SECOND SECTION

CASE OF COËME AND OTHERS v. BELGIUM

(Applications nos. 32492/96, 32547/96, 32548/96,

33209/96 and 33210/96)

JUDGMENT

STRASBOURG

22 June 2000

FINAL

18/10/2000

In the case of Coëme and Others v. Belgium,

The European Court of Human sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President,*

Mr A.B. BAKA,

Mr B. CONFORTI,

Mrs F. TULKENS,

Mr P. LORENZEN,

Mrs M. TSATSA-NIKOLOVSKA,

Mr E. LEVITS, *judges,*

and Mr E. FRIBERGH, *Section Registrar,*

Having deliberated in private on 30 March, 6 April and 30 May 2000,

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

PROCEDURE

1. The case originated in five applications (nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96) against the Kingdom of Belgium lodged with the European

Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by five Belgian nationals.

The first of these applications was lodged by Mr Guy Coëme on 23 July 1996 and registered on 2 August 1996 under file no. 32492/96. Before the Court the applicant was represented by Mr P. Lambert, of the Brussels Bar.

The second application was lodged by Mr Jean-Louis Mazy on 1 August 1996 and registered on 7 August 1996 under file no. 32547/96. Before the Court the applicant was represented by Mr O. Klees, of the Brussels Bar.

The third application was originally lodged by Mr Jean-Louis Stalport on 5 August 1996 and registered on 7 August 1996 under file no. 32548/96. Mr Stalport died on 7 May 1997. By a letter of 4 July 1997 his wife, born in 1951, and his daughters, born in 1976 and 1979, who are all three Belgian nationals and are his sole heirs, announced their intention of pursuing the application and designated as the lawyers who would represent them the counsel chosen by their late husband and father – Mr J. Cruyplants, Mr R. De Baerdemaeker and Mr O. Louppe, of the Brussels Bar.

The fourth application was lodged by Mr Auguste Merry Hermanus on 8 August 1996 and registered on 27 September 1996 under file no. 33209/96. Before the Court the applicant was represented by Ms N. Cahen, Ms F. Maussion and Mr R. de Béco, of the Brussels Bar.

The fifth application was lodged by Mr Camille Javeau on 31 July 1996 and registered on 27 September 1996 under file no. 33210/96. Before the Court the applicant was represented by Mr T. Delahaye, Mr P. Mayence, Ms M.-F. Dubuffet and Mr P. Erkes, of the Brussels Bar.

The Belgian Government ("the Government") were represented by their Agent, Mr C. Debrulle, Director of Administration at the Ministry of Justice.

Relying on Articles 6, 7 13 and 14 of the Convention, the applicants complained of criminal proceedings brought against them in Belgium. Mr Coëme, who was a government minister at the time when the offences with which he was charged were committed, was committed for trial in the Court of Cassation pursuant to Article 103 of the Constitution, as worded before the constitutional revision of 12 June 1998, which provided that only the Court of Cassation, sitting as a full court, was empowered to try ministers. The other applicants were committed for trial in the same court on account of the connection between the offences they had been charged with and those of which Mr Coëme stood accused. On 5 April 1996 the Court of Cassation convicted all five applicants.

2. On 7 April 1997 the Commission decided to give notice of the applications to the Government.

With regard to the first application, the Commission invited the Government to submit their observations on the complaint concerning the lack of implementing legislation governing trial procedure in the Court of Cassation and those based on the fact that the Court of Cassation, applying Article 21 of the Law of 17 April 1978, as amended by Article 25 of the Law of 24 December 1993, had retrospectively applied Article 103 of the Constitution, as amended on 5 May 1993, and had extended the scope of the trial to include offences and charges not covered by the committal decision of the House of Representatives. The Government submitted their observations on 25 September 1997 and the applicant replied on 12 November 1997.

In connection with its examination of the second application, the Commission invited the Government to submit their observations on the complaints concerning the decision to commit the applicant for trial in the Court of Cassation even though he had never held office as a minister and the fact that there was no implementing legislation governing trial procedure in the Court of Cassation, the complaint that the applicant had not had adequate time and facilities for the preparation of his defence and the complaint based on the refusal to submit a preliminary question to the Administrative Jurisdiction and Procedure Court. The Government submitted their observations on 25 September 1997 and the applicant replied on 5 November 1997.

