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

CASE OF WILLE v. LIECHTENSTEIN

(Application no. 28396/95)

JUDGMENT

STRASBOURG

28 October 1999

In the case of Wille v. Liechtenstein,

The European Court of Human Rights, sitting, in accordance with Article 27 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), as amended by Protocol No. 11[1], and the relevant provisions of the Rules of Court[2], as a Grand Chamber composed of the following judges:

Mrs E. PALM, *President*,
Mr C.L. ROZAKIS,
Mr L. FERRARI BRAVO,
Mr G. RESS,
Mr L. CAFLISCH,
Mr I. CABRAL BARRETO,
Mr J.-P. COSTA,
Mr W. FUHRMANN,
Mr K. JUNGWIERT,
Mr B. ZUPANCIC,
Mrs N. VAJIC,
Mr J. HEDIGAN,
Mrs W. THOMASSEN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr T. PANTÎRU,
Mr E. LEVITS,
Mr K. TRAJA,

and also of Mrs M. DE BOER-BUQUICCHIO, *Deputy Registrar*,

Having deliberated in private on 2 June and 13 October 1999,

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

PROCEDURE

1. The case was referred to the Court, as established under former Article 19 of the Convention[3], by the European Commission of Human Rights ("the Commission") and by the Liechtenstein Government ("the Government") on 24 and 27 October 1998 respectively, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. It originated in an application (no. 28396/95) against the Principality of Liechtenstein lodged with the Commission under former Article 25 by a Liechtenstein citizen, Mr Herbert Wille, on 25 August 1995.

Notes by the Registry

1-2. Protocol No. 11 and the Rules of Court came into force on 1 November 1998.

3. Since the entry into force of Protocol No. 11, which amended Article 19, the Court has functioned on a permanent basis.

The Commission's request referred to former Articles 44 and 48 and to the declaration whereby Liechtenstein recognised the compulsory jurisdiction of the Court (former Article 46); the Government's application referred to former Article 48. The object of the request and of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 10 and 13 of the Convention.

2. After the entry into force of Protocol No. 11 on 1 November 1998 and in accordance with the provisions of Article 5 § 5 thereof, the case was referred to the Grand Chamber of the Court. The Grand Chamber included *ex officio* Mr L. Caflisch, the judge elected in respect of Liechtenstein (Article 27 § 2 of the Convention and Rule 24 § 4 of the Rules of Court), Mrs E. Palm and Mr C.L. Rozakis, the Vice-Presidents of the Court, and Mr J.-P. Costa and Mr G. Ress, Vice-Presidents of Sections (Article 27 § 3 of the Convention and Rule 24 §§ 3 and 5 (a)). The other members appointed to complete the Grand Chamber were Mr L. Ferrari Bravo, Mr I. Cabral Barreto, Mr W. Fuhrmann, Mr K. Jungwiert, Mr B. Zupancic, Mrs N. Vajic, Mr J. Hedigan, Mrs W. Thomassen, Mrs M. Tsatsa-Nikolovska, Mr T. Pantîru, Mr E. Levits and Mr K. Traja (Rule 24 § 3 and Rule 100 § 4).

3. The applicant designated the lawyers who would represent him (Rule 36). The lawyers were given leave by the President of the Grand Chamber, Mrs Palm, to use the German language (Rule 34 § 3).

4. As President of the Grand Chamber, Mrs Palm, acting through the Deputy Registrar, consulted the Agent of the Government, the applicant's lawyers and the Delegate of the Commission on the organisation of the written procedure. Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 25 February 1999 and the Government's memorial on 30 March 1999.

5. In accordance with the decision of the President of the Grand Chamber, a hearing took place in public in the Human Rights Building, Strasbourg, on 2 June 1999.

There appeared before the Court:

(a) *for the Government*
Mr H. GOLSONG, Attorney, *Co-Agent*,
Mr N. MARXER,
Mr T. STEIN,
Mr M. WALKER, *Counsel*;

(b) *for the applicant*
Mr W.E. SEEGER, *Rechtsanwalt*,
Mr A. KLEY, *Rechtsanwalt*, *Counsel*.

Mr Wille was also present.

The Court heard addresses by Mr Seeger, Mr Kley, Mr Golsong and Mr Stein.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. In 1992 a controversy arose between His Serene Highness Prince Hans-Adam II of Liechtenstein ("the Prince") and the Liechtenstein government on political competences in connection with the plebiscite on the question of Liechtenstein's accession to the European Economic Area. At the relevant time, the applicant was a member of the Liechtenstein government. Following an argument between the Prince and members of the government at a meeting on 28 October 1992, the matter was settled on the basis of a common declaration by the Prince, the Diet (*Landtag*) and the government.

7. Following elections and the constitution of the new Diet in May 1993, discussions on various constitutional issues took place between the Prince and the government, when the applicant no longer held a government office. The applicant had not stood for re-election in May 1993, and he was appointed President of the Liechtenstein Administrative Court (*Verwaltungsbeschwerdeinstanz*) in December 1993 for a fixed term of office (see paragraph 26 below).

8. On 16 February 1995, in the context of a series of lectures on questions of constitutional jurisdiction and fundamental rights, the applicant gave a public lecture at the Liechtenstein-Institut, a research institute, on the "Nature and Functions of the Liechtenstein Constitutional Court" ("*Wesen und Aufgaben des Staatsgerichtshofes*"). In the course of the lecture, the applicant expressed the view that the Constitutional Court was competent to decide on the "interpretation of the Constitution in case of disagreement between the Prince (government) and the Diet" ("*Entscheidung über die Auslegung der Verfassung bei einem Auslegungsstreit zwischen Fürst (Regierung) und Landtag*").

9. On 17 February 1995 the newspaper *Liechtensteiner Volksblatt* published an article on the lecture given by the applicant, mentioning, *inter alia*, his views on the competences of the Constitutional Court.

10. On 27 February 1995 the Prince addressed a letter to the applicant concerning the above lecture, as summarised in the article published in the *Liechtensteiner Volksblatt*.

11. The letter, written on heraldic letter paper, read as follows:

"Vaduz Castle, 27 February 1995

Dr Herbert Wille
President of the Liechtenstein Administrative Court
[applicant's private address]

Sir,

I was astonished to read the report in the 17 February issue of the *Liechtensteiner Volksblatt* on your lecture on the theme of the 'Nature and Functions of the Liechtenstein Constitutional Court'. I assume that the statements you made on the Court's areas of responsibility have been correctly reproduced in this report, in particular the comment that the Constitutional Court can, as a court that interprets the law, be appealed to in the event of a disagreement between the Prince and the people.

