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

REKVÉNYI v. HUNGARY

(Application no. 25390/94)

JUDGMENT

STRASBOURG

20 May 1999

In the case of Rekvényi v. Hungary,

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:

Mr L. WILDHABER, *President*,
Mrs E. PALM,
Sir Nicolas BRATZA,
Mr A. PASTOR RIDRUEJO,
Mr G. BONELLO,
Mr J. MAKARCZYK,
Mr P. KŪRIS,
Mr R. TÜRMEN,
Mrs F. TULKENS,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mr V. BUTKEVYCH,
Mr J. CASADEVALL,
Mrs H.S. GREVE,
Mr A.B. BAKA,
Mr R. MARUSTE,
Mrs S. BOTOUCHAROVA,

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

Having deliberated in private on 28 January, 1 February and 21 April 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") on 15 September 1998, by a Hungarian national, Mr László Rekvényi ("the applicant"), on 21 September 1998 and by the Hungarian Government ("the Government") on 5 October 1998, within the three-month period laid down by former Articles 32 § 1 and 47 of the

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.

Convention. It originated in an application (no. 25390/94) against the Republic of Hungary lodged with the Commission under former Article 25 by Mr Rekvényi on 20 April 1994.

The Commission's request referred to former Articles 44 and 48 of the Convention and to the declaration whereby Hungary recognised the compulsory jurisdiction of the Court (former Article 46); the applicant's application referred to former Article 48 as amended by Protocol 9[1], which Hungary had ratified; the Government's application referred to former Article 48. The object of the request and of the applications 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 11 of the Convention taken either alone or together with Article 14.

2. The applicant designated the lawyer who would represent him (Rule 31 of former Rules of Court B[2]).

3. As President of the Chamber which had originally been constituted (former Article 43 of the Convention and former Rule 21) in order to deal in particular with procedural matters that might arise before the entry into force of Protocol No. 11, Mr R. Bernhardt, the President of the Court at the time, acting through the Registrar, consulted the Agent of the Government, the applicant's lawyer 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 30 November 1998. The Government replied on 9 December 1998.

4. After the entry into force of Protocol No. 11 on 1 November 1998 and in accordance with Article 5 § 5 thereof, the case was referred to the Grand Chamber of the Court. The Grand Chamber included *ex officio* Mr A.B. Baka, the judge elected in respect of Hungary (Article 27 § 2 of the Convention and Rule 24 § 4 of the Rules of Court), Mr L. Wildhaber, the President of the Court, Mrs E. Palm, Vice-President of the Court, Sir Nicolas Bratza, President of Section, and Mr M. Fischbach, Vice-President of Section (Article 27 § 3 of the Convention and Rule 24 §§ 3 and 5 (a)). The other members appointed to complete the Grand Chamber were Mr A. Pastor Ridruejo, Mr G. Bonello, Mr J. Makarczyk, Mr P. Kūris, Mr R. Türmen, Mrs F. Tulkens, Mrs V. Strážnická, Mr V. Butkevych, Mr J. Casadevall, Mrs H.S. Greve, Mr R. Maruste and Mrs S. Botoucharova (Rules 24 § 3 and 100 § 4).

Notes by the Registry

1. Protocol No. 9 came into force on 1 October 1994 and was repealed by Protocol No. 11.
2. Rules of Court B, which came into force on 2 October 1994, applied until 31 October 1998 to all cases concerning States bound by Protocol No. 9.

5. At the Court's invitation (Rule 99), the Commission delegated one of its members, Mrs M. Hion, to take part in the proceedings before the Grand Chamber.

6. In accordance with the President's decision, a hearing took place in public in the Human Rights Building, Strasbourg, on 28 January 1999.

There appeared before the Court:

(a) *for the Government*
Mr L. HÖLTZL, Deputy Secretary of State, *Agent*,
Mr T. BÁN, *Co-Agent*,
Mr Z. TALLÓDI,
Ms M. WELLER, *Advisers*;

(b) *for the applicant*
Mr V. MASENKO-MAVI, of the Budapest Bar, *Counsel*;

(c) *for the Commission*
Ms M. HION, *Delegate*,
Ms M.-T. SCHOEPFER, *Secretary to the Commission*.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. At the material time, the applicant was a police officer and the Secretary General of the Police Independent Trade Union.

8. On 24 December 1993 Law no. 107 of 1993 on certain amendments to the Constitution (*az Alkotmány módosításáról szóló 1993. évi CVII. törvény*) was published in the Hungarian Official Gazette. This Law amended, *inter alia*, Article 40/B § 4 of the Constitution to the effect that, as from 1 January 1994, members of the armed forces, the police and security services were prohibited from joining any political party and from engaging in any political activity (see paragraph 13 below for the text of the Article).

9. In a circular letter dated 28 January 1994, the Head of the National Police requested, in view of the forthcoming parliamentary elections, that police officers refrain from political activities. He referred to Article 40/B § 4 of the Constitution as amended by Law no. 107 of 1993. He indicated that those who wished to pursue political activities would have to leave the police.

10. In a second circular letter dated 16 February 1994, the Head of the National Police declared that no exemption could be given from the prohibition contained in Article 40/B § 4 of the Constitution.

11. On 9 March 1994 the Police Independent Trade Union filed a constitutional complaint with the Constitutional Court claiming that Article 40/B § 4 of the Constitution, as amended by Law no. 107 of 1993, infringed constitutional rights of career members of the police, was contrary to the generally recognised rules of international law and had been adopted by Parliament unconstitutionally.

12. On 11 April 1994 the Constitutional Court dismissed the constitutional complaint, holding that it had no competence to annul a provision of the Constitution itself.

II. RELEVANT DOMESTIC LAW

13. The relevant Articles of the Constitution of the Republic of Hungary (Law no. 20 of 1949, as amended on several occasions) provide:

Article 40/B § 4 (as in force since 1 January 1994)

"Career members of the armed forces, the police and the civil national security services shall not join any political party and shall not engage in any political activity."

"A fegyveres erők, a rendőrség és a polgári nemzetbiztonsági szolgálatok hivatásos állományú tagjai nem lehetnek tagjai pártnak és politikai tevékenységet nem folytathatnak."