With regard to the third application, the Commission invited the Government to submit their observations on the complaints concerning the decision to commit the applicant for trial in the Court of Cassation even though he had never held office as a minister and the fact that there was no implementing legislation governing trial procedure in the Court of Cassation, and the complaint that the applicant had not had adequate time and facilities for the preparation of his defence. The Government were also invited to submit observations on the complaints that the Court of Cassation had refused to submit a preliminary question to the Administrative Jurisdiction and Procedure Court and had taken certain statements made by the applicant when he was interviewed on 16 March 1994 to constitute a confession. The Government submitted their observations on 25 September 1997 and the applicant's heirs replied on 19 December 1997.

With regard to the fourth application, the Commission invited the Government to submit their observations on the complaints concerning the decision to commit the applicant for trial in the Court of Cassation even though he had never held office as a minister and the fact that there was no implementing legislation governing trial procedure in the Court of Cassation, and the complaints that the Court of Cassation had applied Article 21 of the Law of 17 April 1978, as amended by Article 25 of the Law of 24 December 1993, had refused to submit a preliminary question to the Administrative Jurisdiction and Procedure Court and had not heard the case within a reasonable time. The Government submitted their observations on 25 September 1997 and the applicant replied on 19 December 1997.

With regard to the fifth application, the Commission invited the Government to submit their observations on the complaints concerning the decision to commit the applicant for trial in the Court of Cassation even though he had never held office as a minister and the fact that there was no implementing legislation governing trial procedure in the Court of

Cassation, the complaint that the applicant had not had adequate time and facilities for the preparation of his defence and the complaint based on the refusal to submit a preliminary question to the Administrative Jurisdiction and Procedure Court. The Government submitted their observations on 25 September 1997 and the applicant replied on 19 December 1997.

3. Following the entry into force of Protocol No. 11 to the Convention on 1 November 1998, and in accordance with Article 5 § 2 thereof, the case was examined by the Court.

4. In accordance with Rule 52 § 1 of the Rules of Court, the President of the Court, Mr L. Wildhaber, assigned the case to the Second Section. The Chamber constituted within that Section included *ex officio* Mrs F. Tulkens, the judge elected in respect of Begium (Article 27 § 2 of the Convention and Rule 26 § 1 (a)), and Mr C.L. Rozakis, President of the Section (Rule 26 § 1 (a)). The other members designated by the latter to complete the Chamber were Mr B. Conforti, Mr P. Lorenzen, Mrs M. Tsatsa-Nikolovska, Mr A.B. Baka and Mr E. Levits (Rule 26 § 1 (b)).

5. On 8 December 1998 the Chamber decided to join the applications (Rule 43 § 1). It then decided to invite the parties to attend a hearing to make oral submissions on the admissibility and merits of certain complaints raised in the applications.

6. In accordance with the decision of the President of the Chamber, the hearing took place in public in the Human Rights Building, Strasbourg, on 2 March 1999.

There appeared before the Court:

(a) *for the Government*

Mr J. LATHOUWERS, Deputy Legal Adviser,

Head of Department, Ministry of Justice, *Agent*,

Mr F. HERBERT, of the Brussels Bar,

Mr F. DE VISSCHER, of the Brussels Bar, *Counsel*;

(b) *for the applicants*

(for Mr Coëme)

Mr P. LAMBERT, of the Brussels Bar, *Counsel*,

Mr M. VERDUSSEN, Lecturer

at the Catholic University of Louvain, *Adviser*,

(for Mr Mazy)

Mr O. KLEES, of the Brussels Bar, *Counsel*,

(for the heirs of Mr Stalport)

Mr J. CRUYPLANTS, of the Brussels Bar,

Mr R. DE BAERDEMAEKER, of the Brussels Bar,

Mr O. LOUPPE, of the Brussels Bar, *Counsel*,

(for Mr Hermanus)

Ms N. CAHEN, of the Brussels Bar,

Mr R. DE BECO, of the Brussels Bar, *Counsel*,

(for Mr Javeau)

Ms M.-F. DUBUFFET, of the Brussels Bar,

Mr P. ERKES, of the Brussels Bar, *Counsel*.

