III. ARTICLE 13 OF THE CONVENTION

Right of recourse guaranteed in Article 13 can only relate to a right protected by the Convention.

*Conclusion:* Article 13 not applicable (seven votes to two).

### COURT'S CASE-LAW REFERRED TO

8.6.1976, Engel and Others v. the Netherlands; 18.7.1994, Karlheinz Schmidt v. Germany; 9.12.1994, Schouten and Meldrum v. the Netherlands; 22.2.1996, Putz v. Austria; 17.3.1997, Neigel v. France; 1.7.1997, Pammel v. Germany

**In the case of Pierre-Bloch v. France<sup>1</sup>,**

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<sup>2</sup>, as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,

Mr F. MATSCHER,

Mr L.-E. PETTITI,

Mr J. DE MEYER,

Mr J.M. MORENILLA,

Sir John FREELAND,

Mr M.A. LOPES ROCHA,

Mr J. MAKARCZYK,

Mr U. LÖHMUS,

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

Having deliberated in private on 3 June and 29 September 1997,

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 16 September 1996, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 24194/94) against the French Republic lodged with the Commission under Article 25 by a French national, Mr Jean-Pierre Pierre-Bloch, on 6 April 1994.

The Commission’s request 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 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 Articles 6 § 1, 13 and 14 of the Convention.

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### *Notes by the Registrar*

1. The case is numbered 120/1996/732/938. The first number is the case’s position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case’s position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules 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.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included *ex officio* Mr L.-E. Pettiti, the elected judge of French nationality (Article 43 of the Convention), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 § 4 (b)). On 17 September 1996, 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. Matscher, Mr C. Russo, Mr J. De Meyer, Mr J.M. Morenilla, Mr M.A. Lopes Rocha, Mr J. Makarczyk and Mr U. Löhmus (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 French Government (“the Government”), the applicant’s lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government’s and the applicant’s memorials on 21 February 1997. On 13 March 1997 the Secretary to the Commission indicated that the Delegate did not wish to reply in writing.

5. On 1 April 1997 the Commission produced a number of documents, as requested by the Registrar on the President’s instructions.

6. In accordance with the President’s decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 29 May 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*

Mr M. PERRIN DE BRICHAMBAUT, Director of Legal Affairs, Ministry of Foreign Affairs,	<i>Agent,</i>
Mr O. SCHRAMECK, Secretary-General of the Constitutional Council,	
Mrs M. MERLIN-DESMARTIS, Administrative Court judge, special adviser to the Constitutional Council,	
Mr J. LAPOUZADE, Administrative Court judge on secondment to the Legal Affairs Department, Ministry of Foreign Affairs,	
Mrs C. BROUARD, <i>magistrat</i> , special adviser to the Constitutional Council,	<i>Advisers;</i>

(b) *for the Commission*

Mr B. CONFORTI,	<i>Delegate;</i>
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(c) *for the applicant*

Ms J. ROUÉ-VILLENEUVE, of the *Conseil d'Etat*  
and Court of Cassation Bar,

*Counsel.*

The Court heard addresses by Mr Conforti, Ms Roué-Villeneuve and Mr Perrin de Brichambaut.

7. As Mr Russo was unable to take part in the deliberations on 29 September 1997, he was replaced by Sir John Freeland, substitute judge (Rules 22 § 1 and 24 § 1).

## AS TO THE FACTS

### I. CIRCUMSTANCES OF THE CASE

8. In the general election of 21 and 28 March 1993 Mr Jean-Pierre Pierre-Bloch stood as a candidate for the Union for French Democracy (*Union pour la démocratie française – UDF*) in the 19th administrative district of Paris and was elected as a member of the National Assembly.

#### **A. Examination of the applicant's election campaign accounts and the disqualification from standing for election**

##### *1. Before the National Commission on Election Campaign Accounts and Political Funding*

9. On 27 May 1993 the applicant submitted his campaign accounts to the National Commission on Election Campaign Accounts and Political Funding.

10. The National Commission gave its decision on 30 July 1993. To the expenditure of 440,603.15 French francs (FRF) declared by the applicant it added a sum of FRF 328,641.65 representing the cost of five issues of a magazine called *Demain notre Paris* (“Our Paris Tomorrow”) that was published by Mr Pierre-Bloch between November 1992 and March 1993, taking the view that “there [could] be no doubt, regard being had to their dates, frequency and, more especially, content, that the publications [had] had an undeniable electoral purpose”.

The Commission also added the cost of an opinion poll (FRF 83,020) conducted on 26 October 1992 among voters in the 19th administrative district that had been commissioned by the Union for the Republic (*Rassemblement pour la République – RPR*), on the grounds that “the main purpose of the poll [had been] to determine who was the best candidate to

put up against the outgoing Socialist member of Parliament and the poll [had shown] Mr Jean-Pierre Pierre-Bloch to be at a clear advantage, with the result that he [had been] backed by both the *UDF* and the *RPR*". The poll "also investigated voters' expectations and was therefore designed to find out how the election campaign should be slanted, since the concerns expressed by the majority were addressed at length in the published election material [referred to above]".

As it also noted that the magazine *18ème Indépendant* had campaigned in favour of three candidates, including the applicant, the National Commission added one-third of the cost of the February 1993 issue to his accounts (FRF 8,211.66).

After deducting other sums, it thus assessed the expenditure in issue at FRF 816,663.84 and rejected the applicant's campaign accounts as they exceeded the statutory ceiling by FRF 500,000. It also referred the matter to the Constitutional Council pursuant to Article 136-1 of the Elections Code.

## 2. *In the Conseil d'Etat*

11. On 8 September 1993 Mr Pierre-Bloch applied to the *Conseil d'Etat* to have the National Commission's decision quashed and reversed. His main contention was that, in breach of Article L. 52-15 of the Elections Code and the adversarial principle, the National Commission had added the cost of the opinion poll and the publications in issue to his campaign accounts without first giving him a hearing.

12. In a judgment of 9 May 1994 the *Conseil d'Etat* dismissed the application on the following grounds:

"...