Article 61 § 1 (as in force since 23 October 1989)

"In the Republic of Hungary everyone shall have the right to freedom of expression and to receive and impart information of public interest."

"A Magyar Köztársaságban mindenkinek joga van a szabad véleménynyilvánításra, továbbá arra, hogy a közérdekű adatokat megismerje, illetőleg terjessze."

Article 78 § 1

"… [T]he Government shall ensure that the provisions of the Constitution of the Republic of Hungary are implemented."

"A Magyar Köztársaság alkotmánya ... végrehajtásáról a Kormány gondoskodik."

Article 78 § 2

"The Government shall submit to Parliament such bills as are necessary to implement the Constitution."

"A Kormány köteles az alkotmány végrehajtásához szükséges törvényjavaslatokat az Országgyűlés elé terjeszteni."

14. Law no. 17 of 1989 on referenda, as in force at the material time, provided:

Section 1(4)

"No signatures may be collected … from persons serving in the armed forces or armed bodies on station or while such persons are discharging their duties …"

"Nem gyűjthető aláírás ... fegyveres erőknél és fegyveres testületeknél szolgálati viszonyban levő személyektől, a szolgálati helyen vagy szolgálati feladat teljesítése közben ..."

Section 2(1)

"Citizens eligible to vote or stand in elections … shall have the right to participate in referenda …"

"A népszavazásban ... való részvételre választójoggal rendelkező állampolgárok ... jogosultak."

15. Law no. 34 of 1989 (as amended on several occasions) on parliamentary elections, as in force at the material time, provided:

Section 2(1)

"In the Republic of Hungary every Hungarian citizen … who has attained his [or her] majority (hereinafter: "constituent") shall have the right to vote in parliamentary elections."

"A Magyar Köztársaságban az országgyűlési képviselők választásán választójoga van ... minden nagykorú magyar állampolgárnak (a továbbiakban: választópolgár)."

Section 2(3)

"Everyone who is entitled to vote and has a permanent residence in Hungary shall be entitled to stand for election."

"Mindenki választható, aki választójoggal rendelkezik és állandó lakóhelye Magyarországon van."

Section 5(1)

"Constituents … of each individual constituency shall be entitled to nominate candidates [in relation to that constituency] …"

"Az egyéni választókerületben a választópolgárok ... jelölhetnek...."

Section 10(1)

"Constituents shall be entitled to collect nomination coupons, expound election programmes, promote candidates and organise election campaign meetings …"

"Bármely választópolgár gyűjthet jelöltet ajánló szelvényeket, ismertethet választási programot, népszerűsíthet jelöltet, szervezhet választási gyűlést ..."

Section 10(3)

"Nomination coupons may not be collected … from persons serving in the armed forces or armed bodies … on station or while such persons are discharging their duties …"

"Nem gyűjthető jelöltet ajánló szelvény ... a fegyveres erőknél, a rendőrségnél ... szolgálati viszonyban lévő személytől, a szolgálati helyen vagy szolgálati feladat teljesítése közben ..."

16. Law no. 55 of 1990 on the legal status of members of Parliament, as in force at the material time, provided:

Section 1(1)

"Employers of employees who are candidates in parliamentary elections … shall grant them unpaid leave on request from the moment of their registration as candidates until the end of the elections or, where they are elected, until they take up their seat."

"Az országgyűlési képviselő ... jelöltet jelöltségének nyilvántartásba vételétől a választásának befejezéséig, illetve megválasztása esetén a mandátuma igazolásáig a munkáltató – kérésére – köteles fizetés nélküli szabadságban részesíteni."

Section 1(4) (as in force until 30 September 1994)

"Paragraph 1 … [of Section 1] shall apply as appropriate to candidates … serving … in the … police …"

"A ... rendőrségnél ... szolgálati viszonyban ... álló képviselőjelöltre az [1.§] (1) ... bekezdés rendelkezéseit kell megfelelően alkalmazni."

Section 8(1) (as in force until 3 April 1997)

"A member of Parliament … shall put an end to any situation incompatible with his office within a period of thirty days from the moment he takes up his seat …"

"A képviselő a mandátuma érvényességének megállapításától ... számított harminc napon belül köteles a vele szemben fennálló összeférhetetlenségi okot megszüntetni ..."

17. Law no. 64 of 1990 on the election of members of local authorities and mayors, as in force at the material time, provided:

Section 23(1)

"Constituents shall be entitled to expound election programmes, canvass on behalf of candidates or organise election campaign meetings … from the thirty-fifth day prior to the date of the elections."

"Bármely választópolgár – a szavazást megelőző 35. naptól – ismertethet választási programot, népszerűsíthet jelöltet, szervezhet választási gyűlést ..."

Section 25(1)

"A constituent who exercises his right to vote in an individual constituency shall be entitled to nominate candidates [in relation to that constituency] …"

"Jelöltet ajánlhat az a választópolgár, aki a választókerületben választójogát gyakorolhatja ..."

18. Law no. 34 of 1994 on the police ("the 1994 Police Act"), which entered into force on 1 October 1994, provides:

Section 2(3)

"The police shall discharge their duties in a manner free from any party influence."

"A Rendőrség a feladatának ellátása során pártbefolyástól mentesen jár el."

Section 7(9)

"If a police officer wishes to stand as a candidate in elections to Parliament, to a local authority or to the office of mayor, he shall in advance notify the head of the police department [concerned] of his intention to do so. In such cases his service shall be suspended from the sixtieth day preceding the elections until the day on which the results of the elections are published."

"Ha a rendőr országgyűlési vagy helyi önkormányzati képviselői, illetőleg polgármesteri választáson jelöltként indul, köteles e szándékát a rendőri szerv vezetőjének előzetesen bejelenteni. A választás napját megelőző 60. naptól kezdődően a választás eredményének közzétételéig a szolgálati jogviszonya szünetel."