The Court heard addresses by Mr de Visscher, Mr Klees, Mr Verdussen, Mr Lambert, Ms Cahen, Mr Erkes, Ms Dubuffet and Mr Cruyplants.

7. At the close of the deliberations held after the hearing on 2 March 1999 the Chamber declared the applications admissible as regards the complaints concerning:

– the lack of implementing legislation governing procedure for the trial of ministers pursuant to Article 103 of the Constitution and the resulting difficulties for the organisation of the applicants' defence;

– application of Article 21 of the Law of 17 April 1978, as amended by Article 25 of the Law of 24 December 1993;

– the decision to commit for trial in the Court of Cassation the four applicants who had never held office as ministers;

– the Court of Cassation's refusal to submit to the Administrative Jurisdiction and Procedure Court preliminary questions concerning the connection between the offences and the extension of the limitation period;

– the allegation that the Court of Cassation had taken certain statements made by Mr Stalport when he was interviewed as a witness on 16 March 1994 to constitute a confession;

– the allegedly excessive length of the proceedings against Mr Hermanus; and

– the allegation that the Court of Cassation was structurally and traditionally under the influence of the Principal Public Prosecutor's Office there.

8. On 24 March 1999 the text of the decision on admissibility[1] was communicated to the parties. The parties were also invited to submit observations on the complaint that the Court of Cassation was structurally and traditionally under the influence of the Principal Public Prosecutor's Office there, raised in applications nos. 32547/96 and 32548/96. They were further informed of the possibility of submitting additional observations on the merits of the case. The applicants were in addition invited to provide details of their claims for just satisfaction (Rule 60 § 2).

9. The applicants submitted their observations on the merits of the case on 4 May 1999, and the Government submitted theirs on 21 May 1999. The applicants submitted additional observations on 9 July 1999. Memoranda on the subject of just satisfaction were filed on 11 May 1999 (application no. 32492/96), 21 May 1999 (applications nos. 32547/96, 32548/96 and 33209/96) and 25 May 1999 (application no. 33210/96). The Government replied on 29 July 1999.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. Mr Coëme, a Belgian national born in 1948, is a former member of the House of Representatives and a former minister.

Mr Mazy, a Belgian national born in 1955, is an economist.

Application no. 32548/96 was originally lodged by Mr Stalport, a Belgian national born in 1950, who was then the director-general of Belgian Radio and Television. Following Mr Stalport's death on 7 May 1997 his wife and his daughters announced their intention of pursuing the application in a letter of 4 July 1997.

Mr Hermanus is a Belgian national, born in 1944. A civil servant, he was deputy mayor of the municipality of Jette from 1983 to 1986 and the chairman of the Brussels-Capital Regional Development Board (“the *SDRB*”) from 1989 to 1996.

Mr Javeau, a Belgian national born in 1943, is a psychologist.

11. In 1984 Mr Javeau, an employee of the “I” association, was appointed as its manager. The object of the association was to carry out market research and opinion

polls, and to create and develop computer software. The market research included surveys requested and paid for by third parties in both the private and public sectors (such as the State, public establishments, political parties, etc.). The association also carried out market research and opinion polls on its own initiative. On 22 August 1989, while Mr Javeau was in the United States, he was dismissed for serious misconduct.

12. On 25 August 1989 an investigating judge at the Brussels Court of First Instance was instructed to conduct an investigation into some of “I”'s activities.

13. On 26 August 1989 Mr Javeau was placed in pre-trial detention on his return from the United States. He was suspected of using forged invoices to overcharge “I”'s clients for surveys the association had undertaken to carry out on the basis of contracts with the Belgian State, the Walloon Region and the French-speaking Community, among others. It was alleged that he personally had obtained a financial gain from the higher fees paid to the association in consequence and had allowed others to do so. Those alleged to have benefited from these transactions included prominent politicians.

14. In October 1989 one V., “I”'s deputy manager, was also placed in pre-trial detention. He was released in November 1989, as was Mr Javeau.