The contested decision, whereby the National Commission on Election Campaign Accounts and Political Funding ... revised Mr Pierre-Bloch's campaign accounts and, having found that the maximum permitted amount of election expenditure had been exceeded, referred the matter to the Constitutional Council, cannot be separated from the proceedings thus instituted before that body. That being so, no appeal lies against the decision to the administrative courts. Mr Pierre-Bloch's application is therefore inadmissible.

..."

## 3. *Before the Constitutional Council*

### (a) **The decision of 24 November 1993**

13. Applications were made to the Constitutional Council on 8 April 1993 by a voter in the 19th administrative district, Mr M., who maintained that the applicant had exceeded the statutory maximum amount of campaign expenditure, and on 3 August 1993 by the National Commission.



14. On 8 September 1993 Mr Pierre-Bloch lodged a pleading. He asked the Constitutional Council to stay the proceedings until the *Conseil d'Etat* had ruled on the lawfulness of the National Commission's decision and, in the alternative, to hold that his campaign expenditure had not exceeded the statutory ceiling and that he should not be disqualified from standing for election.

15. In a decision of 24 November 1993 the Constitutional Council rejected Mr Pierre-Bloch's request to stay the proceedings, disqualified him from standing for election for a year from 28 March 1993 and declared that he had forfeited his seat as a member of Parliament. The decision reads as follows:

“ ...

*Mr Pierre-Bloch's request to stay the proceedings*

...

Section 44 of the Ordinance of 7 November 1958 provides: 'When ruling on cases submitted to it, the Constitutional Council has jurisdiction to consider all the issues and objections raised in the application ...' It is thus for the Constitutional Council to rule on all the issues concerning Mr Pierre-Bloch's campaign accounts. That being so, his application to stay the proceedings cannot be granted.

*Mr Pierre-Bloch's election expenditure*

...

The National Commission on Election Campaign Accounts and Political Funding is an administrative authority and not a court. The view it takes when scrutinising a candidate's campaign accounts consequently cannot prejudice the decision of the Constitutional Council, the body that adjudicates upon the lawfulness of an election under Article 59 of the Constitution.

*The inclusion of expenditure relating to the magazine Demain notre Paris*

... regard being had to the dates on which it was published, to the extent of its circulation and to its content, this magazine can be seen to be a vehicle for election propaganda. Issues 71 to 75, however, contain numerous pages of general and local news which cannot be directly linked with promoting the candidate or furthering his election programme. Accordingly, those pages must not be viewed as expenditure committed or incurred for election purposes within the meaning of Article 52-12 of the Elections Code. That being so, they should not be included in the expenditure recorded in Mr Pierre-Bloch's campaign accounts.

On the other hand, other pages in those five issues contain numerous photographs of the candidate or are made up of articles relating to topics addressed during his election campaign. Those pages consequently amount to election propaganda. This is true [of

pages ...] ..., which helped to promote the elected candidate. To that extent, the corresponding expenditure must be seen as coming within the expenditure referred to in the first paragraph of Article L. 52-12 of the Elections Code and must be included in the candidate's campaign accounts. Regard being had to the total cost of the publications concerned and the number of pages to be taken into account, the expenditure incurred under this head amounts to FRF 217,327.47.

...

*The inclusion of the cost of an opinion poll*

It is clear from the inquiry into the facts that an opinion poll commissioned by the RPR was conducted in the 19th constituency in Paris among a representative sample of voters. The questions asked related firstly to the voters' main concerns, secondly to their voting intentions and thirdly to their appraisal of various political figures and groups.

The inquiry into the facts revealed that Mr Pierre-Bloch then made use of the poll findings that related to voters' expectations by choosing his campaign topics on the basis of voter concerns as shown by the findings. Both in issues 71 to 75 of the magazine *Demain notre Paris* and in various leaflets, he gave priority to the topics so identified. The findings were accordingly used to determine the thrust of the candidate's election campaign in the constituency.

It follows that the National Commission on Election Campaign Accounts and Political Funding was right to include the opinion poll but in the circumstances of the case it would be just to limit the amount of the cost included to one-third of the sums expended, namely FRF 27,677.33.

*The inclusion of the cost of part of issue 122 of the magazine 18ème Indépendant*

In issue 122 of February 1993 the magazine *18ème Indépendant*, which has a circulation of forty thousand, published an article by Mr Chinaud, the mayor of the district, expressing his support for the three opposition candidates standing, including Mr Pierre-Bloch. That article, which was intended to underline the unity in the local majority party one month before the first round of the election, was an integral part of the whole publication, which thus in its entirety amounts to election propaganda. Responsibility for it must also be attributed to the three candidates who benefited from it. Consequently, one-third of the cost of the publication (FRF 8,211.66) must be included as expenditure in Mr Pierre-Bloch's campaign accounts, as the National Commission on Election Campaign Accounts and Political Funding ruled.

*The inclusion of the cost of various propaganda expenses*

Mr M. criticised Mr Pierre-Bloch for omitting various propaganda expenses. It is clear from the very details provided by the candidate that some expenditure was omitted ... On the basis of the figures submitted by Mr Pierre-Bloch himself, the total amount to be taken into account for the purposes of Article L. 52-12 is thus FRF 33,360.68.

It follows from all the foregoing that the sum of FRF 191,164.99 must be added to Mr Pierre-Bloch's expenditure. The total amount of his expenditure is thus FRF 588,987.14 and the applicant has consequently exceeded the maximum permitted amount of campaign expenditure by FRF 88,987.14.

..."

**(b) The application for rectification of a clerical error**

16. On 30 November 1993 Mr Pierre-Bloch lodged an application with the Constitutional Council seeking rectification of clerical errors which, in his submission, vitiated the decision of 24 November 1993. He maintained that the Constitutional Council had counted some of his campaign expenditure twice and that it had not ruled on his request that the opinion poll should be left out of account. (Mr Pierre-Bloch argued that Mr M. had failed to prove that he was lawfully in possession of the opinion poll report, marked "confidential exclusive property of client").

