# Caso de Maillard contra Francia, de 1998 [ENG]

Not necessary to examine

EUROPEAN COURT OF HUMAN RIGHTS

JUDGMENT

STRASBOURG

9 June 1998

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SUMMARY[1]

Judgment delivered by a Chamber

*France – length of proceedings brought by a professional serviceman to secure revision of an assessment and retrospective adjustment of his career*

article 6 § 1 of the convention

Common ground that there had been a "*contestation*" (dispute) over a "right" – only issue was whether the right in question had been a "civil" one.

Disputes concerning recruitment, careers and termination of service of civil servants are as general rule outside scope of Article 6 § 1. That applied to French professional servicemen.

Applicant's disputes had related to his assessment for 1983 and its consequences for his promotion – they had therefore primarily concerned his career – pecuniary implications of outcome of relevant proceedings did not suffice to make those proceedings "civil" ones.

*Conclusion*: Article 6 § 1 inapplicable (unanimously).

COURT'S CASE-LAW REFERRED TO

19.2.1998, Huber v. France

**In the case of Maillard v. France[1],**

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A[2], as a Chamber composed of the following judges:

Mr R. Bernhardt, *President*,

Mr L.-E. Pettiti,

Sir John Freeland,

Mr L. Wildhaber,

Mr G. Mifsud Bonnici,

Mr D. Gotchev,

Mr P. Jambrek,

Mr E. Levits,

Mr M. Voicu,

and also of Mr H. Petzold, *Registrar*, and Mr P.J. Mahoney, *Deputy Registrar*,

Having deliberated in private on 27 February and 23 May 1998,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 4 March 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 26586/95) against the French Republic lodged with the Commission under Article 25 by a French national, Mr Yves Maillard, on 24 September 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 Article 6 § 1 of the Convention.

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. Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 19 March 1997, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr B. Walsh, Sir John Freeland, Mr L. Wildhaber, Mr G. Mifsud Bonnici, Mr D. Gotchev, Mr P. Jambrek and Mr E. Levits (Article 43 *in fine* of the Convention and Rule 21 § 5). Subsequently Mr R. Bernhardt, the Vice-President of the Court, replaced Mr Ryssdal, who was unable to take part in the further consideration of the case (Rule 21 § 6, second sub-paragraph), and Mr M. Voicu, substitute judge, replaced Mr Walsh, who had died on 9 March 1998 (Rule 22 § 1).

4. As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, had 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 applicant's and the Government's memorials on 30 September 1997. In a letter of 28 October 1997 the Secretary to the Commission indicated that the Delegate would submit his observations at the hearing.

5. In accordance with Mr Ryssdal's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 23 February 1998. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*

Mr D. DOUVENEAU, Assistant Principal, *Agent*;

Legal Affairs Department,

Ministry of Foreign Affairs,

(b) *for the Commission*

Mr E.A. ALKEMA, *Delegate*;

(c) *for the applicant*

Ms C. Mechain, of the Versailles Bar, *Counsel*.

The Court heard addresses by Mr Alkema, Ms Méchain and Mr Douveneau.

AS TO THE FACTS

I. the CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1946 and lives at Saint-Germain-en-Laye (*département* of Yvelines). He is an officer in the French navy.

A. **The first set of proceedings**

1. ***Before the** military **authorities***

7. On 2 December 1983 Mr Maillard caused to be entered in the complaints register of the fleet escort ship *D'Estrées* the following application for reconsideration of his assessment for 1983:

"…

I … learnt that at senior level and at supreme level my marks had been significantly reduced: for the criterion 'standard of service' the mark had been lowered from 3 to 4 and for the criterion 'promotion' from B to C+, the whole being accompanied by the following written appraisal: 'Is not up to the level that should be achieved by a second in command' (or, within a word or two, a very similar expression). To this day I have been given no explanation of this reduction in marks or of what prompted such a statement.

I consider that this appraisal is excessively severe, unjust and personally offensive. I would refer in this connection to the appraisal made by Commander Gazzano, the assessor at immediate-superior level, to the smooth running of the ship during the period on which my assessment was based and to the responsibility I bear under the rules for that smooth running, and, lastly, to the good performance of the *D'Estrées* during the general inspections of 1982 and 1983, attested by the messages of congratulations sent by the admiral commanding the Mediterranean fleet on those occasions.