Section 7(10)

"Police officers shall have the right to join professional or other organisations which are aimed at protecting or representing their interests and are related to their professional duties, and to hold office therein; they shall not suffer any disadvantage in their careers on account of their membership and activity. Police officers shall inform the head of the police department [concerned] of their existing or intended membership of organisations unrelated to their professional duties. The head of the police department [concerned] may prohibit the police officer in question from becoming or remaining a member of such organisation if it is incompatible with the profession or duties of a police officer, or if it interferes with or endangers the interests of the force. Such a prohibition shall take the form of a decision. An appeal against such a decision lies to the head of the superior police authority. The decision of the superior authority on the appeal may be challenged in the courts."

"A rendőr a hivatásával összefüggő szakmai, érdekvédelmi, érdekképviseleti szervezetnek tagja lehet, abban tisztséget vállalhat, e tagsági viszonya és tevékenysége miatt szolgálati jogviszonya körében hátrányt nem szenvedhet. A rendőr köteles a hivatásával össze nem függő társadalmi szervezettel fennálló, illetőleg az újonnan létesülő tagsági viszonyt előzetesen a rendőri szerv vezetőjéhez bejelenteni. A rendőri szerv vezetője a tagsági viszony fenntartását vagy létesítését megtilthatja, ha az a rendőri hivatással vagy szolgálati beosztással nem egyeztethető össze, illetőleg a szolgálat érdekeit sérti vagy veszélyezteti. E döntést határozatba kell foglalni. A határozat ellen a felettes szerv vezetőjénél panasszal lehet élni. A felettes szervnek a panasz kivizsgálása eredményeként hozott határozata a bíróság előtt megtámadható."

19. Decree no. 1/1990 of 10 January 1990 of the Minister of the Interior ("the 1990 Regulations"), which laid down service regulations for the police, was in force until 30 March 1995 and provided:

Regulation 430

"… No party political activity may be carried out on police premises; no questions related to party politics shall be discussed during staff meetings."

"... A rendőrségen pártpolitikai tevékenység nem folytatható, munkahelyi értekezleteken pártpolitikai kérdések nem tárgyalhatók."

Regulation 432

"With the exception of political parties, police officers shall … be entitled to form and maintain social organisations [*társadalmi szervezet*] (trade unions, mass movements, organisations protecting their interests, associations, etc.) provided that their aims are not contrary to the legal provisions and rules regulating police service."

"Rendőrök önmagukból – párt kivételével – ... a szolgálati viszonyra vonatkozó jogszabályokkal, rendelkezésekkel nem ellentétes célú társadalmi szervezetet létrehozhatnak és működtethetnek (szakszervezet, tömegmozgalom, érdekképviseleti szervezet, egyesület stb.)."

Regulation 433

"Police officers shall be entitled to join any social organisation [*társadalmi szervezet*], including a political party, which has been lawfully founded and registered by a court. Police officers shall not enjoy any advantage or suffer any detriment in their career on account of their membership of an organisation or their party affiliation."

"A rendőr bármely törvényesen megalakult, illetve bíróság által nyilvántartásba vett társadalmi szervezetnek – beleértve a politikai pártot is – tagja lehet. Szervezeti hovatartozása, pártállása miatt szolgálati viszonya keretében semmiféle előnyben vagy hátrányban nem részesíthető."

Regulation 434

"Party badges and symbols shall not be displayed on police premises. While on duty, police officers shall refrain from wearing badges showing their political preference."

"A rendőrség hivatali helyiségeiben, körleteiben pártok jelvényei, jelképei nem helyezhetők el. A rendőr szolgálatban politikai hovatartozására utaló jelvényt nem viselhet."

Regulation 435

"Police officers shall not engage in activities as experts or advisers in relation to questions of police service upon request from political parties unless authorised to do so by the Minister of the Interior."

"A rendőr pártok részére a rendőri szolgálattal összefüggő kérdésekben szakértői, szaktanácsadó feladatokat csak a belügyminiszter engedélyével végezhet."

Regulation 437

"On police premises the exercise of the right to freedom of assembly is subject to the approval of the common superior of all the organisers [of any assembly]."

"A rendőrség objektumaiban a gyülekezési jog csak a szervezők közös elöljáróinak engedélyével gyakorolható."

Regulation 438

"Police officers shall have the right to participate in lawfully organised … gatherings (such as peaceful assemblies, processions and demonstrations) in their leisure time. On such occasions they shall refrain from wearing uniform unless the aim

of the gathering is the representation or protection of interests related to [police] service. They shall refrain from carrying their service gun or other firearms lawfully in their possession. Where the gathering is ordered to be dissolved, they shall immediately leave."

"A rendőr szabad idejében részt vehet a ... jogszerűen tartott rendezvényen (békés összejövetelen, felvonuláson, tüntetésen). Ilyen esetben egyenruhát csak akkor viselhet, ha a rendezvény célja a szolgálati viszonnyal összefüggő érdekek képviselete, védelme. Szolgálati vagy más jogszerűen tartott lőfegyverét nem tarthatja magánál. Ha a rendezvény feloszlatására kerül sor, köteles a helyszínt azonnal önként elhagyni."

Regulation 470

"Police officers shall … be entitled to make statements upon request from the press or radio or television stations on questions related to road safety, public safety or certain offences provided that, [in so doing,] they maintain the confidentiality of service secrets, observe the principle of the presumption of innocence, respect personality rights [*személyiséghez fűződő jogok*] and do not prejudice the examination and investigation of cases …"

"A rendőr, a sajtó, a rádió és a televízió megkeresése alapján a közlekedés-, a közbiztonság kérdéseiről, egyes bűncselekményekről, a szolgálati titok megőrzésével, az ügyek vizsgálatának és felderítésének veszélyeztetése nélkül, valamint az ártatlanság vélelmének figyelembe vételével és a személyiséghez fűződő jogok tiszteletben tartásával ... nyilatkozhat ..."

Regulation 472

"… [Police officers] shall be entitled to give lectures on – or to participate in radio or television programmes concerning – politics, science, literature or sport without prior authorisation but on condition that no reference is made to their police service."

"... [A rendőr] politikai, tudományos, szépirodalmi és sport témájú előadásokat, szereplést (a rádióban és a televízióban is) engedély nélkül vállalhat rendőri állására való utalás nélkül."