17. The applicant lodged a pleading containing further arguments on 7 December 1993. He argued that the Constitutional Council's decision did not contain its President's signature or that of the secretary-general or the rapporteur; furthermore, the rapporteur's name had not been given. He added that he had also been denied any opportunity to lodge final submissions as he had not been informed when his case would be heard.

18. Neither the applicant nor his counsel was informed of the date of the hearing, even though in a letter of 2 December 1993 the lawyer had asked the secretary-general for the date.

19. In its decision of 17 December 1993 the Constitutional Council rejected the applicant's submissions based on procedural and formal defects on the ground that "in an application seeking rectification of a clerical error it is not permissible to challenge the assessment of the facts of the case or their legal classification or the formal or procedural manner in which the decision [to which the application relates] was rendered". It also reduced the amount of propaganda expenditure to FRF 7,950 and set the amount of expenditure incurred by the applicant at FRF 563,572.46, consequently materially amending its decision of 24 November 1993, while stating that "this rectification [was] not such as to call in question Mr Pierre-Bloch's disqualification from standing for election or the forfeiture of his seat".

**B. Application of Article L. 52-15 of the Elections Code**

20. In a decision of 8 April 1994 the National Commission, having deducted the accountant's fees from the amount assessed by the

Constitutional Council, set the amount which Mr Pierre-Bloch was to pay the Treasury pursuant to the last paragraph of Article L. 52-15 of the Elections Code at FRF 59,572.

21. On 8 June 1994 the applicant applied to the Paris Administrative Court to quash this decision. He alleged, in particular, that the National Commission had breached Article 6 § 1 of the Convention.

In a judgment of 14 November 1994 the Paris Administrative Court dismissed his application as follows:

“...

It appears from the inquiry into the facts that the impugned decision was taken by the National Commission on Election Campaign Accounts and Political Funding, which is not a court. It is thus not required to afford the procedural safeguards provided for in [Article 6 § 1 of the Convention]. The applicant is not, however, thereby deprived of the right – which he exercised – to have his case heard by a tribunal. Accordingly, the argument based on a violation of Article 6 § 1 of the Convention ... must fail.

...

... in its decision of 24 November 1993, as amended on 17 December 1993, the Constitutional Council found that Mr Jean-Pierre Pierre-Bloch had exceeded the maximum permitted amount of expenditure in his campaign in the 19th constituency in Paris for the general election on 21 and 28 March 1993 by FRF 63,572.46. Pursuant to the statutory provisions cited above, the National Commission on Election Campaign Accounts and Political Funding was under a duty to require the applicant to pay the amount of the excess. The other grounds relied on by the applicant in order to challenge the decision are consequently invalid and must be rejected.

...”

## II. RELEVANT DOMESTIC LEGISLATION AND PRACTICE

### A. Capping of election expenditure

22. The election expenditure of (in particular) parliamentary candidates must not exceed a statutory ceiling (Article L. 52-11 of the Elections Code).

#### 1. *Monitoring of parliamentary candidates' election expenditure*

23. Within two months of the ballot in which the election was won, each candidate who took part in the first round must file his campaign accounts, certified by an accountant, at the prefecture. The accounts are then sent to

the National Commission on Election Campaign Accounts and Political Funding (Article L. 52-12).

**(a) Scrutiny by the National Commission on Election Campaign Accounts and Political Funding**

24. The National Commission on Election Campaign Accounts and Political Funding has nine members appointed for five years by decree: three members or former members of the *Conseil d'Etat* nominated by the Vice-President of the *Conseil d'Etat* after consultation of its Judges' Council; three members or former members of the Court of Cassation nominated by the President of the Court of Cassation after consultation of its Judges' Council; three members or former members of the Audit Court nominated by the President of the Audit Court after consultation of its divisional presidents (Article L. 52-14).

25. The Commission publishes the campaign accounts (Article L. 52-12).

It approves them and, "after adversarial proceedings", rejects or amends them (Article L. 52-15).

Where the amount of a declared item of expenditure is less than the usual price, the Commission calculates the difference and adds it to the campaign expenditure after asking the candidate to provide any evidence relevant to an assessment of the facts. The same procedure is applied in respect of all direct or indirect benefits, services and gifts in kind received by the candidate (Article L. 52-17).

26. If the accounts have not been filed within the prescribed period, if they have been rejected or if – where appropriate after amendment – they show that the maximum permitted amount of election expenditure has been exceeded, the Commission refers the case to the body that adjudicates election disputes (Articles L. 52-15 and L.O. 136-1), which is the Constitutional Council in respect of the election of members of Parliament (Article 59 of the Constitution).

**(b) Review by the Constitutional Council**

27. The Constitutional Council has nine members, appointed for a non-renewable nine-year term. Three of them are appointed by the President of the Republic, three by the Speaker of the National Assembly and three by the Speaker of the Senate. In addition to those nine members, former presidents of the Republic are life members of the Constitutional Council as of right. The President of the Constitutional Council is appointed by the President of the Republic. In the event of a tie, he has the casting vote (Article 56 of the Constitution).

28. Within the Constitutional Council there are three sections, each comprising three members drawn by lot. Lots are drawn separately among

the members appointed by the President of the Republic, those appointed by the Speaker of the Senate and those appointed by the Speaker of the National Assembly.

Each year the Constitutional Council draws up a list of ten deputy rapporteurs from among the middle-ranking members of the *Conseil d'Etat* and the Audit Court; they are not entitled to vote (section 36 of Ordinance no. 58-1067 of 7 November 1958 on the Constitutional Council – “the Ordinance”).

29. In addition to the application of Article L.O. 136-1 of the Elections Code (see paragraph 26 above), the election of a member of Parliament may be challenged before the Constitutional Council within ten days of the election results being announced, by means of a written application by anyone on the electoral roll of the constituency in which the election was held or by anyone who stood for election (sections 33–34 of the Ordinance and Rule 1 of the Rules of Procedure of 31 May 1959 as amended by the Constitutional Council’s decisions of 5 March 1986, 24 November 1987 and 9 July 1991 – “the Rules of Procedure”).

30. As soon as he receives an application, the President allocates it to one of the sections to examine in order to prepare the case for hearing and appoints a rapporteur, who may be selected from among the deputy rapporteurs (sections 37–38 of the Ordinance).