Furthermore, the appraisal calls in question the wisdom of the decisions of those of my superiors who on two occasions saw fit to appoint me to a second-in-command post and the appraisals made by the various commanding officers who assessed me as their second in command.

I accordingly have the honour to request that

(1) the sentence 'Is not up to the level that should be achieved by a second in command' should be deleted. It is an appraisal made not of the standard of my performance which is meant to be the subject of the assessment, but of my person, in a manner which casts a slur on my honour as it is offensive;

(2) the criteria 39, 40 (standard of service and promotion) and consequently 44 and 46 (promotion and 'class' at supreme level) should be raised in consequence, given the implied meaning of the sentence complained of in regard to the level of my service and my promotion potential; and

(3) once my marks at senior and supreme level have been reassessed, given the effect that my 1983 assessment may have under the current rules, on the introductory memorandum submitted by the Naval Service Personnel Department for the competitive examination for entry to the National Naval Warfare College, it should be considered whether that reassessment is not such as to justify reconsideration of my failing that examination."

8. On 16 February 1984 the Navy Chief of Staff dismissed the complaint. In a letter of the same date he informed the Commander-in-Chief for the Mediterranean of the fact and requested that the applicant should be notified of it.

9. On 3 February 1984, having still not received any reply, the applicant had sent his complaint to the Minister of Defence; it was dismissed in a decision taken by the Minister on 9 April 1984.

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

10. On 18 April and 6 July 1984 Mr Maillard applied to the *Conseil d'Etat* for judicial review of those two decisions. He filed supplementary pleadings on 17 and 29 August 1984.

11. In a judgment of 20 July 1988 the *Conseil d'Etat* quashed the decision containing the applicant's assessment for 1983 and the decisions of 16 February and 9 April 1984. It gave the following reason:

"It is unnecessary to consider the grounds of the applications.

According to the provisions of section 25 of the Law of 13 July 1972 making general regulations for service personnel, as amended by the Law of 30 October 1975, 'service staff shall be assessed at least once a year. The marks and appraisals shall be compulsorily communicated to the service personnel each year. When the assessment is made, the chief shall make known to each of his subordinates his appraisal of each individual's performance'. The same Law provides in section 107 that implementing provisions shall be laid down in decrees adopted after consultation of the *Conseil d'Etat*. Similarly, under section 3 of the Law, the special rules governing professional service personnel must be laid down in a decree adopted after consultation of the *Conseil d'Etat*.

… Mr Maillard's assessment for 1983 was drawn up according to the procedure of assessment at several successive levels of authority and to an assessment scale laid down in the ministerial directive of 1 February 1980 concerning the assessment of naval officers. That directive laid down new general rules which govern the implementation of the Law and which could therefore only have been lawfully laid down by a decree adopted after consultation of the *Conseil d'Etat*. It follows that the impugned decision containing Mr Maillard's assessment for 1983, together with the

decisions whereby the Navy Chief of Staff and thereafter the Minister of Defence refused to revise the assessment, decisions made under rules issued by an authority lacking the necessary competence, are unlawful…"

B. **The second set of proceedings**

***1. Before the** military **authorities***

12. On 12 September 1988 Mr Maillard sent the following letter to the admiral superintendent of Cherbourg naval dockyard:

"I have the honour to ask you to kindly forward to the higher authorities the present letter in which I am seeking

(1) pursuant to the *Conseil d'Etat*'s decision [of 20 July 1988], to have my assessment for 1983 removed from my personal file;

(2) to be assessed for that same year 1983 in accordance with the legal requirements;

…

(3) given the substantial damage I have suffered by reason of the impugned assessment, which is evident to me, *inter alia*, from the fact that since the year in question I have not been given any post of responsibility at sea (command or second in command), to have my career retrospectively adjusted as laid down in the *Conseil d'Etat*'s case-law."