You will doubtless remember the discussion between the government and me in the period before 28 October 1992, at which you were present as deputy head of government. I drew the government's attention during this exchange of views at Vaduz Castle to the fact that it was not abiding by the Constitution and read out the relevant Articles thereof. You replied that you did not agree (or words to that effect) with these parts of the Constitution in any case and that you therefore did not consider yourself bound by it. Since the other members of the government did not contradict you, I was forced to assume that the entire government was of the opinion that the two bodies that hold supreme power, the people and the Prince, must observe the Constitution and the ordinary laws but not the members of the government, who have sworn an oath of allegiance to the Constitution.

I considered your statement at that time and the government's attitude to be incredibly arrogant and therefore informed the government in no uncertain terms that it had lost my confidence. Following the compromise that was fortunately reached a little later between the government and the Diet, on the one hand, and myself, on the other, I declared that I once again had confidence in the government, doing so in the hope that individual members had realised that they had taken up an inexcusable position in relation to our Constitution and now recognised that they were bound by it. Just as I would have appointed Mr Brunhart head of government, had his party won the election, I appointed you President of the Administrative Court on the Diet's recommendation.

Unfortunately, I had to realise following the publication of the report in the *Liechtensteiner Volksblatt* that you still do not consider yourself bound by the Constitution and hold views that are clearly in violation of both the spirit and the letter thereof. Anyone reading the relevant Articles of the Constitution will be able to establish that the Constitutional Court has no competence to decide as a court of interpretation in the event of a disagreement between the Prince and the people (the Diet). In my eyes your attitude, Dr Wille, makes you unsuitable for public office. I do not intend to get involved in a long public or private debate with you, but I should like to inform you in good time that I shall not appoint you again to a public office should you be proposed by the Diet or any other body. I only hope that in your judgments as

President of the Administrative Court you will abide by the Constitution and the ordinary laws for the rest of your term of office.

Yours sincerely,

Hans-Adam II
Prince of Liechtenstein"

"Schloss Vaduz, 27. Februar 1995

Herrn Dr. Herbert Wille
Präsident der Fürstlich Liecht.
Verwaltungsbeschwerdeinstanz
...

Sehr geehrter Herr Präsident

Mit Erstaunen habe ich im Liechtensteiner Volksblatt *vom 17. Februar den Bericht über Ihren Vortrag am Liechtenstein Institut zum Thema 'Wesen und Aufgaben des Staatsgerichtshofes' gelesen. Ich nehme an, dass Ihre Aussagen über die Zuständigkeitsbereiche des Staatsgerichtshofes in diesem Bericht korrekt wiedergegeben wurden, insbesondere jene, in der Sie feststellen, dass der Staatsgerichtshof als Interpretations-gerichtshof bei unterschiedlichen Auffassungen zwischen Fürst und Volk angerufen werden könne.*

Sie werden sich bestimmt noch an die Auseinandersetzung zwischen der Regierung und mir vor dem 28. Oktober 1992 erinnern, bei der Sie als stellvertretender Regierungschef anwesend waren. Ich habe damals bei der Aussprache auf Schloss Vaduz die Regierung darauf aufmerksam gemacht, dass sie sich nicht an die Verfassung hält, und die entsprechenden Artikel aus der Verfassung der Regierung vorgelesen. Sie haben dazumal sinngemäss geantwortet, dass Sie mit diesen Teilen der Verfassung sowieso nicht einverstanden seien, und sich deshalb auch nicht an die Verfassung gebunden fühlten. Nachdem die anderen Regierungsmitglieder Ihrer Aussage nicht widersprochen haben, musste ich davon ausgehen, dass die gesamte Regierung der Auffassung ist, dass sich zwar die beiden Souveräne, Volk und Fürst, an Verfassung und Gesetze zu halten haben, nicht aber die Regierungsmitglieder, welche einen Eid auf die Verfassung abgelegt haben.

Ich habe Ihre damalige Aussage sowie die Haltung der Regierung als unglaubliche Arroganz empfunden, und deshalb habe ich der Regierung in sehr klaren Worten mitgeteilt, dass sie mein Vertrauen verloren hat. Beim Kompromiss, der glücklicherweise etwas später zwischen Regierung und Landtag auf der einen Seite und mir auf der anderen Seite erzielt wurde, habe ich der Regierung wieder mein Vertrauen ausgesprochen. Ich habe dies auch in der Hoffnung getan, dass die einzelnen Regierungsmitglieder ihre unentschuldbare Haltung gegenüber unserer Verfassung eingesehen haben und die Verfassung für sie wieder als bindend anerkennen. Ebenso wie ich Herrn Brunhart bei einem Sieg seiner Partei wiederum zum Regierungschef ernannt hätte, so habe ich Sie über Vorschlag des Landtages zum Präsidenten der Verwaltungs-beschwerdeinstanz ernannt.

Leider muss ich aufgrund des Berichtes im Liechtensteiner Volksblatt *nun feststellen, dass Sie sich nach wie vor nicht an die Verfassung gebunden fühlen und Auffassungen vertreten, die eindeutig gegen Sinn und Wortlaut der Verfassung*

verstossen. Jeder wird beim Lesen der einschlägigen Verfassungsartikel feststellen können, dass der Staatsgerichtshof eben nicht Interpretationsgerichtshof bei unterschiedlichen Auffassungen zwischen Fürst und Volk (Landtag) ist. In meinen Augen sind Sie, Herr Dr. Wille, aufgrund Ihrer Haltung gegenüber der Verfassung ungeeignet für ein öffentliches Amt. Ich habe nicht die Absicht, mich mit Ihnen öffentlich oder privat in eine lange Auseinandersetzung einzulassen, aber ich möchte Ihnen rechtzeitig mitteilen, dass ich Sie nicht mehr für ein öffentliches Amt ernennen werde, sollten Sie mir vom Landtag oder sonst irgendeinem Gremium vorgeschlagen werden. Es verbleibt mir die Hoffnung, dass Sie sich während des Restes Ihrer Amtszeit als Präsident der Verwaltungsbeschwerdeinstanz in Ihren Urteilen an Verfassung und Gesetze halten.

Mit vorzüglicher Hochachtung

Hans-Adam II.
Fürst von Liechtenstein"

12. By letter of 9 March 1995 the applicant informed the President of the Diet about the letter of 27 February 1995. He denied having ever made a statement to the effect that he did not consider himself bound by the Constitution or parts thereof. He further explained his research on the competences of the Constitutional Court in constitutional matters. According to him, the expression of an opinion not shared by the Prince could not be regarded as a failure to comply with the Constitution. However, taking into account the conclusions drawn by the Prince in the said letter, his office as President of the Administrative Court was called into question. The President of the Diet subsequently informed the applicant that the Diet had discussed the matter in camera and had come to the unanimous conclusion that the applicant's office was not called into question on account of his legal opinions as stated in the context of his lecture.