Regulation 473

"Police officers shall have the right to make statements and publish articles in Ministry of the Interior publications without permission, while observing the rules on service and official secrets."

"A Belügyminisztérium lapjaiban a szolgálati- és az államtitokra vonatkozó szabályok betartásával a rendőr engedély nélkül nyilatkozhat és publikálhat."

Regulation 474

"Police officers shall not be entitled to publish textbooks and documentary literature related to police activities save with prior authorisation …"

"A rendőri vonatkozású kérdéseket tárgyaló szak- és tényirodalmi művet a rendőr csak előzetes engedéllyel jelentetheti meg ..."

Regulation 477

"Police officers shall be entitled to publish works of fiction … and works on science, politics or sport … that are unrelated to police activities without permission but on condition that no reference is made to their police service."

"A rendőr – a rendőri állásra való utalás nélkül – szabadon közölheti, illetve kiadhatja a nem rendőri vonatkozású szépirodalmi ..., tudományos, politikai kérdéseket tárgyaló, sporttal foglalkozó műveit ..."

20. Decree no. 3/1995 of 1 March 1995 of the Minister of the Interior ("the 1995 Regulations"), which was adopted under the 1994 Police Act in order to implement its provisions and which laid down service regulations for the police, entered into force on 31 March 1995. It provides:

Section 106(5)

"Police officers, in their capacity as representatives of the police or experts, shall not give statements to the press or participate in radio or television programmes or in films, unless permitted to do so by the Head of the National Police or one of his deputies. No permission is needed for giving scientific or cultural lectures or for other public appearances of a similar nature (including participation in radio or television programmes) if no reference is made to police service."

"A rendőr a rendőrség képviselőjeként, szakértőjeként a sajtóban, a rádió és televízió műsoraiban, filmekben csak az országos rendőrfőkapitány, illetve helyettesei előzetes hozzájárulásával szerepelhet. A rendőri állásra utalás nélkül tartott tudományos, kulturális előadások megtartásához, ilyen irányú egyéb közszerepléshez beleértve a rádióban és televízióban történő szereplést is) engedély nem kell."

Section 106(6)

"Police officers shall have the right to make statements and publish articles in police publications without permission, while observing the rules on service and official secrets."

"A rendőrség lapjaiban a szolgálati és az államtitokra vonatkozó szabályok betartásával a rendőr engedély nélkül nyilatkozhat és publikálhat."

Section 106(9)

"Members of the police force, in their capacity as police officers, shall not make public appearances unless authorised to do so by the head of the police department. On such occasions police officers shall refrain from making political statements and shall evince a neutral attitude towards any social organisation [*társadalmi szervezetek*]."

"Nyilvános szerepléshez (ha az rendőrként történik) engedélyt kell kérni a rendőrfőkapitánytól. A rendőr ilyen közéleti szereplése során tartózkodjék a politikai nyilatkozatoktól, magatartása a társadalmi szervezeteket illetően semleges legyen."

Section 106(10)

"Police officers shall have the right to participate in lawfully organised … gatherings in their leisure time. On such occasions they shall refrain from wearing uniform and carrying their service gun or other firearms lawfully in their possession. Where the gathering is ordered to be dissolved, they shall immediately leave ."

"A rendőr szabad idejében részt vehet a ... jogszerűen tartott rendezvényen. Ilyen esetben egyenruhát nem viselhet. Szolgálati vagy más jogszerűen tartott lőfegyverét nem tarthatja magánál. Ha a rendezvény feloszlatására kerül sor, köteles a helyszínt azonnal önként elhagyni."

PROCEEDINGS BEFORE THE COMMISSION

21. Mr László Rekvényi applied to the Commission on 20 April 1994. He alleged that the prohibitions contained in Article 40/B § 4 of the Hungarian Constitution infringed his rights under Articles 10 and 11 of the Convention taken either alone or together with Article 14.

22. The Commission declared the application (no. 25390/94) admissible on 11 April 1997. In its report of 9 July 1998 (former Article 31 of the Convention), it expressed the opinion that there had been a violation of Article 10 (twenty-one votes to nine); that there had been no violation of Article 11 (twenty-one votes to nine); that it was not necessary to examine the applicant's complaint under Article 14 read in conjunction with Article 10 (twenty-five votes to five) and that there had been no violation of Article 14 read in conjunction with Article 11 (twenty-two votes to eight). The full text of the Commission's opinion and of the four partly dissenting opinions contained in the report is reproduced as an annex to this judgment[1].

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.

FINAL SUBMISSIONS TO THE COURT

23. The applicant requested the Court in his memorial to find the respondent State in breach of its obligations under Articles 10 and 11 of the Convention taken either alone or together with Article 14 and to award him just satisfaction under Article 41.

The Government, for their part, invited the Court to reject the applicant's complaints under Articles 10 and 11 of the Convention both taken alone and together with Article 14.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

24. The applicant maintained that the prohibition on engaging in "political activities" contained in Article 40/B § 4 of the Hungarian Constitution amounted to an unjustified interference with his right to freedom of expression, in violation of Article 10 of the Convention, which provides:

> "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."

25. The Commission arrived at the same conclusion, finding that the impugned prohibition was vague and sweeping, and could not, therefore, be regarded as being "prescribed by law" as required by paragraph 2 of Article 10.

The Government did not dispute that the applicant could rely on the guarantees contained in Article 10; nor did they deny that the prohibition interfered with the exercise of his rights under that Article. They contended, however, that the interference was justified under the second paragraph of Article 10.

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

26. The Court takes it for granted that the pursuit of activities of a political nature comes within the ambit of Article 10 in so far as freedom of political debate constitutes a particular aspect of freedom of expression. Indeed, freedom of political debate is at the very core of the concept of a democratic society (see the Lingens v. Austria judgment of 8 July 1986, Series A no. 103, p. 26, § 42). Furthermore, the guarantees contained in Article 10 of the Convention extend to military personnel and civil servants (see the Engel and Others v. the Netherlands judgment of 8 June 1976, Series A no. 22, pp. 41-42, § 100; and the Vogt v. Germany judgment of 26 September 1995, Series A no. 323, pp. 22-23, § 43). The Court sees no reason to come to a different conclusion in respect of police officers and this has not been disputed by those appearing before the Court.