13. On 15 December 1988 the Navy Chief of Staff decided to remove the impugned assessment from the applicant's personal file, to draw up and add to that file a new assessment for 1983 identical with the first one and to refuse the application for retrospective adjustment of career. On the latter point the Chief of Staff considered that "the development of [the applicant's] career [had] not been affected by the formal irregularity impugned by the *Conseil d'Etat*, an irregularity which [had] not, in particular, had the consequence of placing this senior officer in circumstances different from those in which the other officers competing with him [found] or [might] have found themselves".

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

14. Mr Maillard complained to the Report and Research Division of the *Conseil d'Etat* about the difficulties he considered he was encountering in having the judgment of 20 July 1988 executed.

On 17 February 1989 the Deputy General Rapporteur replied that the administrative authorities had in fact drawn the appropriate conclusions from the judgment setting aside the first assessment for 1983 and that if he wished to challenge the lawfulness of the decision of 15 December 1988 on its merits, he would have to apply to the Judicial Division of the *Conseil d'Etat*.

15. On 20 February 1989 the applicant applied to the *Conseil d'Etat* for judicial review of the decision of 15 December 1988 and, consequently, of the one of 13 December 1988 establishing the table of command posts for 1989. He produced supplementary pleadings on 19 June 1989.

On 19 February 1990 Mr Maillard lodged another application seeking judicial review of a decision of 14 December 1989 establishing the table of command posts for 1990 and an order that the State should pay him the sum of 10,000 French francs (section 75-1 of Law no. 91-647 of 10 July 1991).

16. The Minister of Defence filed his defence on 27 September 1990. The applicant replied on 18 November 1990 and produced fresh documents on 22 December 1990.

17. The reporting judge was appointed on 9 July 1993 and submitted his report on 18 October 1993.

18. A preparatory sitting was held on 18 February 1994 and the hearing took place on 9 March 1994.

19. In a judgment of 8 April 1994 the *Conseil d'Etat* quashed the decision of 15 December 1988 on the following ground:

"It is unnecessary to consider the other grounds…

… under Article 3 of the decree of 31 December 1983 on the assessment of service personnel, adopted pursuant to the Law [of 13 July 1972, as amended, making general regulations for service personnel], 'service personnel shall be assessed at one or more levels by the authorities to which they are subordinate'. That decree did not come into force until 1 January 1984.

It appears from the evidence that while Mr Maillard's new assessment for 1983 was drawn up according to the procedure of assessment at several successive levels provided for in Article 3 of the decree of 31 December 1983 on the assessment of service personnel, that decree was not applicable to assessments drawn up for 1983. Moreover, no other provision of service regulations provided for the implementation of such a procedure for 1983. The applicant is accordingly justified in seeking to have his assessment for 1983 quashed. Furthermore, the administrative authorities could not lawfully refuse him retrospective adjustment of his career without undertaking a fresh review of his position and his merit."

The applicant's other claims were dismissed.

### C. The third set of proceedings

20. On 16 August 1994 the Director of Naval Service Personnel reinstated the assessment drawn up in 1983.

21. In a letter of 21 September 1994 the applicant informed the Report and Research Division of the *Conseil d'Etat* of the difficulties he considered he was encountering in levying execution of the judgments of 20 July 1988 and 8 April 1994. On 14 December 1994 the Deputy General Rapporteur replied as follows:

"…

After interventions by the Report and Research Division of the *Conseil d'Etat* the Department of Naval Service Personnel informed me in a letter of 25 October 1994 that your position would be re-examined by the advisory board provided for in section 41 of Law no. 72-662 of 13 July 1972. That board met at the beginning of November and did not agree to a revision of your assessment that would have enabled your superiors to adjust your career retrospectively if appropriate.

That being so, seeing that your assessment for 1983 and your career position have been reviewed and a fresh individual assessment decision has been taken by the Naval Personnel Department, the Report and Research Division considers that the authorities have taken the necessary measures to execute the *Conseil d'Etat*'s judgment [of 8 April 1994].

That being so, I can only close your file, without prejudice to the rights you might again have occasion to assert before the Judicial Division of the *Conseil d'Etat*.