15. On 28 August 1989 Mr Hermanus lodged a complaint against a person or persons unknown in connection with “slanderous rumours [being spread] about [him] in relation to the dismissal of Mr C. Javeau”. In this complaint he gave detailed explanations about two surveys he had requested “I” to carry out, in his capacity as secretary-general of the Ministry of the French-speaking Community of Belgium. These surveys, one of which had allegedly not been carried out, had been requested from “I” in two contracts dated 16 and 27 November 1987, the bills for which had been paid by the French-speaking Community on 20 January and 29 February 1988 respectively.

16. In the context of the proceedings brought against Mr Javeau, among others, the investigating judge appointed a court expert to ascertain how the fraud had been perpetrated, who was responsible for it and who had benefited from it. The expert was instructed in particular to report on the association's bookkeeping, to study its annual accounts, to determine to what extent, if at all, it was engaged in activity of a commercial nature, to identify the documents whose authenticity was in doubt and to note any evidence of fraud within the limits of the prosecution submissions and any further submissions which might be made.

17. The expert filed a preliminary report in December 1989.

18. At the prosecution's request, the investigating judge commissioned further expert reports. One of these was filed in 1990.

19. On 28 August 1991 searches were carried out at the home of Mr Hermanus and the offices he occupied as deputy mayor of Jette.

20. On 10 June 1992 the Audit Commission (an independent body responsible for detecting frauds or offences committed in connection with the operation of public services, supervising public works or supply contracts and verifying how public subsidies have been used) interviewed Mr Hermanus. A report on the proceedings was drawn up (no. 2337). Mr Hermanus was questioned by the Audit Commission on a number of further occasions in 1992 and 1993.

21. On 8 June 1993 an Audit Commission investigator questioned Mr Javeau about certain contracts entered into by "I", particularly three contracts for 1,200,000 Belgian francs (BEF) each signed by Minister M. which concerned businesses in the Brussels area which were geared for exports, operating as sub-contractors or receiving subsidies from the Brussels Region (files nos. IN B/40, B/50 and B/60).

He was asked in particular whether the intention had not been "in effect to scrape together all available funds" before Minister M. left the Brussels Region and whether a preliminary study had not been split into three contracts in order to evade the scrutiny of the Treasury inspector.

According to the interview record, Mr Javeau replied:

"Yes, in effect, we signed those contracts at the end of Minister M.'s term of office in the Brussels Region as I have just explained, but I think that splitting the work between three contracts was done simply to save time. The new minister-president had to be installed and a new procedure would have led to further delays. If we had not severed the contract we would indeed have had to submit it to the Treasury inspector for approval, and in the event of an unfavourable opinion we would have had to go up as far as the Cabinet, all for a contract that M. was determined to get through whatever level of the procedure it had to go to."

22. The final report containing the expert opinions ran to six volumes which were filed between December 1993 and March 1994.

23. Reports concerning the additional expert opinions requested were filed in January and February 1995.

24. On 2 February 1994 the investigating judge charged Mr Hermanus with misappropriation, fraud, forgery, uttering forged documents and accepting bribes as a civil servant.

25. On 7 February 1994, as the investigation appeared to have uncovered evidence of offences committed by prominent politicians who, because of ministerial or parliamentary immunity, could not be prosecuted or investigated except under the conditions laid down in Articles 59, 103 or 120 of the Constitution (concerning members of the House of Representatives or Senate, ministers and members of Community or Regional Councils respectively), the investigating judge sent a copy of the file in the meantime to the Principal Public Prosecutor's Office at the Brussels Court of Appeal.

26. The Principal Public Prosecutor (*procureur général*) at the Brussels Court of Appeal decided that there did indeed appear to be evidence that offences had been committed by eleven prominent politicians protected by ministerial or parliamentary immunity, including Mr Coëme and Minister M.