Nor has it been contested that the prohibition, by curtailing the applicant's involvement in political activities, interfered with the exercise of his right to freedom of expression. The Court for its part also finds that there has been an interference with the applicant's right to freedom of expression.

B. As to whether the interference was justified

27. 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"

(a) Submissions of those appearing before the Court

(i) The applicant

28. The applicant submitted that the prohibition at issue was of an unacceptably general character and was open to arbitrary interpretations. A general constitutional ban on political activities contradicted any legislation of a lower level permitting certain activities of a political nature. Since the notion of "political activities" was not defined in any Hungarian law, it was not foreseeable whether or not a certain activity fell under the prohibition. This legal situation had prevailed without interruption since 1 January 1994 and had not been rectified by any subsequent legislation, including the 1994 Police Act.

(ii) The Government

29. In the proceedings before the Commission, the Government argued that the 1994 Police Act and the 1995 Regulations had provided a legal framework detailed enough to define the restrictions on political activities by police officers in a manner compatible with Article 10 § 2.

30. In their pleadings before the Court, the Government relied on Article 78 of the Hungarian Constitution (see paragraph 13 above) as regards the alleged contradiction between the constitutional restriction and the permissive legislation of a lower level and explained that the two were not in conflict but complemented each other. They maintained that in the Hungarian legal system it was the practice that certain provisions of the Constitution could properly be interpreted only if read together with legislation of a lower level completing and explaining their precise content. Contemporary legislative techniques often left it to laws lower in the hierarchy to define general notions used in higher laws – a law-making method not uncommon at least in continental legal systems and never in principle disapproved by the Convention organs. In any event, the Constitutional Court had the competence to rule on any potential contradiction between the Constitution and other legislation.

31. Furthermore, the legislation in force both prior and subsequent to the adoption of the 1994 Police Act and the 1995 Regulations met the requirements of foreseeability, the latter two instruments having merely recodified provisions already in force. Therefore, the constitutional restriction in question was "prescribed by law" at all times subsequent to its entry into force. Prior to 1 October 1994, the conditions governing various activities of a political nature, whereby police officers have always been permitted to exercise certain rights relating to freedom of expression, were laid down, *inter alia*, in Law no. 34 of 1989 on parliamentary elections, Law no. 55 of 1990 on the legal status of members of Parliament, Law no. 64 of 1990 on the election of members of local authorities and mayors, and Law no. 17 of 1989 on referenda (the right to collect "nomination coupons", expound election programmes, promote candidates, organise election campaign meetings, nominate candidates, vote in and stand for elections to Parliament, local authorities and the office of mayor and to participate in referenda) and also in the 1990 Regulations (the right to join trade unions, associations and other organisations representing and protecting police officers' interests, to participate in peaceful assemblies, make statements to the press, participate in radio or television programmes or publish works on politics, etc.) (see paragraphs 14 to 17 and 19 above).

(iii) The Commission

32. In its report the Commission, after examining the relevant domestic law as presented by the Government in the proceedings before it, observed that the 1994 Police Act and the 1995 Regulations had entered into force only in October 1994 and March 1995 respectively. The Commission, therefore, came to the conclusion that in the relevant period the impugned restriction had been based solely on Article 40/B § 4 of the Constitution. Moreover, it considered that the notion of "political activities" was vague and sweeping and that the Government had not adduced any case-law interpreting this term. The constitutional restriction itself was not, therefore, precise enough to enable the applicant to regulate his conduct in the matter. The Commission concluded that, the requirement of foreseeability thus not having been met, the interference was not "prescribed by law".

33. In her submissions to the Court, the Commission's Delegate explained that the various laws referred to by the Government in their memorial and, in particular, the 1990 Regulations, had been adopted prior to the impugned amendment to the Constitution. The only legal provisions which could be regarded as having further defined the constitutional restriction on political activities by police officers were to be found in the 1994 Police Act and the 1995 Regulations. Consequently, it was not until the 1994 Police Act and the 1995 Regulations came into force that the legal situation had met the requirement of foreseeability.

(b) The Court's assessment

34. According to the Court's well-established case-law, one of the requirements flowing from the expression "prescribed by law" is foreseeability. Thus, a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice (see the *Sunday Times* v. the United Kingdom (no. 1) judgment of 26 April 1979, Series A no. 30, p. 31, § 49, and the Kokkinakis v. Greece judgment of 25 May 1993, Series A no. 260-A, p. 19, § 40). The role of adjudication vested in the courts is precisely to dissipate such interpretational doubts as remain (see, *mutatis mutandis*, the Cantoni v. France judgment of 15 November 1996, *Reports of Judgments and*

Decisions 1996-V, p. 1628, § 32). The level of precision required of domestic legislation – which cannot in any case provide for every eventuality – depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed (see the previously cited Vogt judgment, p. 24, § 48). Because of the general nature of constitutional provisions, the level of precision required of them may be lower than for other legislation.

35. The Court notes the Government's submission that Article 40/B § 4 of the Constitution, which contains the generic term "political activities", is subject to interpretation and is to be read in conjunction with complementary provisions contained in the various laws cited and the 1990 Regulations (see paragraphs 14 to 17, 19 and 31 above). As has been recalled many times in the Court's case-law, it is primarily for the national authorities to interpret and apply domestic law (see, for example, the Chorherr v. Austria judgment of 25 August 1993, Series A no. 266-B, pp. 35-36, § 25). In the absence of any domestic precedents to the opposite effect adduced by the applicant, the Court considers that the detailed provisions invoked by the Government cannot be held to be in contradiction with the general wording of the Constitution. Further, the adoption of the constitutional amendment in question did not result in the annulment of the 1990 Regulations, which were therefore in force when the impugned circular letters were issued. As a consequence, there appears to have existed at the relevant time a framework of provisions partly permitting – occasionally subject to authorisation – and partly restricting the participation of police officers in certain kinds of political activity.