…"

22. On 21 November 1994 Mr Maillard applied to the *Conseil d'Etat* seeking, firstly, judicial review of the assessment drawn up on 16 August 1994 and, secondly, an order for full discovery of a 1983 report on his assessment.

On 27 February 1995 he lodged another application, in which he sought judicial review of two decisions taken by the Minister of Defence on 20 December 1994 establishing, firstly, the promotion table for 1995 and, secondly, the table of command posts for 1995.

23. The hearing took place on 21 February 1996, and in a judgment of 25 March 1996 the *Conseil d'Etat* quashed the assessment of 16 August 1994 on the following grounds:

"…

In a decision of 20 July 1988 the *Conseil d'Etat*, acting in its judicial capacity, quashed the decision of 25 June 1983 whereby Mr Maillard's assessment for 1983 was determined, on the ground that the assessment had been drawn up according to the procedure of assessment at several successive levels and to an assessment scheme, both of which (the procedure and the scheme) had been laid down in a ministerial directive of 1 February 1980, setting out general rules, which by sections 3 and 107 of the Law of 13 July 1972, as amended, must be enacted in a decree adopted after consultation of the *Conseil d'Etat*. In a decision of 8 April 1994 the *Conseil d'Etat*, acting in its judicial capacity, quashed the decision of 15 December 1988 whereby Mr Maillard's assessment for 1983 was redetermined, on the ground that the assessment had been drawn up according to the procedure for assessment at several successive levels which was provided for in Article 3 of the decree of 31 December 1983 on the assessment of service personnel, although that decree was not applicable to assessments drawn up for 1983 and there was no provision in general regulations for the implementation of such a procedure for 1983. Following the quashing of those decisions, it was for the Minister of Defence to take the necessary measures to ensure that Mr Maillard was retrospectively assessed for 1983 under the rules then applicable. In the absence of a decree adopted after consultation of the *Conseil d'Etat* as provided in the Law of 13 July 1972, as amended, it was for the commanding officer of the *D'Estrées* in 1983, the ship on which Mr Maillard performed the duties of second-in-command, to make that assessment and, if appropriate, for the assessed officer to appeal to a higher authority. Only if it had been impossible to carry out that exercise for factual or legal reasons could the administrative authority have lawfully reviewed Mr Maillard's performance for 1983 in the sole light of all the information in his file which concerned the assessment period.

…[W]ithout ascertaining whether it was possible to have Mr Maillard's assessment carried out afresh by the commanding officer of the *D'Estrées* in 1983, the Director of Naval Personnel, instead of making a fresh assessment of the qualities of the assessed officer for the period in question, did no more than reproduce in full the quashed assessments which had been drawn up by means of a procedure entailing several successive levels of authority, a procedure that had been censured in the aforementioned

decisions of the *Conseil d'Etat*. The impugned decision of 16 August 1994 was accordingly unlawful and must be quashed, without its being necessary to order discovery of the [report of the] inquiry by commanding officers as sought by Mr Maillard."

The applicant's other claims were dismissed.

**D. The fourth set of proceedings**

24. In the meantime the assessment complained of had been revised on the basis of reports made in 1983 by the commanding officer of the *D'Estrées* and signed by him.

25. On 15 November 1995 the Director of Naval Service Personnel had informed the applicant that the Promotions Advisory Board had reconsidered his file and delivered the following opinion:

"After making a fresh annual assessment of Commander Maillard for 1983 and looking at the effect of that new assessment on his total marks, the Advisory Board finds that the assessment did not have any bearing on his subsequent career and that a retrospective adjustment of his career is not justified."

26. On 2 February 1996 the applicant had applied to the *Conseil d'Etat* for judicial review of the decision of 15 November 1995 whereby his application for retrospective adjustment of his career had been refused and of decisions of 20 and 21 December 1995 establishing the promotions table for 1996 and the table of command posts for the same year respectively.

On 15 November 1996 the President of the Seventh Section of the Judicial Division of the *Conseil d'Etat* made an order striking out the proceedings, on the ground that Mr Maillard had failed to produce within the statutory time the supplementary pleading he had announced in his application.

ii. relevant domestic law and practice

27. Service personnel are not subject to the "Central and Local Government Service Code" but to the "General Regulations on Service Personnel" (Law no. 72-662 of 13 July 1972, as amended).