13. On 20 March 1995 the applicant replied to the letter sent by the Prince on 27 February 1995, and enclosed a copy of his letter to the President of the Diet. He explained in particular that it was his conviction as a lawyer that his statements on the occasion of the lecture of 16 February 1995, namely that the Constitutional Court was competent to decide on the interpretation of the Constitution in case of a dispute between the Prince and the people (Diet), were correct and did not infringe the Constitution. The applicant concluded that the declaration made by the Prince that he did not intend to appoint the applicant to a public office, amounted to an interference with his rights to freedom of opinion and to freedom of thought, as guaranteed under the Constitution and the European Convention on Human Rights. It further called into question the constitutional right to equal access to public office and constituted an attempt to interfere with judicial independence.

14. In his letter in reply dated 4 April 1995, the Prince noted that Mr Wille had distributed the letter of 27 February 1995 to a large group of

persons. The Prince stated that it had been his intention to avoid a public discussion in informing Mr Wille, in a personal letter, about his decision as early as possible. He considered that a long debate between them on the question of Mr Wille's qualification for the office of judge was inappropriate, as Mr Wille had remained in office and the Prince's criticism had not been directed at the decisions of the Administrative Court, but at Mr Wille's general attitude towards the Constitution.

15. The Prince added that it was left to his discretion whether or not to appoint a candidate for public office and that he was not obliged to give any reasons for such a decision. However, as he had known Mr Wille for many years, he had considered it appropriate to state the reasons for his decision regarding him. Moreover, the decision no longer to appoint him to the office of President of one of the highest courts, on account of his attitude in the past as well as the opinions expressed by him, did not amount to an interference with Mr Wille's rights to freedom of expression and to freedom of thought. All citizens were free to propose and to plead for amendments to constitutional or other legal provisions. However, Mr Wille, during his term of office as a member of the government and in his lecture, had not availed himself of such constitutional and democratic means, but had simply ignored those parts of the Constitution with which he disagreed.

16. The Prince further explained that the relevant provision, namely Article 112 of the Constitution, concerned the competence of the Constitutional Court to decide on the interpretation of the Constitution in case of a dispute between the government and the Diet. Confusing the terms "Government" and "Diet" with "Prince" or "people", as Mr Wille had done, would undermine the rule of law. As head of State, he was obliged to safeguard the constitutional order and the democratic rights of the people. He would be failing in his duties if he were to appoint to one of the highest judicial offices a person whom, owing to his attitude and the statements he had made, he could not regard as being committed to upholding the Constitution.

17. On 2 June 1995 the Prince sent to the applicant, President of the Administrative Court, an open letter which was published in Liechtenstein newspapers. The Prince noted that Mr Wille had made public at least part of the Prince's letter of 27 February 1995. As this had given rise to various comments, the Prince considered it necessary to explain his point of view in an open letter.

18. In his opinion, in a democratic State based on the rule of law (*demokratischer Rechtsstaat*), a distinction had to be drawn between freedom of expression and the means used by an individual for imposing his views in such a society. In that connection, the individual should respect the rules defined in the Constitution and other statutory provisions. The Prince further stated that it was the right of Mr Wille, in his position as a judge, to express the opinion that the monarchy was no longer opportune; that

Article 7 of the Constitution should be amended; that the Prince should be subject to the jurisdiction of the Liechtenstein judiciary; and that the Liechtenstein Constitutional Court should be given supplementary competences. However, Mr Wille was not entitled to place himself above the existing Constitution or incite the Constitutional Court to lay claim to competences which were not vested in it by virtue of the Constitution. The Prince considered that Mr Wille, having regard to his education and professional experience, knew that the terms "people" ("*Volk*"), "Diet" ("*Landtag*"), "Government" ("*Regierung*") and "Prince" ("*Fürst*") and their respective rights and obligations were clearly defined in the Constitution. The applicant's contention that these terms were interchangeable would jeopardise the Constitution and the constitutional State as a whole.

19. The Prince also made reference to the political events in the autumn of 1992 and, lastly, he stated that, on the basis of the article in a Liechtenstein newspaper of 17 February 1995, he was forced to conclude that Mr Wille continued to have the intention of placing himself above the Liechtenstein Constitution. He explained that he had therefore intended to inform Mr Wille, in a personal letter and as early as possible, about his decision not to appoint him to public office in future.

20. In spring 1997 the applicant's term of office as President of the Administrative Court expired. On 14 April 1997 the Liechtenstein Diet decided to propose the applicant again as President of the Administrative Court.

21. In a letter of 17 April 1997 to the President of the Diet the Prince refused to accept the proposed appointment. He explained that, considering his experiences with Mr Wille, he had become convinced that Mr Wille did not feel bound by the Liechtenstein Constitution. In these circumstances, he would be failing in his duties as head of State if he were to appoint Mr Wille as President of the Administrative Court. The Prince further stated that Mr Wille, on account of his other professional qualifications, had made important contributions as a judge of the Administrative Court and that he (the Prince) could therefore understand the proposal made to a certain extent. If the Diet did not share his doubts regarding Mr Wille, it could elect him as associate judge of the Administrative Court.

22. The applicant is currently employed as a researcher by the Liechtenstein-Institut.

II. RELEVANT DOMESTIC LAW

23. The Principality of Liechtenstein is a constitutional, hereditary monarchy on a democratic and parliamentary basis; the power of the State is inherent in and emanates from the Prince and the people and shall be exercised by both of them in accordance with the provisions of the Constitution (Article 2 of the Constitution of 24 October 1921).

24. Chapter II of the Constitution is entitled "The Prince". In its Article 7, it stipulates that the Prince is the head of the State and exercises his sovereign authority in conformity with the provisions of the Constitution and of the other laws; and that his person is sacred and inviolable. Further competences are laid down in Articles 8 to 13. According to Article 11, the Prince appoints the State officials, in conformity with the provisions of the Constitution (see Article 79 concerning the head of the government, the government councillors and their substitutes; Article 97 concerning the president of the Administrative Court and his deputy; Article 99, in conjunction with the Court Organisation Act, concerning the first-instance judges; Article 102 § 3 concerning the members of the High Court (*Obergericht*) and the Supreme Court of Justice (*Oberster Gerichtshof*)). By letter of 28 April 1997, the Prince informed the Liechtenstein government that he instructed it to proceed, within its competence, with the appointment in 1997 of State officials who, pursuant to Article 11 of the Constitution, were to be appointed by the Prince.