36. As to the wording of these provisions, it is inevitable, in the Court's opinion, that conduct which may entail involvement in political activities cannot be defined with absolute precision. It seems, therefore, acceptable for the 1990 Regulations (see paragraph 19 above) – as for the 1994 Police Act and the 1995 Regulations (see paragraphs 18 and 20 above) – to lay down the conditions for undertaking types of conduct and activities with potential political aspects, such as participation in peaceful assemblies, making statements to the press, participating in radio or television programmes, publications or joining trade unions, associations or other organisations representing and protecting police officers' interests.

37. The Court is satisfied that in the circumstances these provisions were clear enough to enable the applicant to regulate his conduct accordingly. Even accepting that it might not be possible on occasions for police officers to determine with certainty whether a given action would or would not – against the background of the 1990 Regulations – fall foul of Article 40/B § 4 of the Constitution, it was nevertheless open to them to seek advice beforehand from their superior or clarification of the law by means of a court judgment.

38. Having regard to these considerations, the Court finds that the interference was "prescribed by law" for the purposes of paragraph 2 of Article 10.

2. Legitimate aim

39. The Government submitted that the constitutional provision in question was aimed at depoliticising the police, and this during a period when Hungary was being transformed from a totalitarian regime to a pluralistic democracy. In view of the police's past commitment to the ruling political party, the restriction served the purpose of protecting national security and public safety as well as preventing disorder.

40. Neither the applicant nor the Commission expressed an opinion on this point.

41. In the present case the obligation imposed on certain categories of public officials including police officers to refrain from political activities is intended to depoliticise the services concerned and thereby to contribute to the consolidation and maintenance of pluralistic democracy in the country. The Court notes that Hungary is not alone, in that a number of Contracting States restrict certain political activities on the part of their police. Police officers are invested with coercive powers to regulate the conduct of citizens, in some countries being authorised to carry arms in the discharge of their duties. Ultimately the police force is at the service of the State. Members of the public are therefore entitled to expect that in their dealings with the police they are confronted with politically neutral officers who are detached from the political fray, to paraphrase the language of the recent judgment in the case of Ahmed and Others v. the United Kingdom (judgment of 2 September 1998, *Reports* 1998-VI, pp. 2376-77, § 53, which judgment concerned the compatibility with Article 10 of restrictions on the involvement of senior local government officers in certain types of political activity). In the Court's view, the desire to ensure that the crucial role of the police in society is not compromised through the corrosion of the political neutrality of its officers is one that is compatible with democratic principles.

This objective takes on a special historical significance in Hungary because of that country's experience of a totalitarian regime which relied to a great extent on its police's direct commitment to the ruling party (see, *mutatis mutandis*, the previously cited Vogt judgment, p. 25, § 51).

Accordingly, the Court concludes that the restriction in question pursued legitimate aims within the meaning of paragraph 2 of Article 10, namely the protection of national security and public safety and the prevention of disorder.

3. "Necessary in a democratic society"

(a) General principles

42. In its above-mentioned Vogt judgment (pp. 25-26, § 52) the Court 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 and 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.

43. In the same judgment the Court declared that "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 legitimate aim in question (p. 26, § 53). Such considerations apply equally to military personnel (see the previously cited Engel and Others judgment, pp. 23 and 41-42, §§ 54 and 100) and police officers (see paragraph 26 above).

(b) Application of the above principles to the instant case

44. The Government contended that for decades preceding Hungary's return to democracy in 1989 to 1990, the police had been a self-avowed tool of the ruling party and had taken an active part in the implementation of the party policies. Career members of the police were expected to be politically committed to the ruling party. Given Hungary's peaceful and gradual transformation towards pluralism without a general purge in the public administration, it was necessary to depoliticise, *inter alia*, the police and restrict the political activities of its members so that the public should no longer regard the police as a supporter of the totalitarian regime but rather as a guardian of democratic institutions.

45. Neither the applicant nor the Commission expressed an opinion on this point.

46. Bearing in mind the role of the police in society, the Court has recognised that it is a legitimate aim in any democratic society to have a politically neutral police force (see paragraph 41 above). In view of the particular history of some Contracting States, the national authorities of these States may, so as to ensure the consolidation and maintenance of democracy, consider it necessary to have constitutional safeguards to achieve this aim by restricting the freedom of police officers to engage in political activities and, in particular, political debate.

What remains to be determined is whether the particular restrictions imposed in the present case can be regarded as "necessary in a democratic society".

47. The Court observes that between 1949 and 1989 Hungary was ruled by one political party. Membership of that party was, in many social spheres, expected as a manifestation of the individual's commitment to the regime. This expectation was even more pronounced within the military and the police, where party membership on the part of the vast majority of serving staff guaranteed that the ruling party's political will was directly implemented. This is precisely the vice that rules on the political neutrality of the police are designed to prevent. It was not until 1989 that Hungarian society succeeded in building up the institutions of a pluralistic democracy,

leading to the first multi-party parliamentary elections in more than forty years being held in 1990. The impugned amendment to the Constitution was adopted some months prior to the second democratic parliamentary elections in 1994.

48. Regard being had to the margin of appreciation left to the national authorities in this area, the Court finds that, especially against this historical background, the relevant measures taken in Hungary in order to protect the police force from the direct influence of party politics can be seen as answering a "pressing social need" in a democratic society.

49. As to the extent of the restriction on the applicant's freedom of expression, although the wording of Article 40/B § 4 might prima facie suggest that what is in issue is an absolute ban on political activities, an examination of the relevant laws shows that police officers have in fact remained entitled to undertake some activities enabling them to articulate their political opinions and preferences. Notably, whilst sometimes subject to restrictions imposed in the interest of the service, police officers have had the right to expound election programmes, promote and nominate candidates, organise election campaign meetings, vote in and stand for elections to Parliament, local authorities and the office of mayor, participate in referenda, join trade unions, associations and other organisations, participate in peaceful assemblies, make statements to the press, participate in radio or television programmes or publish works on politics (see paragraphs 14 to 20 above). In these circumstances the scope and the effect of the impugned restrictions on the applicant's exercise of his freedom of expression do not appear excessive.