Where the application is not declared inadmissible or manifestly ill-founded (section 38 of the Ordinance), the member of Parliament whose election is being challenged and, where applicable, his substitute are given notice of it. They may designate a person of their choice to represent them and to assist them with the various steps in the proceedings. The section of the Constitutional Council allots them a period of time for inspecting the application and the documents at the Council’s secretariat and producing their written observations (section 39 of the Ordinance and Rule 9).

When a case is ready for hearing, the section hears the report of the rapporteur. In this he sets out the issues of fact and law and submits a draft decision (Rule 13). The section discusses his proposals and refers the case to the Constitutional Council for its ruling on the merits (Rule 14).

The President of the Constitutional Council determines when a case is to be entered in its list. Proceedings in the Constitutional Council are not public, and only since the Constitutional Council’s decision of 28 June 1995 amending the Rules have applicants and members of Parliament whose election is in issue been able to seek leave to address the Council. The secretary-general and the rapporteur for the case attend the Council’s deliberations. The rapporteur drafts the decision taken as a result of those deliberations (Rule 17).

31. The Constitutional Council gives its ruling in a reasoned decision, which indicates the members who took part in the sitting at which it was taken. The decision is signed by the President, the secretary-general and the rapporteur (section 40 of the Ordinance and Rule 18) and is published in France's Official Gazette (Rule 18).

32. No appeal lies against the Constitutional Council's decisions (Article 62 of the Constitution and Rule 20). They are binding on the public authorities (*pouvoirs publics*) and on all administrative and judicial authorities (Article 62 of the Constitution).

The Constitutional Council may, however, of its own motion or at the request of an interested party, rectify clerical errors affecting its decisions (Rules 21–22).

## *2. Consequences of exceeding the ceiling on election expenditure*

### **(a) Non-reimbursement of campaign expenditure**

33. Reimbursement in whole or in part of expenditure recorded in campaign accounts, where provided for by law, is not possible until the campaign accounts have been approved by the National Commission (Article L. 52-15 of the Elections Code).

### **(b) Payment of a sum equivalent to the amount of the excess**

34. Where it has been found in a final decision that the maximum permitted amount of election expenditure has been exceeded, the National Commission orders the candidate to pay the Treasury a sum equivalent to the amount of the excess. The sum is recovered in the same way as debts owed to the State other than taxes and debts relating to State property (Article L. 52-15).

35. The National Commission has no discretion; it is required to apply the Constitutional Council's final decision and to base its calculation of the sum payable to the Treasury by the candidate solely upon the amount by which the statutory ceiling on election expenditure has been exceeded (judgment of the Paris Administrative Court, 12 February 1993).

36. As to the nature of the payment, the Paris Administrative Court has held (in the judgment cited above):

“... even if it is accepted that the requirement to pay the State a sum equivalent to the amount by which the maximum permitted amount of election expenditure has been exceeded represents a penalty, that penalty is only an administrative penalty. It cannot be regarded as criminal in nature or intended to punish an offence. It does not therefore come within the scope of Article 7 of the Convention ... Moreover, where the ceiling on election expenditure has been exceeded, Article L. 113-1 of the Elections Code makes provision for the penalties of fines and imprisonment; these are criminal

in nature and are not in issue in the instant case. The argument based on an infringement of the provisions of Article 7 of the European Convention in the contested decision must consequently fail.”

**(c) Disqualification**

37. A person who has not filed his campaign accounts in accordance with the requirements and within the time-limit laid down in Article L. 52-12 or whose campaign accounts have been rightly rejected is disqualified from standing for election for a period of one year from the date of the election. Anyone who has exceeded the maximum permitted amount of campaign expenditure as laid down in Article L. 52-11 may likewise be disqualified from standing for election for the same length of time (Article L.O. 128, second paragraph, of the Elections Code).

Where appropriate, the Constitutional Council disqualifies the person from standing for election and, if that person was the candidate elected, it declares in the same decision that he has forfeited his seat (Article L.O. 136-1).

**(d) Criminal proceedings**

38. Article L. 113-1 of the Elections Code provides:

“A fine of FRF 25,000 and a sentence of one year’s imprisonment, or only one of those penalties, shall be imposed on any candidate (in the case of a poll to elect a single candidate) or any candidate heading a list (in the case of a poll to elect candidates from party lists) who

...

(3) has expended more than the maximum permitted amount laid down pursuant to Article L. 52-11;

(4) has not complied with the formal requirements for drawing up campaign accounts laid down in Articles L. 52-12 and L. 52-13;

(5) has declared in his campaign accounts or the appendices to them amounts that have knowingly been reduced;

...”

It is the duty of the National Commission to send a case to the public prosecutor’s office where it finds irregularities which appear to contravene, in particular, Article L. 52-11 of the Elections Code (Article L. 52-15).

**B. Deprivation of civic, civil and family rights**

39. Where so provided by law, a serious crime (*crime*) or other major offence (*délit*) is punishable with one or more “additional” penalties



(Article 131-10 of the New Criminal Code), including deprivation of civic, civil and family rights, which may include the right to stand for election (Article 131-26). Notwithstanding any provision to the contrary, such a deprivation cannot follow automatically from a criminal conviction (Article 132-31).

## PROCEEDINGS BEFORE THE COMMISSION

40. Mr Pierre-Bloch applied to the Commission on 6 April 1994. He maintained that he had not had a fair hearing before the Constitutional Council, in breach of Article 6 § 1 of the Convention. He also alleged that there had been a violation of his right to an effective remedy within the meaning of Article 13 and complained of discrimination on account of his political views, contrary to Article 14.

41. The Commission declared the application (no. 24194/94) admissible on 30 June 1995. In its report of 1 July 1996 (Article 31), it expressed the opinion that there had not been a violation of Article 6 § 1 (nine votes to eight), Article 13 (nine votes to eight) or Article 14 (unanimously). 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<sup>1</sup>.

## FINAL SUBMISSIONS TO THE COURT

42. In his memorial the applicant stated that he "reiterate[d] his earlier submissions".

The Government asked the Court to "dismiss Mr Pierre-Bloch's application".