25. Chapter IV of the Constitution contains the general rights and obligations of citizens of the Principality. Article 31 stipulates the equality of all citizens before the law, and also provides that the public offices are equally open to them, subject to observance of the legal regulations.

26. According to Article 97 of the Constitution, all decisions or orders by the government are subject to appeal before the Administrative Court. The Administrative Court consists of a president trained in the law and of his deputy, who are appointed by the Prince on the proposal of the Diet, and of four appeal judges and their substitutes, who are elected by the Diet. The president and his deputy must be Liechtenstein nationals. Their term of office coincides with that of the Diet, and ends at such time as they are replaced.

27. According to Article 104 of the Constitution, the Constitutional Court is, *inter alia*, competent to protect rights accorded by the Constitution. Section 23 of the Constitutional Court Act (*Staatsgerichtshofgesetz*) provides that decisions of a court or of an administrative authority may be challenged before the Constitutional Court, by alleging that there has been an infringement of constitutional rights or of rights guaranteed under the Convention for the Protection of Human Rights and Fundamental Freedoms.

28. Pursuant to Article 105 of the Constitution, in conjunction with section 4 of the Constitutional Court Act, the judges of the Constitutional Court are elected by the Diet; the election of the president and the deputy president are subject to confirmation by the Prince.

29. Article 112 of the Constitution reads as follows:

> "If doubts arise as to the interpretation of specific provisions of the Constitution and cannot be dispelled on the basis of an agreement between the Government and the Diet, the Constitutional Court is called upon to decide on the matter."

"Wenn über die Auslegung einzelner Bestimmungen der Verfassung Zweifel entstehen und nicht durch Übereinkunft zwischen der Regierung und dem Landtage beseitigt werden können, so hat hierüber der Staatsgerichtshof zu entscheiden."

30. In 1991 the Liechtenstein government introduced a bill in Parliament with the object of amending the Constitutional Court Act of 1925. In its comments on the provision regarding the Constitutional Court's competence to decide on the interpretation of specific provisions of the Constitution, the government explained, *inter alia*, its views on the wording and purpose of Article 112 of the Constitution and in particular on the term "Government" which should be understood as referring to the Prince. At the preparatory stage, the Prince, in a letter addressed to the applicant, who at the time held the office of deputy head of the Liechtenstein government, had stated his disagreement with the proposed interpretation. The applicant explained the bill in Parliament when it received its first reading in April 1992. In the course of the discussions, the President of the Parliament questioned the interpretation of Article 112 of the Constitution, as contained in the government's comments. The bill was passed by the Diet on 11 November 1992; however, the Prince failed to sign it so that it did not enter into force.

31. Under section 20 of the Liechtenstein Court Organisation Act (*Gerichtsorganisationsgesetz, LGBl 1922 Nr. 16*), judges are required to swear an oath, including the duties of loyalty to the Prince and of obedience to the laws and the Constitution.

PROCEEDINGS BEFORE THE COMMISSION

32. Mr Herbert Wille applied to the Commission on 25 August 1995. He alleged that following a public lecture he had given on issues of constitutional law the monarch of Liechtenstein, His Serene Highness Prince Hans-Adam II, as announced in a letter, decided not to appoint the applicant to public office in the future. This measure constituted a violation of his rights under Articles 6, 10, 13 and 14 of the Convention.

33. The Commission declared the application (no. 28396/95) admissible on 27 May 1997. In its report of 17 September 1998 (former Article 31 of the Convention), it expressed the opinion that there had been a violation of Article 10 (fifteen votes to four); that it was not necessary to determine whether there had been a violation of Article 6 (seventeen votes to two); that there had been a violation of Article 13 taken in conjunction with Article 10 (sixteen votes to three); and that no separate issue arose under Article 14 taken in conjunction with Article 10 (seventeen votes to two).

The full text of the Commission's opinion and of the three dissenting opinions contained in the report is reproduced as an annex to this judgment[1].

FINAL SUBMISSIONS TO THE COURT

34. In his memorial, the applicant requested the Court to find the respondent State in breach of its obligations under Articles 10 and 13 of the Convention and to award him just satisfaction under Article 41.

The Government, for their part, invited the Court to dismiss the applicant's complaints under Articles 10 and 13 of the Convention.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

35. The applicant complained that, on account of the views expressed by him in the course of a public lecture on constitutional law at the Liechtenstein-Institut on 16 February 1995, the monarch of Liechtenstein, His Serene Highness Prince Hans-Adam II, in a letter addressed to him, announced his intention not to appoint the applicant to a public office again. He considered that this constituted a breach of his right to freedom of expression as guaranteed by Article 10 of the Convention, which reads:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

1. *Note by the Registry*. For practical reasons this annex will appear only with the final printed version of the judgment (in the official reports of selected judgments and decisions of the Court), but a copy of the Commission's report is obtainable from the Registry.

A. As to the applicability of Article 10 and the existence of an interference

36. The applicant submitted that the Prince's decision not to appoint him to a public office in the future should he be proposed by the Diet or any other body as expressed in the Prince's letter of 27 February 1995 constituted an immediate reaction to his academic speech delivered a few days before and could not be considered anything else but a sanction for the expression of his legal opinion. Although the Convention did not guarantee a right of access to the civil service, civil servants nevertheless enjoyed the protection of Article 10.

37. The Government submitted that the applicant's speech and the Prince's reaction thereto expressed in his letter of 27 February 1995 should be considered against the background of an ongoing political debate in Liechtenstein regarding the Prince's authority and should not be seen in isolation. In 1992 there was a controversy between the Prince and the government over the date of a referendum for accession to the European Economic Area. The applicant was then a member of the Liechtenstein government, deputy head of the government and in charge of the justice portfolio. In the course of that controversy the applicant had expressed the view that, under Article 112 of the Constitution, the Constitutional Court had the power to decide on the interpretation of the Constitution in case of a disagreement between the Prince and the Diet. At the same time the Diet was considering a draft amendment to the Constitutional Court Act. In the explanatory report thereon the applicant had expressed the same opinion. In both cases the Prince had directly contradicted the applicant. Nevertheless, in December 1993, he had appointed the applicant President of the Administrative Court. Thus the Prince's letter essentially expressed the Prince's disappointment and surprise that the applicant, despite a previous compromise on the controversy regarding the jurisdiction of the Constitutional Court, had given a public speech on this issue although he must have known that the Prince could not have been in agreement with the opinion expressed.