50. In the light of the foregoing considerations, the Court concludes that the means employed in order to achieve the legitimate aims pursued were not disproportionate. Accordingly, the impugned interference with the applicant's freedom of expression is not in violation of Article 10.

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

51. The applicant submitted that the prohibition on joining a party, prescribed by Article 40/B § 4 of the Constitution, violated his right to freedom of association guaranteed under Article 11 of the Convention which provides:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of

> others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

52. Both the Commission and the Government accepted that the facts complained of by the applicant attracted the application of the safeguard set forth in Article 11 and that the prohibition interfered with the exercise of his right under that Article. They took the view, however, that the interference was justified under the last sentence of paragraph 2 of Article 11.

A. Submissions of those appearing before the Court as to whether the interference was justified

1. The applicant

53. The applicant argued that while Regulation 433 of the 1990 Regulations, which remained in force until March 1995, permitted police officers to be members of a party, Article 40/B § 4 of the Constitution expressly prohibited this as from 1 January 1994. This situation, which lasted fifteen months, was contradictory and unconstitutional.

Moreover, the aims of the impugned prohibition were not indicated in Hungarian law. In fact, the prohibition could only be seen as serving political interests, and thus as not pursuing a "legitimate aim" for the purposes of Article 11 § 2.

54. Furthermore, although the last sentence of paragraph 2 of Article 11 did not expressly refer to the requirement of "necessity", the restriction in issue nevertheless had to be "necessary in a democratic society" in order to be justified under this paragraph, a condition not met in the present case. The fact that Hungary had recently become a pluralistic democracy and a member State of the Council of Europe should not give rise to any leniency when examining the criteria for justification of the interference. Neither could the interference be regarded as "proportionate" to the aims pursued, given that the restriction in fact amounted to a complete ban on police officers' exercise of their right to freedom of association.

2. The Government

55. The Government expressed the view that, in any event, the last sentence of Article 11 § 2 provided sufficient justification for the impugned restriction on freedom of association, should it not be justified under the first sentence of that paragraph. In their opinion, the justification provided for in the last sentence was entirely independent of that in the first sentence; otherwise the provision would be superfluous.

56. As to the requirement under the last sentence of Article 11 § 2 that a restriction be "lawful", the Government first pointed out that what was in issue was a provision of the Hungarian Constitution. In reply to the

applicant's argument that between January 1994 and March 1995 Regulation 433 of the 1990 Regulations had been in contradiction with the contested constitutional provision, they explained that such ambiguities in the law were to be resolved by the Constitutional Court.

They submitted that the wish to depoliticise the police could not be regarded as "unlawful" in the sense of being arbitrary. In this respect they mainly reiterated their arguments concerning Article 10 (see paragraphs 39 and 44 above) and maintained in particular that the prohibition on party membership on the part of police officers had been intended to contribute to the elimination of any direct party political influence on the police by severing the institutional links which had previously existed between the armed forces and the police on the one hand and political circles on the other. Furthermore, the restriction in question could not be regarded as disproportionate to the legitimate aims pursued, since police officers' right to freedom of association had been restricted exclusively in respect of political parties within the meaning of Law no. 33 of 1989 on political parties.

3. The Commission

57. The Commission was of the view that the prohibition in question fell to be examined under the last sentence of paragraph 2 of Article 11. To be "lawful" for the purposes of that sentence, a restriction must be in accordance with the national law and devoid of arbitrariness. Having been prescribed by the Constitution, the restriction was to be considered as being in accordance with the national law. As regards arbitrariness, the Commission recalled that States must be given a wide discretion when ensuring the protection of their national security (see the Leander v. Sweden judgment of 26 March 1987, Series A no. 116, p. 25, § 59 *in fine*). Against the background of Hungary's recent history and the repercussions of a politically committed police force exploited for decades by a totalitarian regime, the Commission considered that the efforts to depoliticise the police could not be regarded as arbitrary. The prohibition was, therefore, also "lawful" within the wider meaning of that term in the second sentence of Article 11 § 2.

B. The Court's assessment

58. Notwithstanding its autonomous role and particular sphere of application, Article 11 must in the present case also be considered in the light of Article 10. As the Court has explained in previous judgments, "the protection of personal opinions, secured by Article 10, is one of the objectives of the freedoms of assembly and association as enshrined in Article 11" (see the Vogt judgment cited above, p. 30, § 64).

59. The last sentence of paragraph 2 of Article 11 – which is undoubtedly applicable in the present case – entitles States to impose "lawful restrictions" on the exercise of the right to freedom of association by members of the police.

Like the Commission, the Court considers that the term "lawful" in this sentence alludes to the very same concept of lawfulness as that to which the Convention refers elsewhere when using the same or similar expressions, notably the expressions "in accordance with the law" and "prescribed by law" found in the second paragraph of Articles 9 to 11. As recalled above in relation to Article 10, the concept of lawfulness in the Convention, apart from positing conformity with domestic law, also implies qualitative requirements in the domestic law such as foreseeability and, generally, an absence of arbitrariness (see paragraph 34 above).

60. In so far as the applicant criticises the basis in domestic law of the impugned restriction (see paragraph 53 above), the Court reiterates that it is primarily for the national authorities to interpret and apply domestic law, especially if there is a need to elucidate doubtful points (see the S.W. v. the United Kingdom judgment of 22 November 1995, Series A no. 335-B, p. 42, § 36, and also the previously cited Chorherr and Cantoni judgments). In the present case, however, the prohibition on membership of a political party by police officers as contained in Article 40/B § 4 of the Constitution is in fact unambiguous (see paragraph 13 above) and it would not appear to be arguable that subordinate legislation introduced some four years earlier (Regulation 433 of Decree no. 1/1990 of 10 January 1990 – see paragraph 19 above) was capable of affecting the scope of this prohibition. In the circumstances the Court concludes that the legal position was sufficiently clear to enable the applicant to regulate his conduct and that the requirement of foreseeability was accordingly satisfied. Further, the Court finds no ground for holding the restriction imposed on the applicant's exercise of his freedom of association to be arbitrary. The contested restriction was consequently "lawful" within the meaning of Article 11 § 2.