## AS TO THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

43. The applicant maintained that he had not had a fair hearing before the Constitutional Council, in particular because the proceedings had been

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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* 1997), but a copy of the Commission's report is obtainable from the registry.

neither adversarial nor public. He 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 fair and public hearing ... by an independent and impartial tribunal established by law ...”

44. It must first of all be determined whether that provision is applicable in the instant case.

#### **A. The arguments of those appearing before the Court**

45. In Mr Pierre-Bloch’s submission, the fact that the proceedings in question took place before the Constitutional Council could not of itself have the consequence that Article 6 § 1 was inapplicable, since the Council had not in the instant case adjudicated upon a constitutional matter.

Furthermore, while, on account of the political nature of the rights in issue, proceedings in election disputes were not in principle subject to supervision by the Convention institutions, the Constitutional Council had in this instance determined a “mixed” dispute, in which what was at stake also included the payment by the applicant of a sum corresponding to the amount by which his election campaign expenditure had exceeded the permitted maximum and the reimbursement by the State of that expenditure. That pecuniary element gave the “*contestation*” (dispute) a sufficient “civil” connotation to bring the instant case within the ambit of Article 6 § 1.

At all events, the proceedings in issue had also related to a “quasi-criminal” charge and were on that account covered by Article 6 § 1. In support of that argument the applicant maintained, firstly, that the “offence” of exceeding the maximum permitted amount of election expenditure was one that concerned not solely a particular group of individuals but all citizens who could stand for election. He added that the nature of the penalties laid down reflected a punitive aim and that this gave them a criminal connotation. Disqualification from standing for election was a penalty provided in the Criminal Code and imposed on persons convicted of various serious offences; and the obligation to pay the Treasury the amount of the excess was not designed to compensate for damage but to punish conduct. It also had to be taken into account that it was possible to incur the penalties provided in Article L. 113-1 of the Elections Code (a fine of FRF 360 to FRF 15,000 and/or from one month’s to one year’s imprisonment), even though the Constitutional Council had no jurisdiction either to make a direct finding that the offence laid down by that provision had been committed or to institute criminal proceedings. It was in fact a “strict liability” offence, and a finding by the Constitutional Council that the maximum permitted amount of expenditure had been exceeded would be

binding on any criminal court before which the case was brought. Lastly, the seriousness of the aforementioned penalties – which were dishonouring – likewise lent support to the view that they were criminal in nature.

46. The Government maintained that election disputes related to the exercise of political rights and therefore came exclusively within the sphere of public law. The Constitutional Council's finding that the ceiling on election expenditure had been exceeded had admittedly had economic consequences for Mr Pierre-Bloch in that he had had to pay the Treasury a sum corresponding to the excess. That obligation, however, was but an indirect effect of the proceedings in the Constitutional Council as it flowed from a separate decision of the National Commission on Election Campaign Accounts and Political Funding ("the National Commission"). Furthermore, it was apparent from the case-law and practice of the Convention institutions that the existence of a pecuniary stake did not automatically give a "civil" connotation to a case. However that might be, in the instant case the public-law aspects (nature of the legislation, the subject matter of the dispute and the nature of the rights in issue) clearly outweighed that single private-law aspect.

Nor had there been any "criminal charge". To begin with the "offence" in issue was not classified as a "criminal" one in French law. Furthermore, the relevant legislation applied only to a limited number of persons – candidates in elections – and was part of a body of provisions designed to guarantee the democratic nature of the poll, not to punish individual conduct. Nor did the nature and degree of severity of the penalties give the offence any criminal connotation. Disqualification from standing for election, for instance, was a typical measure in the law governing elections since it was a penalty for other breaches of the Elections Code than exceeding the ceiling on campaign expenditure and affected other persons, such as judges or civil servants, quite independently of any punitive aim; moreover, it was limited to a period of one year from the date of the election and applied only to the election in question, such that it had only limited effects. The obligation to pay the Treasury a sum equal to the amount of the excess was essentially the quid pro quo for State financing of political parties; it was not subject to the rules applicable to criminal fines in the strict sense, such as an entry in the criminal record, non-imposition of consecutive sentences for multiple offences and imprisonment in default, and – contrary to what applied in the case of criminal fines – the amount to be paid was neither determined according to a fixed scale nor set in advance. The size of the sum to be paid by Mr Pierre-Bloch also had to be put into perspective. At all events, the obligation in question arose not from the Constitutional Council's finding that the ceiling on authorised expenditure had been exceeded but from a separate decision of the National Commission. The penalties provided in Article L. 113-1 of the Elections Code were certainly criminal in nature but

were not relevant in the instant case as no prosecution had been brought against the applicant on that basis.

In short, Article 6 § 1 was not applicable.

47. The Commission agreed with that argument in substance.

### **B. The Court's assessment**

48. The Court reiterates that under its case-law the fact that proceedings have taken place before a constitutional court does not suffice to remove them from the ambit of Article 6 § 1 (see, for example and *mutatis mutandis*, the Pammel v. Germany judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1109, § 53).

It must be ascertained whether the proceedings in issue in the instant case did or did not relate to “the determination of ... civil rights and obligations” or of a “criminal charge”.

#### *1. Whether there was a “contestation” (dispute) over “civil rights and obligations”*

49. As it was not in issue that there had been a “*contestation*” (dispute), the Court's task is confined to ascertaining whether the dispute related to “civil rights and obligations”.

50. It observes that, like any other parliamentary candidate, Mr Pierre-Bloch was required by law not to spend more than a specified sum on financing his campaign. The Constitutional Council held that the sum in question had on this occasion been exceeded and disqualified the applicant from standing for election for a year and declared that he had forfeited his seat, thereby jeopardising his right to stand for election to the National Assembly and to keep his seat. Such a right is a political one and not a “civil” one within the meaning of Article 6 § 1, so that disputes relating to the arrangements for the exercise of it – such as ones concerning candidates' obligation to limit their election expenditure – lie outside the scope of that provision.