28. Section 25 of the Law of 13 July 1972, as amended, provides:

"Service personnel shall be assessed at least once a year.

The marks and appraisals shall be compulsorily communicated to the service personnel each year.

When making the assessment the chief shall make known to each of his direct subordinates his appraisal of each individual's performance."

The Law provides in section 107 that the regulations for its implementation are to be laid down in a decree made after consultation of the *Conseil d'Etat*. The decree relating to assessment was made on 31 December 1983 (Decree no. 83-1252, which came into force on 1 January 1984); Article 2 provides:

"Assessment is an evaluation by the immediate superior of the serviceman's moral, intellectual and professional qualities, his physical fitness, his performance during a given period and his ability to occupy higher posts in the immediate future and thereafter.

It takes the form of

General reports;

Merit levels or marks determined according to a scale or marking scheme respectively, laid down for each service or attached formation in the light of the corps which compose it.

Assessment is distinct from proposals for promotion."

Article 3 of the decree provides:

"The serviceman shall be assessed at one or several levels by the authorities to which he is subordinate.

The number of levels of assessment and the designation of the corresponding authorities shall be laid down by the minister responsible for the armed forces in the light of the serviceman's corps, grade and function and of the specific organisation of each service or attached formation."

29. Service personnel have the possibility of challenging their assessments in the administrative courts (*Conseil d'Etat*, 22 April 1977, Pierron).

## PROCEEDINGS BEFORE THE COMMISSION

30. Mr Maillard applied to the Commission on 24 September 1994. He complained, firstly, of the length of the proceedings he had brought to have his assessment for 1983 quashed and his career retrospectively adjusted, and, secondly, of the French judicial and administrative authorities' refusal to execute or have executed the *Conseil d'Etat's* judgment of 8 April 1994.

31. The Commission examined the application (no. 26586/95) under Article 6 § 1 of the Convention and on 24 June 1996 declared admissible the complaint based on the length of the proceedings concerning the application for retrospective adjustment of the applicant's career. In its report of 14 January 1997 (Article 31), it expressed the opinion by seventeen votes to twelve that there had been no violation of that provision. The full text of the Commission's opinion and of the three separate opinions contained in the report is reproduced as an annex to this judgment[1].

## FINAL SUBMISSIONS TO THE COURT

32. In his memorial Mr Maillard asked the Court to hold that there had been a violation of Article 6 § 1 of the Convention.

33. The Government submitted that Mr Maillard's application was inadmissible and, in the alternative, that it should be dismissed.

as to the law

alleged violation of Article 6 § 1 of the convention

34. Mr Maillard complained of the length of the proceedings he had brought in order to have his assessment for 1983 quashed and his career retrospectively adjusted. He relied on Article 6 § 1 of the Convention, which provides:

"In the determination of his civil rights and obligations …, everyone is entitled to a … hearing within a reasonable time by [a] … tribunal…"

35. It must first be determined whether that provision is applicable to the instant case.

The Court notes that it was common ground that Mr Maillard had raised a "*contestation*" (dispute) over a "right" within the meaning of Article 6 § 1. The only issue is whether the right in question was a "civil" one.

36. The applicant argued that his claims had been essentially economic since his assessment determined his promotion and therefore his pay and pension. Because of the time that had elapsed between the date on which that assessment had been made and the date on which it had been changed, a retrospective adjustment of his career had become an essential precondition if the desired pecuniary effects were to be achieved.

37. The Government maintained that the dispute between Mr Maillard and the Minister of Defence concerned the development of Mr Maillard's career and had only a "very minor" economic aspect. They added that the "sovereign power of the State" in its most fundamental aspects was at stake.

38. The Commission distinguished between two disputes, one relating to the applicant's assessment and the other to the retrospective adjustment of his career.

It declared the application inadmissible as to the part concerning the first dispute, on the ground that "*contestations* (disputes) relating to a promotion or the manner of it in the civil service do not, normally, concern civil rights and obligations and accordingly do not come within the scope of Article 6 § 1".