38. The Prince's letter to the applicant of 27 February 1995 was a personal letter not intended for the general public and sent to the applicant's private address. It did not constitute an act of State but was rather the notice of an intent to make a decision at a later time. The letter did not have a direct impact on the applicant's legal status. He was not dismissed from office nor was his professional activity as President of the Administrative Court obstructed in any other way. But even if the Prince's letter could be construed as an act of State, the Convention would not be applicable to the case. As the sanction was the refusal to appoint the applicant to a specific public office, it did not affect the applicant in any of his rights, as there was no right, either under Liechtenstein law or under the Convention, to be

appointed to such office. Article 10 did not apply when the central issue was a question of access to public office.

39. The Commission essentially agreed with the applicant. It found that the Prince's decision, as expressed in his letter of 27 February 1995, not to appoint the applicant in the future to public office was an interference with the applicant's right to freedom of expression as secured in Article 10 of the Convention.

40. The Court will first deal with the Government's argument that the case essentially concerns access to the civil service, a right not guaranteed by the Convention.

41. In this connection the Court points out that the right of recruitment to the civil service was deliberately omitted from the Convention. Consequently, the refusal to appoint a person as a civil servant cannot as such provide the basis for a complaint under the Convention. This does not mean, however, that a person who has been appointed as a civil servant cannot complain of being dismissed if that dismissal violates one of his or her rights under the Convention. Civil servants do not fall outside the scope of the Convention. In Articles 1 and 14, the Convention stipulates that "everyone within [the] jurisdiction" of the Contracting States must enjoy the rights and freedoms in Section I "without discrimination on any ground". Moreover, Article 11 § 2 *in fine*, which allows States to impose special restrictions on the exercise of the freedoms of assembly and association by "members of the armed forces, of the police or of the administration of the State", confirms that as a general rule the guarantees in the Convention extend to civil servants (see the Glasenapp and Kosiek v. Germany judgments of 28 August 1986, Series A nos. 104, p. 26, § 49, and 105, p. 20, § 35, and the Vogt v. Germany judgment of 26 September 1995, Series A no. 323, pp. 22-23, § 43).

42. Accordingly, the status of civil servant obtained by the applicant when he was appointed President of the Liechtenstein Administrative Court did not deprive him of the protection of Article 10.

43. In order to determine whether this provision was infringed it must first be ascertained whether the disputed measure amounted to an interference with the exercise of freedom of expression – in the form of a "formality, condition, restriction or penalty" – or whether it lay within the sphere of the right of access to the civil service, a right not secured in the Convention. In order to answer this question, the scope of the measure must be determined by putting it in the context of the facts of the case and of the relevant legislation (see the Glasenapp and Kosiek judgments cited above, p. 26, § 50, and p. 20, § 36).

44. In the Glasenapp and Kosiek cases, the Court analysed the action of the authorities as a refusal to grant the applicants access to the civil service on the ground that they did not possess one of the necessary qualifications. In the Vogt case, the Court found that Mrs Vogt, for her part, had been a

permanent civil servant since February 1979. She was suspended in August 1986 and dismissed in 1987. It concluded that there was indeed an interference with the exercise of the right protected by Article 10 of the Convention (see the Vogt judgment cited above, p. 23, § 44). In the instant case, the Court considers likewise that recruitment to the civil service does not lie at the heart of the issue submitted to it. Even though the Prince raised the matter of a possible reappointment of the applicant as President of the Administrative Court in the future, his communications to the applicant essentially consisted in a reprimand for the opinions the latter had expressed previously.

45. The Government argue that the Prince's letter of 27 February 1995 was merely an advance announcement of a possible decision to be taken by the Prince in the future; thus it was a private letter and could not be equated to a sanction.

46. The Court reiterates in this connection that the responsibility of a State under the Convention may arise for acts of all its organs, agents and servants. As is the case in international law generally, their rank is immaterial since the acts by persons accomplished in an official capacity are imputed to the State in any case. In particular, the obligations of a Contracting Party under the Convention can be violated by any person exercising an official function vested in him (see Ireland v. the United Kingdom, application no. 5310/71, Commission's report of 25 January 1976, Yearbook 19, p. 758).

47. The Court notes that the Principality of Liechtenstein is a constitutional hereditary monarchy on a democratic and parliamentary basis; the power of the State is inherent in and emanates from the Prince and the people and shall be exercised by both of them in accordance with the provisions of the Constitution (Article 2 of the Constitution). Chapter II of the Constitution specifies various sovereign powers of the Prince, *inter alia*, the appointment of State officials (Article 11 of the Constitution).

48. The Court further notes that the applicant had been appointed President of the Liechtenstein Administrative Court in December 1993. On 27 February 1995 the Prince of Liechtenstein, in a letter to the applicant, informed him of his intention not to appoint him to public office again, should he be proposed by the Diet or any other body. The Prince's letter was prompted, and this is not in dispute between the parties, by a report in the *Liechtensteiner Volksblatt* concerning the lecture given by the applicant on 16 February 1995 on the nature and functions of the Liechtenstein Constitutional Court, including a statement that the competence of that court under the Constitution could, in matters of interpretation of the Constitution, extend to disputes involving the powers of the Prince. According to the latter, the views thus expressed by the applicant infringed the Constitution, and the applicant's attitude towards the Constitution made him unsuitable for public office. The Prince confirmed his intention not to appoint the

applicant in subsequent letters of 4 April and 2 June 1995 and eventually, by letter of 17 April 1997, refused to reappoint the applicant as President of the Administrative Court after he had been proposed for this post by the Diet. Hence the Court cannot accept the argument that the letters of the Prince were private correspondence and did not constitute an act of State.

49. In examining whether there has been an interference with the applicant's right to freedom of expression the Court finds that the Prince's letter of 27 February 1995 should be at the centre of its attention as it expressed for the first time the Prince's intentions *vis-à-vis* the applicant. However, this measure has to be seen in the context of the Prince's subsequent communications which confirmed these intentions.