51. It is true that in the proceedings in question the applicant's pecuniary interests were also at stake. Where the Constitutional Council has found that the ceiling on election expenditure has been exceeded, the National Commission assesses a sum equal to the amount of the excess, which the candidate is required to pay the Treasury. The proceedings before the National Commission are not separable from those before the Constitutional Court since the National Commission has no discretion and is required to adopt the amount determined by the Constitutional Council (see paragraph 35 above). Furthermore, reimbursement in whole or in part of the expenditure recorded in campaign accounts, where provided for by law, is not possible until the accounts have been approved by the National Commission (see paragraph 33 above).

This economic aspect of the proceedings in issue does not, however, make them “civil” ones within the meaning of Article 6 § 1. The impossibility of securing reimbursement of campaign expenditure where the ceiling has been found to have been exceeded and the obligation to pay the Treasury a sum equivalent to the excess are corollaries of the obligation to limit election expenditure; like that obligation, they form part of the arrangements for the exercise of the right in question. Besides, proceedings do not become “civil” merely because they also raise an economic issue (see, for example and *mutatis mutandis*, the Schouten and Meldrum v. the Netherlands judgment of 9 December 1994, Series A no. 304, p. 21, § 50, and the Neigel v. France judgment of 17 March 1997, Reports 1997-II, p. 411, § 44).

52. Article 6 § 1 accordingly did not apply in its civil aspect.

2. *Whether there was a “criminal charge”*

53. As it was not disputed that there had been a “charge”, the Court’s task is confined to ascertaining whether it was a criminal one. For this purpose it has regard to three criteria: the legal classification of the offence in question in national law, the very nature of the offence and the nature and degree of severity of the penalty (see, in particular, the Engel and Others v. the Netherlands judgment of 8 June 1976, Series A no. 22, p. 35, § 82, and the Putz v. Austria judgment of 22 February 1996, Reports 1996-I, p. 324, § 31).

(a) **Legal classification of the offence in French law and the very nature of the offence**

54. The Elections Code establishes the principle of capping election expenditure by parliamentary candidates (Article L. 52-11 – see paragraph 22 above) and monitoring compliance with that principle (see paragraphs 23–32 above). The National Commission examines the campaign accounts of all candidates and, if it considers that the maximum permitted amount has been exceeded by one of them, it refers the case to the Constitutional Council, the body with jurisdiction over the election of MPs (to which application can also be made by private individuals). Where the Constitutional Council subsequently finds that the maximum permitted amount has been exceeded, the candidate in question can be disqualified from standing for election for a period of a year (Articles L. 118-3, L.O. 128 and L.O. 136-1 – see paragraph 37 above) and he is required to pay the Treasury a sum equal to the amount of the excess as determined by the National Commission (Article L. 52-15 – see paragraph 34 above). Those provisions – the only ones relevant in the instant case – clearly do not belong to French criminal law but, as the title of the Elections Code chapter in which they appear confirms, to the rules governing the “financing and

capping of election expenditure” and therefore to electoral law. Nor can a breach of a legal rule governing such a matter be described as “criminal” by nature.

**(b) Nature and degree of severity of the penalty**

55. Three “penalties” are or may be imposed on candidates who do not keep within the statutory limit on expenditure: disqualification from standing for election, an obligation to pay the Treasury a sum equal to the amount of the excess, and the penalties provided in Article L. 113-1 of the Elections Code.

*(i) Disqualification*

56. The Constitutional Council may disqualify from standing for election for a period of one year any candidate whom it finds to have exceeded the maximum permitted amount of election expenditure; if, as in the instant case, the candidate has been elected, the Council declares him to have forfeited his seat.

The purpose of that penalty is to compel candidates to respect the maximum limit. The penalty is thus directly one of the measures designed to ensure the proper conduct of parliamentary elections, so that, by virtue of its purpose, it lies outside the “criminal” sphere. Admittedly, as the applicant pointed out, disqualification from standing for election is also one of the forms of deprivation of civic rights provided in French criminal law. Nevertheless, in that instance the penalty is “ancillary” or “additional” to certain penalties imposed by the criminal courts (see paragraph 39 above); its criminal nature derives in that instance from the “principal” penalty to which it attaches.

The disqualification imposed by the Constitutional Council is, moreover, limited to a period of one year from the date of the election and applies only to the election in question, in this instance the election to the National Assembly.

57. In short, neither the nature nor the degree of severity of that penalty brings the issue into the “criminal” realm.

*(ii) The obligation to pay the Treasury a sum equal to the amount of the excess*

58. Where the Constitutional Council has found that the maximum permitted amount of election expenditure has been exceeded, the National Commission assesses a sum equal to the amount of the excess, which the candidate is required to pay to the Treasury. The Court has already indicated that the proceedings before the National Commission are not separable from those before the Constitutional Council (see paragraph 51 above).

The obligation to pay relates to the amount by which the Constitutional Council has found the ceiling to have been exceeded. This would appear to show that it is in the nature of a payment to the community of the sum of which the candidate in question improperly took advantage to seek the votes of his fellow citizens and that it too forms part of the measures designed to ensure the proper conduct of parliamentary elections and, in particular, equality of the candidates. Furthermore, apart from the fact that the amount payable is neither determined according to a fixed scale nor set in advance, several features differentiate this obligation to pay from criminal fines in the strict sense: no entry is made in the criminal record, the rule that consecutive sentences are not imposed in respect of multiple offences does not apply, and imprisonment is not available to sanction failure to pay. In view of its nature, the obligation to pay the Treasury a sum equal to the amount of the excess cannot be construed as a fine.

59. In short, the nature of the penalty in the instant case likewise does not bring the issue into the “criminal” realm.

*(iii) The penalties provided in Article L. 113-1 of the Elections Code*

60. Article L. 113-1 of the Elections Code provides that a candidate who has exceeded the ceiling on election expenditure is liable to a fine of FRF 25,000 and/or a year’s imprisonment (see paragraph 38 above), penalties which would be imposed by the ordinary criminal courts. The nature of those penalties is the less in doubt as Article L. 113-1 is included in the “Criminal provisions” chapter of the relevant part of the Elections Code. These penalties are not, however, in issue in this case as no proceedings were brought against the applicant on the basis of that Article.