As to the second dispute, the Commission considered that it concerned mainly the applicant's career and that what was at stake in pecuniary terms was not sufficient to give it nevertheless a "civil" connotation. Noting also that Mr Maillard was a naval officer and that as such he took part in the exercise of public power, it concluded that Article 6 § 1 was inapplicable.

39. The Court reiterates that "disputes concerning the recruitment, careers and termination of service of civil servants are as a general rule outside the scope of Article 6 § 1". Matters are nevertheless different where the claims in issue relate to a "purely economic" right – such as payment of a salary or pension – or at least an "essentially economic" one (see, among many other authorities, the Huber v. France judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 115, § 36).

That applies to French professional servicemen such as Mr Maillard, as the rights and obligations attaching to their employment are governed by the "General Regulations on Service Personnel" (see paragraphs 6 and 27 above).

40. The present case originated in the military authorities' refusal of the applicant's request of 2 December 1983 for reconsideration of his assessment for 1983 (see paragraphs 7–9 above). The applicant applied to the *Conseil d'Etat*, which quashed the refusal on a purely formal ground (judgment of 20 July 1988); and Mr Maillard made a fresh request for revision of the assessment and for retrospective adjustment of his career (see paragraphs 10–12 above). When the military authorities reinstated the assessment in question and refused the rest of the request, Mr Maillard again applied to the *Conseil d'Etat* for judicial review of that decision; the *Conseil d'Etat* quashed the decision on formal grounds (judgment of 8 April 1994; see paragraphs 13 and 15–19 above). The impugned assessment having once again been reinstated, he sought judicial review of it from the *Conseil d'Etat*, which in a judgment of 25 March 1996 allowed his application on the ground that the assessment had to be made by the officer who had been the applicant's superior in 1983 (see paragraphs 20 and 22–23 above). In the meantime the assessment had been revised according to the rules, but the authorities had refused to adjust Mr Maillard's career retrospectively and the applicant had lodged an application for judicial review of that refusal with the *Conseil d'Etat* (see paragraphs 24–26 above).

41. The applicant's disputes thus related to his assessment for 1983 and its consequences for his promotion; they therefore primarily concerned his career. The pecuniary implications of the outcome of the relevant proceedings do not suffice to make those proceedings "civil" ones (see, *mutatis mutandis*, the Huber judgment cited above, pp. 115–16, § 37).

Article 6 § 1 consequently does not apply in the instant case.

for these reasons, the court unanimously

*Holds* that Article 6 § 1 of the Convention does not apply in the instant case.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 9 June 1998.

*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 concurring opinion of Mr Jambrek is annexed to this judgment.

*Initialled*: R. B.

*Initialled*: H. P.

Concurring opinion of Judge Jambrek

The distinction between civil servants, on the one hand, and all other employees in the private sector, on the other, concerning protection of their rights under the Convention is rather artificial. It is true that even engine drivers and teachers may be civil servants; it may also be asked why an army captain should be excluded from protection. For my part, I would opt for an extension of Article 6 so that it would apply also to aspects of the careers of civil servants, including cases in which it is difficult to distinguish whether the pecuniary nature of their right dominates or whether it is a secondary issue.

Another point is (in)equality of treatment. Cases concerning procedural rights of military and police personnel raise issues of unfair treatment of such persons in comparison with other potential victims. It does not seem consistent that a soldier who makes a claim for social welfare and gets involved in a dispute over such a claim should be excluded from the protection offered by Article 6 simply because of his status as a civil servant. He also, in my view, should be guaranteed a fair procedure.

On the other hand, I agree that the established case-law of this Court does not offer much scope for holding that Article 6 is applicable in this and similar cases. Moreover, this particular case does not seem to me to be the best suited for sending to the Grand Chamber with a view to securing a change in the case-law, which some of the judges are unhappy or uncomfortable with. Issues raised by the Maillard v. France case may also have come somewhat late for the present Court. I would therefore agree with the idea of leaving this kind of problem to be solved by the new Court, albeit such an option may look like a sign of “justified” defeatism.

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

*Notes by the Registrar*

1. The case is numbered 33/1997/817/1020. 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.

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