50. Considering the contents of this letter the Court finds that there has been an interference by a State authority with the applicant's freedom of expression. The measure complained of occurred in the middle of the applicant's term of office as President of the Administrative Court; it was unconnected with any concrete recruitment procedure involving an appraisal of personal qualifications. From the terms of the letter of 27 February 1995 it appears that the Prince had come to a resolution regarding his future conduct towards the applicant, which related to the exercise of one of his sovereign powers, that is his power to appoint State officials. Moreover, the said letter was expressly addressed to the applicant as President of the Administrative Court, though sent to his place of residence. Thus, the measure complained of was taken by an organ which was competent to act in the manner it did and whose acts engaged the responsibility of Liechtenstein as a State under the Convention. The right of the applicant to exercise his freedom of expression was interfered with once the Prince, criticising the contents of the applicant's speech, announced the intention to sanction the applicant because he had freely expressed his opinion. The announcement by the Prince of his intention not to reappoint the applicant to a public post constituted a reprimand for the previous exercise by the applicant of his right to freedom of expression and, moreover, had a chilling effect on the exercise by the applicant of his freedom of expression, as it was likely to discourage him from making statements of that kind in the future.

51. It follows that there was an interference with the exercise of the applicant's right to freedom of expression, as secured in Article 10 § 1.

B. As to whether the interference was justified

52. Such an interference gives rise to a breach of Article 10 unless it can be shown that it was "prescribed by law", pursued one or more legitimate aim or aims as defined in paragraph 2 and was "necessary in a democratic society" to attain them.

1. "Prescribed by law" and legitimate aim

53. The applicant submitted that the interference complained of did not have any legal basis in Liechtenstein law. In particular, it had been unforeseeable for him that as a reaction to his speech the Prince would impose such a serious and far-reaching sanction. Furthermore the Prince's measure did not pursue any legitimate aim.

54. In the Government's view the interference, if there had been any, was justified on account of the applicant's violation of judicial norms of conduct and of his oath of office under Liechtenstein law, which included swearing loyalty to the Prince and obedience to the Constitution and the laws. Furthermore, the aim of the interference was to maintain public order and promote civil stability, and to preserve judicial independence and impartiality.

55. The Commission found that in examining the justification of the interference with the applicant's right to freedom of expression, the central issue was whether this interference was "necessary in a democratic society". In view of the conclusions it reached with regard to this third condition, it did not find it necessary to examine compliance with the first two conditions.

56. Assuming that the interference was prescribed by law and pursued a legitimate aim, as the Government claimed, the Court considers that it was not "necessary in a democratic society", for the following reasons.

2. "Necessary in a democratic society"

57. The applicant submitted that the measure complained of constituted an interference with his right to freedom of expression which could not be justified under paragraph 2 of Article 10 as it was not "necessary in a democratic society".

58. The Commission shared this opinion while it was contested by the Government.

59. The Government submitted that Article 10 § 2 granted States a wide margin of appreciation in determining what political conduct was incompatible with the "decorum of judicial office". At the hearing they explained that beyond a certain level in the public service, dissenting from those who were free to appoint, reappoint or dismiss high-ranking officials, including (high-ranking) judges, carries a certain risk, a risk known to all concerned and so far not regarded as a violation of human rights. In their view, it was inherent in the nature of judicial office that a particularly high degree of self-restraint be observed by the holder of such office in making public pronouncements which had a political flavour.

60. The Government considered that the applicant's lecture on the functions of the Liechtenstein Constitutional Court contained a controversial political statement and a subtle but significant provocation of

one of the sovereigns of Liechtenstein. The applicant had been aware that his statement regarding the competence of the Constitutional Court to decide in the event of a conflict between the Prince and Parliament contradicted the Prince's view, supported by the text of the Constitution, that he was completely immune from the compulsory jurisdiction of any court. In their submission, the applicant was invited as a judge to give a lecture, and he used the opportunity to make his own political and legal beliefs public. He thereby put at risk the public trust in judicial independence and impartiality.

61. The Court recalls that in its above-mentioned Vogt judgment (pp. 25-26, § 52) it summarised as follows the basic principles concerning Article 10 as laid down in its case-law:

(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb; such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society". Freedom of expression, as enshrined in Article 10, is subject to a number of exceptions which, however, must be narrowly interpreted, and the necessity for any restrictions must be convincingly established.

(ii) The adjective "necessary", within the meaning of Article 10 § 2, implies the existence of a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with a European supervision, embracing both the law and the decisions applying it, even those given by independent courts. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10.

(iii) The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully or in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts.

62. In the same judgment the Court declared:

> "These principles apply also to civil servants. Although it is legitimate for a State to impose on civil servants, on account of their status, a duty of discretion, civil servants are individuals and, as such, qualify for the protection of Article 10 of the Convention. It therefore falls to the Court, having regard to the circumstances of each case, to determine whether a fair balance has been struck between the fundamental right of the individual to freedom of expression and the legitimate interest of a democratic State in ensuring that its civil service properly furthers the purposes enumerated in Article 10 § 2. In carrying out this review, the Court will bear in mind that whenever civil servants' right to freedom of expression is in issue the 'duties and responsibilities' referred to in Article 10 § 2 assume a special significance, which justifies leaving to the national authorities a certain margin of appreciation in determining whether the impugned interference is proportionate to the above aim." (p. 26, § 53, and the Ahmed and Others v. the United Kingdom judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, p. 2378, § 56)

63. In assessing whether the measure taken by the Prince as a reaction to the statement made by the applicant in the course of his lecture on 16 February 1995 corresponded to a "pressing social need" and was "proportionate to the legitimate aim pursued", the Court will consider the impugned statement in the light of the case as a whole. It will attach particular importance to the office held by the applicant, the applicant's statement, the context in which it was made and the reaction thereto.

64. In December 1993 the applicant was appointed President of the Administrative Court and he held this office when, on 16 February 1995, he gave the lecture at issue. Since the applicant was a high-ranking judge at that time, the Court must bear in mind that, whenever the right to freedom of expression of persons in such a position is at issue, the "duties and responsibilities" referred to in Article 10 § 2 assume a special significance since it can be expected of public officials serving in the judiciary that they should show restraint in exercising their freedom of expression in all cases where the authority and impartiality of the judiciary are likely to be called in question. Nevertheless the Court finds that an interference with the freedom of expression of a judge in a position such as the applicant's calls for close scrutiny on the part of the Court.

65. As regards the applicant's lecture on 16 February 1995, the Court observes that this lecture formed part of a series of academic lectures at a Liechtenstein research institute on questions of constitutional jurisdiction and fundamental rights (see paragraph 8 above). The applicant's discourse included a statement on the competences of the Constitutional Court under Article 112 of the Liechtenstein Constitution. It was the applicant's view that the term "Government" used in this provision included the Prince, an opinion allegedly in conflict with the principle of the Prince's immunity from the jurisdiction of the Liechtenstein judiciary (see paragraphs 24 and 29).

66. In the applicant's view this statement was an academic comment on the interpretation of Article 112 of the Constitution. The Government, on the other hand, maintained that although it was being made in the guise of a

legally aseptic statement, it constituted, in essence, a highly political statement involving an attack on the existing constitutional order and not reconcilable with the public office held by the applicant at the time.