**(c) Conclusion**

61. Having regard to all the foregoing considerations, the Court concludes that Article 6 § 1 did not apply in its criminal aspect either.

## II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

62. The applicant’s complaint under Article 14 of the Convention that he had suffered discrimination on the ground of political opinions, which the Commission declared admissible (see paragraphs 40–41 above), was not reiterated either in his memorial or at the hearing before the Court. That being so, and inasmuch as no issue can in principle arise under this provision taken in isolation (see, for example and *mutatis mutandis*, the Karlheinz Schmidt v. Germany judgment of 18 July 1994, Series A no. 291-B, p. 32, § 22), the Court sees no reason to consider it of its own motion.

### III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

63. Mr Pierre-Bloch stated, lastly, that he had not had an effective remedy that would have enabled him to put forward his complaints in that no appeal lay against the Constitutional Council's decision. He relied on Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

64. Like the Government and the Commission, the Court reiterates that the right of recourse guaranteed in Article 13 can only relate to a right protected by the Convention. Accordingly, having regard to its decisions on the complaints based on Articles 6 § 1 (see paragraphs 52 and 61 above) and 14 (see paragraph 62 above), the Court holds that Article 13 is not applicable.

### FOR THESE REASONS, THE COURT

1. *Holds* by seven votes to two that neither Article 6 § 1 nor Article 13 of the Convention applies in this case;
2. *Holds* unanimously that it is unnecessary to consider the complaint based on Article 14 of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 21 October 1997.

*Signed:* Rudolf BERNHARDT  
President

*Signed:* Herbert PETZOLD  
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 53 § 2 of Rules of Court A, the following separate opinions are annexed to this judgment:

- (a) dissenting opinion of Mr De Meyer;
- (b) dissenting opinion of Mr Löhmus.

*Initialled:* R. B.  
*Initialled:* H. P.



## DISSENTING OPINION OF JUDGE DE MEYER

(Translation)

### I. General observations

It is very much to be regretted that the Court, after proceeding, as regards Article 6 of the Convention, step by step along the road of an open, “autonomous” interpretation of the concept of “civil rights and obligations” and “criminal charges”, should have felt it necessary in some of its recent judgments – and again today in the present one – to withdraw nervously into the cocoon of a strict, fainthearted interpretation.

Once again, it has missed the opportunity to acknowledge and assert the full extent of the meaning to be given to each of those concepts.

### II. Civil nature of the case

On the one hand, the Court says that the right of a French citizen “to stand for election to the National Assembly and to keep his seat” is “a political one and not a ‘civil’ one within the meaning of Article 6 § 1”<sup>1</sup>.

The distinction between civil rights and political rights is strange in itself if one considers the etymology of the two adjectives, seeing that the Latin words from which the former is derived (*civile*, *civis*, *civitas*) and the Greek words from which the latter is derived (*politikon*, *politis*, *politeia*) mean the same thing.

This distinction – like the one between private law and public law, to which it is linked – has all too often served to remove from the scope of the ordinary law situations affecting the exercise of what is called public authority (*puissance publique*) and to reduce the scope of the protection of citizens in relation to such situations.

Are “civil” rights therefore not essentially, in the most literal meaning of the term, the rights of the citizen (*civis*)?

Are not so-called “political” rights themselves rights of that type, “civil” rights *par excellence*? Is that not the case with the *jus suffragii* and the *jus honorum*, which are precisely what we are dealing with in the instant case?

In reality “political” rights are a special category of “civil” rights. Indeed, they are more “civil” than others in that they are more directly inherent in citizenship and, furthermore, are normally exclusive to citizens.

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1. Paragraph 50 of the judgment.

Where human rights are concerned, and more particularly where disputes over rights or obligations are to be determined, there is nothing to justify treating those who lay claim to a “political” right, such as those who are candidates in an election, more or less favourably than other citizens<sup>1</sup>.

### III. Criminal nature of the case

On the other hand, the Court declines to recognise the “criminal” nature of the penalties imposed on the applicant for having exceeded the maximum permitted amount of election expenditure – disqualification from standing for election for a year and the obligation to pay the Treasury a sum equal to the amount of the excess.

“In accordance with the ordinary meaning to be given to the terms”<sup>2</sup> in everyday language<sup>3</sup>, are these not true “penalties” and even rather serious penalties?

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1. The Court is accordingly also wrong, in my view, to have said several times that disputes relating to the “recruitment, careers and termination of service of civil servants”, who are distinguished from “employees governed by private law”, “are as a general rule outside the scope of Article 6 § 1” (see, among other authorities, the following judgments: Francesco Lombardo v. Italy, 26 November 1992, Series A no. 249-B, p. 26, § 17; Giancarlo Lombardo v. Italy, 26 November 1992, Series A no. 249-C, p. 42, § 16; Massa v. Italy, 24 August 1993, Series A no. 265-B, p. 20, § 26; and Neigel v. France, 17 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 411, § 44; and the judgments delivered on 2 September 1997 in the following cases: Spurio v. Italy, Reports 1997-V, pp. 1580-81, § 18; Gallo v. Italy, *ibid.*, p. 1591, § 19; Zilaghe v. Italy, *ibid.*, p. 1602, § 19; Laghi v. Italy, *ibid.*, p. 1614, § 17; Viero v. Italy, *ibid.*, p. 1626, § 16; Orlandini v. Italy, *ibid.*, p. 1637, § 18; Ryllo v. Italy, *ibid.*, pp. 1648-49, § 19; Soldani v. Italy, *ibid.*, p. 1719, § 18; Fusco v. Italy, *ibid.*, p. 1732, § 20; Di Luca and Saluzzi v. Italy, *ibid.*, p. 1744, § 18; Pizzi v. Italy, *ibid.*, p. 1754, § 8; Scarfò v. Italy, *ibid.*, pp. 1767-68, § 18; Argento v. Italy, *ibid.*, pp. 1779-80, § 18; and Trombetta v. Italy, *ibid.*, pp. 1791-92, § 21). It has, however, recognised the “civil character” of “an obligation on the State to pay a pension to a public servant” or “to a judge in accordance with the legislation in force” or to pay, similarly, a reversionary pension to the husband of a public servant. It explained this by remarking that “[the State] may be compared, in this respect, to an employer who is a party to a contract of employment governed by private law” (Francesco Lombardo, Giancarlo Lombardo and Massa judgments cited above). Why only in that “respect”? Very recently, the Court seems similarly to have accepted, more generally, in four cases concerning remuneration issues, that a civil servant relies on a civil right when what is concerned is a “purely economic right legally derived from her work” (see the Lapalorcica v. Italy judgment of 2 September 1997, Reports 1997-V, p. 1677, § 21; see also the judgments delivered on the same day in the cases of De Santa v. Italy, *ibid.*, p. 1663, § 18; Abenavoli v. Italy, *ibid.*, p. 1690, § 16, and Nicodemo v. Italy, *ibid.*, p. 1703, § 18). Why should the same not apply to the other rights attaching to the performance of the duties of what is called the “civil service”?