61. Finally, it is not necessary in the present case to settle the disputed issue of the extent to which the interference in question is, by virtue of the second sentence of Article 11 § 2, excluded from being subject to the conditions other than lawfulness enumerated in the first sentence of that paragraph. For the reasons previously given in relation to Article 10 (see paragraphs 41 and 46 to 48 above), the Court considers that, in any event, the interference with the applicant's freedom of association satisfied those conditions (see, *mutatis mutandis*, the previously cited Vogt judgment, p. 31, § 68).

62. In sum, the interference can be regarded as justified under paragraph 2 of Article 11. Accordingly, there has been no violation of Article 11 either.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLES 10 OR 11

63. The applicant further alleged that the impugned prohibition on engaging in political activities and on joining a party was discriminatory. He relied on Article 14 of the Convention, which provides:

> "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."

64. In his memorial, the applicant did not address the issue under Article 14 taken in conjunction with Article 10.

As to Article 14 taken in conjunction with Article 11, he argued that there was no objective and reasonable justification for the prohibition on party membership, either in respect of police officers or other groups of public servants. The issue of party affiliation had in fact only very limited connection to the duties and responsibilities peculiar to members of the armed forces and the police. Any difference in treatment as to the possibility of joining a party should not be based on a prohibition of an unacceptably general character.

65. The Government submitted that the restrictions in issue had been imposed not only on police officers but members of the armed forces, judges, Constitutional Court judges and public prosecutors as well. They maintained that any distinction between police officers and other groups of citizens as to the exercise of the right to freedom of expression – and, *mutatis mutandis*, freedom of association – could be justified on the ground of differences between the conditions of military and of civil life and, more specifically, by the duties and responsibilities peculiar to members of the armed forces and the police. They referred in this respect to the Engel and Others judgment (judgment cited above, p. 42, § 103).

66. The Commission did not find it necessary to examine the applicant's complaint under Article 14 taken in conjunction with Article 10.

As to Article 14 taken in conjunction with Article 11, the Commission observed that the specific status of the applicant had already been taken into account when it had examined the justification for the prohibition in question under Article 11 § 2. The Commission found that those considerations were equally valid in the context of Article 14 and concluded that there was no appearance of any discrimination in breach of that Article taken in conjunction with Article 11.

67. The Court's conclusions that the contested restrictions do not amount to a violation of Articles 10 and 11 (see paragraphs 50 and 62 above) do not preclude the finding of a violation of Article 14 of the Convention. While it is true that the guarantee laid down in Article 14 has no independent existence

in the sense that under the terms of that Article it relates solely to "rights and freedoms set forth in [the] Convention", a measure which in itself is in conformity with the requirements of the Article enshrining the right or freedom in question may however infringe this Article when read in conjunction with Article 14 for the reason that it is of a discriminatory nature (see the case "relating to certain aspects of the laws on the use of languages in education in Belgium" (*merits*), judgment of 23 July 1968, Series A no. 6, pp. 33-34, § 9).

68. The considerations underlying the Court's conclusions that the interferences with the applicant's freedoms of expression and association were justified under Articles 10 § 2 and 11 § 2 have already taken into account the applicant's special status as a police officer (see paragraphs 41, 46 to 49 and 61 above). These considerations are equally valid in the context of Article 14 and, even assuming that police officers can be taken to be in a comparable position to ordinary citizens, justify the difference of treatment complained of. There has accordingly been no violation of Article 14 taken in conjunction with Articles 10 or 11.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been no violation of Article 10 of the Convention;

2. *Holds* by sixteen votes to one that there has been no violation of Article 11 of the Convention;

3. *Holds* unanimously that there has been no violation of Article 14 of the Convention taken in conjunction with Articles 10 or 11.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 20 May 1999.

Luzius WILDHABER
President

Paul MAHONEY
Deputy Registrar

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Mr Fischbach is annexed to this judgment.

L.W.
P.J.M.

PARTLY DISSENTING OPINION OF JUDGE FISCHBACH

(*Translation*)

While I agree with the majority that there has been no violation of Article 10, I regret that I am unable to share its view that there has been no breach of Article 11 of the Convention.

As I read the *travaux préparatoires* on Article 11 of the Convention (see paragraph IX, pages 18 and 19), restrictions on freedom of association must not only be lawful, as required by the second sentence of Article 11 § 2, they must also be necessary in a democratic society.

I can see no convincing argument which, in a pluralist, democratic society, could justify a ban on joining a political party.

On the contrary, I consider that the unhappy experiences suffered under the communist regime ought to encourage political leaders to advocate a fresh approach so that the democratic process can be consolidated and the future prepared for in a spirit of open-mindedness and tolerance.

As the police are now no longer at the service of the communist party, but of democracy, it is essential that change be accompanied by an approach fostering awareness of democratic pluralism through divergent political views that fuel debate over ideas.

Banning the police from joining a political party amounts to depriving them of a right, if not the democratic duty, which all citizens have to hold opinions and political convictions, to take a close interest in public affairs and to participate in the fashioning of the will of the people and of the State.

Admittedly, the right to state one's personal convictions by belonging to a party should not be confused with either freedom to express opinions and political convictions irrespective of time or place or, above all, with freedom to comment in public on the actions of political leaders. Those are freedoms that have always to be reconciled with the obligation of discretion to which all public servants and, *a fortiori*, members of the police are subject by virtue of their duties to the executive of impartiality and loyalty.

It is for that reason that I share the majority's view that there has been no violation of Article 10.

However, the total ban on belonging to a political party and, consequently, the legislature's refusal to allow policemen to take part in the internal workings of a party is, to my mind, disproportionate and made yet more unjust by the fact that the selfsame legislature affords all members of the police the right to stand for elections at national, local or

municipal level on condition that they inform the head of police of their intention to do so and remain off duty from the sixtieth day preceding the election until publication of the results.

I very much doubt the effectiveness of such a right to stand for election since its exercise is highly dependent on the person concerned being given the freedom to familiarise himself with a party's ideas, working methods and machinery and, hence, enough time to acquire a taste for politics and to begin a political career.