67. The Court accepts that the applicant's lecture, since it dealt with matters of constitutional law and more specifically with the issue of whether one of the sovereigns of the State was subject to the jurisdiction of a constitutional court, inevitably had political implications. It considers that questions of constitutional law, by their very nature, have political implications. It cannot find, however, that this element alone should have prevented the applicant from making any statement on this matter. The Court further observes that in the context of introducing a bill amending the Constitutional Court Act in 1991, the Liechtenstein government had, in its accompanying comments, held a similar view, which had been opposed by the Prince but had found agreement in the Liechtenstein Diet, albeit only by a majority (see paragraph 30 above). The opinion expressed by the applicant cannot be regarded as an untenable proposition since it was shared by a considerable number of persons in Liechtenstein. Moreover, there is no evidence to conclude that the applicant's lecture contained any remarks on pending cases, severe criticism of persons or public institutions or insults of high officials or the Prince.

68. Turning to the Prince's reaction, the Court observes that he announced his intention not to appoint the applicant to public office again, should the applicant be proposed by the Diet or any other body. The Prince considered that the above-mentioned statement by the applicant clearly infringed the Liechtenstein Constitution. In this context, he also made reference to a political controversy with the Liechtenstein government in October 1992 and, in conclusion, he reproached the applicant, who had been a member of the government at that time and President of the Liechtenstein Administrative Court since 1993, with regarding himself as not being bound by the Constitution. In the Prince's view, the applicant's attitude towards the Constitution made him unsuitable for public office (see paragraph 11 above).

69. The Prince's reaction was based on general inferences drawn from the applicant's previous conduct in his position as a member of the government, in particular on the occasion of the political controversy in 1992, and his brief statement, as reported in the press, on a particular, though controversial, constitutional issue of judicial competence. No reference was made to any incident suggesting that the applicant's view, as expressed at the lecture in question, had a bearing on his performance as President of the Administrative Court or on any other pending or imminent proceedings. Also the Government did not refer to any instance where the applicant, in the pursuit of his judicial duties or otherwise, had acted in an objectionable way.

70. On the facts of the present case, the Court finds that, while relevant, the reasons relied on by the Government in order to justify the interference with the applicant's right to freedom of expression are not sufficient to show that the interference complained of was "necessary in a democratic society". Even allowing for a certain margin of appreciation, the Prince's action appears disproportionate to the aim pursued. Accordingly the Court holds that there has been a violation of Article 10 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

71. The applicant complained that he did not have an effective judicial or other remedy enabling him to challenge the action taken by the Prince with regard to the opinion expressed on the occasion of his lecture. 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."

72. The Government disputed the above contention, emphasising that a remedy existed of which the applicant had failed to avail himself.

At the hearing the Government submitted that there were strong indications in the case-law of the Constitutional Court that it would not only consider a court or an administrative authority but also the Diet as one of the bodies against which a request for adjudication could be lodged with the Constitutional Court under Section 23 of the Constitutional Court Act. The applicant therefore had at his disposal an effective remedy within the meaning of Article 13 of the Convention as he could and should have challenged the Diet's failure to insist on his nomination as President of the Administrative Court.

73. In the applicant's submission, a request for adjudication to the Constitutional Court under Section 23 of the Constitutional Court Act required that the decision complained of should emanate from a court or an administrative authority. The Prince, however, was neither of these.

74. The Commission agreed with the applicant. It found that the Government had not succeeded in showing that, against the violation of Article 10 of the Convention alleged by the applicant, a remedy effective in practice as well as in law existed under Liechtenstein law. In particular, as regards a complaint with the Constitutional Court the Government had not put forward any example showing its application in a case similar to the present one.

75. Article 13 has been consistently interpreted by the Court as requiring a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (see the Boyle and Rice v. the United Kingdom judgment of 27 April 1988, Series A no. 131, p. 23,

§ 52, and the Powell and Rayner v. the United Kingdom judgment of 21 February 1990, Series A no. 172, p. 14, § 31). Article 13 guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of this Article is thus to require the provision of a domestic remedy allowing the "competent national authority" both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their obligation under this provision. The remedy must be "effective" in practice as well as in law (see the Mentes and Others v. Turkey judgment of 28 November 1997, *Reports* 1997-VIII, p. 2715, § 89).

76. In the light of the conclusion in paragraph 70 above, the requirement that the complaint be "arguable" is satisfied in respect of the submission in question (see the Vereinigung demokratischer Soldaten Österreichs and Gubi v. Austria judgment of 19 December 1994, Series A no. 302, p. 20, § 53).

77. As regards the Government's argument that the applicant should have seised the Constitutional Court against the Diet for not having insisted on its right to nominate him for a new term of office as President of the Administrative Court, it suffices to note that the applicant's complaint under Article 10 concerned acts by the Prince and not by the Diet. The Government, however, have failed to show that there exists any precedent in the Constitutional Court's case-law, since its establishment in 1925, that that court has ever accepted for adjudication a complaint brought against the Prince. They have therefore failed to show that such a remedy would have been effective.

78. It follows that the applicant has also been the victim of a violation of Article 13.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND OF ARTICLE 14 TAKEN IN CONJUNCTION WITH ARTICLE 10

79. Before the Commission the applicant further alleged that he had been denied access to a tribunal to defend his reputation and seek protection of his personal rights, including his occupation and professional career, against the statements of the Prince. He relied on Article 6 § 1 of the Convention, the relevant part of 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 within a reasonable time by an independent and impartial tribunal established by law …"

80. Before the Commission the applicant also complained that, because of his opinion regarding a particular legal issue, he was prejudiced in his access to public office. He relied on Article 14 of the Convention taken in conjunction with Article 10. Article 14 of the Convention states:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

81. As regards the complaint under Article 6, the Commission found it appropriate to examine this complaint in relation to the more general obligation on States under Article 13 to provide an effective remedy in respect of violations of the Convention. It concluded that it was not necessary to determine whether there had been a violation of Article 6. As regards the complaint under Article 14, the Commission, having regard to its conclusion concerning Article 10, found that no separate issue arose under Article 14 taken in conjunction with Article 10.

82. Before the Court the applicant did not reiterate these complaints and the Court does not find it necessary to deal with the matter of its own motion.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. The applicant sought just satisfaction under Article 41 of the Convention, which provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

84. Under the head of pecuniary damage, the applicant claimed 25,000 Swiss francs (CHF) compensation for economic loss suffered by him as a consequence of the measure complained of. He submitted that, unlike his predecessors, he had not been offered any remunerated position in Liechtenstein industrial and business circles.