2. Article 31 § 1 of the Vienna Convention on the Law of Treaties.

3. See, *mutatis mutandis*, my dissenting opinion in the Putz v. Austria judgment of 22 February 1996, Reports 1996-I, pp. 329–34, in particular paragraphs 2–7.

There is nothing to warrant the statement that such penalties are not “criminal” by nature or even that they “clearly do not belong to French criminal law”<sup>1</sup>. That cannot simply be inferred from the fact that the relevant provisions “appear in an elections code” and “belong to electoral law”<sup>2</sup>.

A penalty imposed on someone for having done what he was forbidden to do or for not having done what he was under an obligation to do does not cease to be a penalty merely because it is imposed on him under a law that is distinct from the Criminal Code, such as a regulatory offences act or road traffic code<sup>3</sup>, a tax code or tax regulations<sup>4</sup>, a code of criminal procedure<sup>5</sup> or an ordinance concerning the privileges and powers of a parliamentary assembly<sup>6</sup>.

Of similarly small importance is the “degree of severity of the penalty”: even a minor penalty remains a penalty. It is, at all events, surprising in the present case that an amount of 59,572 French francs is not considered sufficiently large for it to constitute a “criminal” penalty for the purposes of Article 6 § 1<sup>7</sup>, when it was accepted that 60 German marks were sufficient in the Öztürk case<sup>8</sup>, 300 Swiss francs in the Weber case<sup>9</sup> and 250 Maltese liri in the Demicoli case<sup>10</sup>.

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1. Paragraph 54 of the judgment.

2. Ibid. This does not prevent the Court from recognising in paragraph 60 the criminal “nature” of the fines and imprisonment provided in Article L. 131-1 of the same Elections Code for the same offence.

3. Öztürk v. Germany judgment of 21 February 1984, Series A no. 73, p. 9, § 11, and pp. 18–21, §§ 51–53.

4. See the following judgments: Bendenoun v. France, 24 February 1994, Series A no. 284, p. 20, § 47; A.P., M.P. and T.P. v. Switzerland, 29 August 1997, *Reports of Judgments and Decisions* 1997-V, p. 1784, § 19, and p. 1488, § 42; and E.L., R.L. and J.O.-L. v. Switzerland, 29 August 1997, *Reports* 1997-V, p. 1515, § 19, and p. 1520, § 47.

5. Weber v. Switzerland judgment of 22 May 1990, Series A no. 177, pp. 17–18, § 31.

6. Demicoli v. Malta judgment of 27 August 1991, Series A no. 210, p. 9, § 11, pp. 12–13, § 20, and pp. 16–17, §§ 32–33.

7. The Court remains cautiously silent on this matter in paragraphs 58 and 59 of the judgment.

8. Öztürk judgment cited above, p. 9, § 11, p. 10, § 18, and p. 21, § 54. In this case the maximum provided in the Act was 1,000 marks; the Court observed: “The relative lack of seriousness of the penalty at stake ... cannot divest an offence of its inherently criminal character.”

9. Weber judgment cited above, p. 18, § 34.

10. Demicoli judgment cited above, p. 17, § 34.

## DISSENTING OPINION OF JUDGE LÖHMUS

1. I do not share the opinion of the majority of the Court, which concluded, in paragraphs 57 and 59 of its judgment, that neither the nature nor the degree of severity of the penalties brought the issue into the criminal realm and that consequently Article 6 did not apply in the instant case.

2. Article L. 113-1 of the Elections Code provides that a candidate who has exceeded the ceiling on election expenditure is liable to a fine of 25,000 French francs (FRF) and/or a year's imprisonment, penalties which would be imposed by the ordinary criminal courts. It is true that these penalties are not in issue in this case as no proceedings were brought against the applicant on the basis of that Article. Nevertheless, disqualification is a form of deprivation of civic rights and the order to pay the Treasury the sum of FRF 59,372 amounts in a sense to a fine.

3. In the case of *Schmautzer v. Austria* the federal police authority in Graz had imposed on the applicant a fine of 300 Austrian schillings with twenty-four hours' imprisonment in default of payment for driving his car without wearing his safety-belt. The Court noted: "although the offences in issue and the procedures followed in the case fall within the administrative sphere, they are nevertheless criminal in nature" (see the *Schmautzer v. Austria* judgment of 23 October 1995, Series A no. 328-A, p. 13, § 28).

Comparing these two cases, I find it difficult to understand why Article 6 does not apply in the instant case.

4. The Court analysed the nature and the degree of severity of the penalties (disqualification and the obligation to pay the Treasury a sum equal to the amount of the excess). The Court found that neither the nature nor the degree of severity of the penalty brought the issue into the criminal realm. As both of the "deterrent measures" were imposed on the applicant, their combined effect must be taken into account when the nature and the degree of severity of the penalty is being determined.

5. I am not convinced by the fact that the deprivation of civic rights provided in French criminal law is a supplementary punishment and that the disqualification imposed by the Constitutional Council is limited to a period of one year from the date of the election (paragraph 56 of the judgment).

Having regard to the nature and degree of severity of the penalties as a whole, I find there was a "criminal charge" within the meaning of Article 6 § 1.