85. The Government objected to this claim.

86. The Court finds that there is no sufficient causal link established between the damage claimed and the violation of the Convention found. Thus, it cannot allow the compensation claim submitted under this head.

87. Under the head of non-pecuniary damage, the applicant claimed CHF 30,000. He submitted that the Prince's statements had been highly offensive and had adversely affected his reputation.

88. The Government also opposed this claim.

89. The Court considers that the applicant may be taken to have suffered distress on account of the facts of the case. On an equitable basis, the Court awards him CHF 10,000 for non-pecuniary damage.

B. Costs and expenses

90. In respect of costs and expenses relating to his representation before the Convention institutions, the applicant claimed a total of CHF 91,014.05, namely CHF 44,927.20 for Mr Kley and CHF 46,086.85 for Mr Seeger.

91. The Government did not contest this claim.

92. The Court is satisfied that the hourly rates charged in the Strasbourg proceedings were reasonable. Taking into account that a hearing was held both before the Commission and the Court, it also finds the number of hours claimed not excessive. The claim for costs and expenses is thus to be allowed in its entirety.

C. Default interest

93. According to the information available to the Court, the statutory rate of interest applicable in Liechtenstein at the date of adoption of the present judgment is 5% per annum.

FOR THESE REASONS, THE COURT

1. *Holds* by sixteen votes to one that there has been a violation of Article 10 of the Convention;

2. *Holds* by sixteen votes to one that there has been a violation of Article 13 of the Convention;

3. *Holds* unanimously that it is not necessary to consider whether there has been a violation of Article 6 of the Convention and of Article 14 taken in conjunction with Article 10;

4. *Holds* unanimously
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) 10,000 (ten thousand) Swiss francs for non-pecuniary damage;
      (ii) 91,014.05 (ninety-one thousand and fourteen) Swiss francs and five centimes for costs and expenses;

(b) that simple interest at an annual rate of 5% shall be payable from the expiry of the above-mentioned three months until settlement;

5. *Dismisses* unanimously the remainder of the applicant's claims for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 28 October 1999.

Elisabeth PALM
President

Maud DE BOER-BUQUICCHIO
Deputy Registrar

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) joint concurring opinion of Mr Caflisch, Mr Zupancic and Mr Hedigan;

(b) dissenting opinion of Mr Cabral Barreto.

E.P.
M.B.

JOINT CONCURRING OPINION OF JUDGES CAFLISCH, ZUPANCIC AND HEDIGAN

We concur with the Court in its judgment but should like to enter a reservation as to the Court's reasoning in finding a violation of Article 10.

The matter complained of by the applicant, who alleged that it amounted to an interference with a right guaranteed by Article 10, is held to have been completed by the first letter written by HSH Prince Hans-Adam II of Liechtenstein. We do not share that view. The letter in question was dated 27 February 1995. At that juncture it could be regarded as the mere expression of an intention, which might very well have changed in the months that followed and which only crystallised into an "interference" with the Prince's subsequent confirming communications. Only in the light of the latter can it be accepted that the threat of a sanction indeed hung over the applicant. Furthermore, taken alone, the letter of 27 February 1995 could have been regarded as the expression of a private personal opinion. It is the subsequent confirming letters which justify concluding, without any possible doubt, that this measure was, in fact, an act of State.

We thus reach the conclusion that the measure which infringed the right guaranteed by Article 10 consisted in the Prince's communications taken as a whole.

DISSENTING OPINION OF JUDGE CABRAL BARRETO

(*Translation*)

I regret that I cannot share the opinion of the majority of the Court; in my opinion, there has not been a violation of the applicant's right to freedom of expression.

There are two decisive pieces of evidence in the case: the Prince's letter of 27 February 1995, in which the Prince expressed for the first time his intention of not reappointing the applicant as President of the Administrative Court, and the letter of 17 April 1997 to the President of the Diet, in which the Prince refused to make that appointment.

Let us examine these.

1. The letter of 27 February 1995 was a personal letter, sent to the applicant's private address, in which the Prince indicated his intention of not appointing the applicant to any public office again.

It will, I think, be helpful to reproduce the following passage:

> "In my eyes your attitude, Dr Wille, makes you unsuitable for public office. I do not intend to get involved in a long public or private debate with you, but I should like to inform you in good time that I shall not appoint you again to a public office should you be proposed by the Diet or any other body …"

I note at the outset that the Prince did not wish to get involved in a public discussion and that he merely wanted to indicate in good time his intention of taking a certain course of action if the opportunity arose.

I have difficulty in seeing how this letter constituted a "reprimand" (see paragraph 50 of the judgment).

The letter expressed above all the Prince's disagreement with the applicant's ideas about the interpretation of the Liechtenstein Constitution. That disagreement entailed the loss of the political confidence which the Prince was supposed to have in the applicant and consequently the announcement that the Prince intended to draw the necessary political conclusions.

Nothing more, in other words, than what the applicant could expect, regard being had to the controversy in 1992 between the Prince and the government (of which the applicant was then a member).

An intention does not, in itself, amount to a legal act or even an initial step towards performing such an act.

There is no doubt that we are here in the purely psychological field, still far from even a preparatory act, which would presuppose that physical acts had already been performed.

I would therefore be able to understand that the Prince's letter should be judged as having been quite simply designed to announce "in good time" his intention of carrying out an act, in order to give the applicant time to make the necessary preparations for his future.

It is true that this private letter announcing an intention became public and that it was confirmed by the other letters from the Prince, which were open letters.

All that, however, was due solely to the applicant's conduct and, as Mr Conforti rightly said in his dissenting opinion annexed to the Commission's report, the applicant cannot "avoid the application of the principle *nemo contra factum suum proprium venire potest*".

Accepting the contrary would, to my mind, contravene the letter and the spirit of Article 10 of the Convention. It is not possible to judge intentions without falling into the realm of a "virtual" violation, and that seems to me to be what has happened in the instant case.

2. The refusal to reappoint the applicant as President of the Administrative Court was, without any doubt, a legal act, and in the circumstances of the case I can accept that it was prompted by the opinions that the applicant had expressed, and that poses a problem under Article 10.

However, I consider that it is unnecessary to determine whether that refusal pursued a legitimate aim and whether it was necessary in a democratic society, since no one will dispute that we are here in the field of access to public office, a subject which was deliberately omitted from the Convention. That is acknowledged by the majority of the Court in paragraph 41 of the judgment.

I therefore conclude that there has been no violation of the Convention.