27. On 16 March 1994 Mr Stalport was interviewed, as former head of the private office of Minister M., by two civil servants belonging to the investigation branch of the Audit Commission, acting pursuant to instructions given by the investigating judge handling the proceedings against Mr Javeau. This interview mainly concerned the relations between Mr Javeau and the private office of Minister M., and the working practices of the private office. It concentrated on three contracts dated 15 June 1989 between the Brussels Region and "I". The verbatim record of the interview records this part of the proceedings as follows:

"*Q* [*Question*] On 17 May 1989 Mr Javeau sent the private office a draft contract for a preliminary study to be carried out among small and medium-sized businesses in the Brussels area for a total fee of BEF 4,800,000 net of VAT. The study was intended to produce a list of businesses

– geared for exports;

– operating as sub-contractors;

– receiving subsidies from the Brussels Region.

A few days later you informed Javeau that his draft contract had been transmitted to the administration for scrutiny (appendices 116 to 122 of the same report). Did you have instructions to do that? Did you inform yourself about the possibility of a call for tenders for the creation of such a data bank?

A [*Answer*] I had no instruction to do that. As for finding out about calls for tenders, I left that to the administration, for the reasons I have already mentioned.

...

Q What is the procedure to be followed where the Treasury inspector's opinion on a draft contract is unfavourable?

A I now know that it was possible to apply to the regional government for arbitration. At the time, I was unaware of that procedure and nobody told me about it. I was determined to get things moving and the opinion of the Treasury inspector, L. in this case, concentrated very much on the regulations and was little concerned with financial viability. In substance, I was irked by the inflexibility and resistance to change of the Treasury inspectorate. In my private office I was advised to do things differently, namely to split the contract into three parts so that the fees would be lower than the BEF 1,250,000 threshold triggering compulsory scrutiny by the Treasury inspector. I must

emphasise that, despite doing things that way, I once again submitted the subdivided project to the Treasury inspector, but the second time he gave a favourable opinion.

Q Here you see three contracts signed on 15 June 1989 between the Brussels Region, represented by Minister M., and the "I" association, represented by Mr Javeau (see appendices 100 to 111 of the expert report). Each of these contracts concerns a preliminary study to be carried out among small and medium-sized businesses in the Brussels area to determine which of them would be interested in appearing in a data bank as described in the initial project. Each of these contracts concerns one of the three above-mentioned criteria. They represent a total cost for the preliminary study of BEF 3,600,000 net of VAT, as compared with the initial project, which would have cost BEF 4,800,000 net of VAT. Did not that reduction result from the need to split the initial project into three, since there were three criteria, while at the same time making sure that none of the three contracts exceeded BEF 1,250,000 net of VAT, the threshold for intervention by the Treasury inspector?

A I wish to make it clear that I once again requested the opinion of the Treasury inspectorate even though in each case the fee was below the BEF 1,250,000 threshold. I would also point out that splitting the project into three led to a significant reduction in cost amounting to 25% of the overall fees.

Q Does the fact that Mr Javeau agreed to do the same work for BEF 3,600,000 not show that the initial contract accepted by the private office and the administration was overpriced?

A Your point about the initial price is not wrong, but the agreement on BEF 3,600,000 was probably the result of a tripartite or quadripartite agreement between the private office, the administration, the Treasury inspectorate and "I". That is a guess, because I can't remember the precise details of that transaction now.

...

Q Here is the commitment slip for one of the contracts signed with "I" on 15 June 1989. This document bears the signature of Treasury inspector L., dated 30 June 1989, authorising the expenditure. Could Mr L. have opposed implementation of the contract, his opinion not having been sought, it would appear, before it was signed?

A I would observe on this point that I was not obliged to submit the file to Mr L. in view of the size of the fee. But as I was working more with the administration than with the private office, the administration automatically sent the *ad hoc* expenditure commitment slip to the Treasury inspector for authorisation. In my opinion, Mr L. must have received the contract before it was signed.

Q When these three contracts were received the administration gave them only one commitment number, which was the number of one of them (see appendices 130 and 131 of the same report). Here is another series of documents which indicate that the

administrative authorities wrongly thought they were dealing with a single contract, so much so that when “I” sent them three invoices for part-payment of each of the three contracts Mr P. informed Mr Javeau that he thought “I” must have made a mistake. In fact, he requested three original copies of what he believed to be a single invoice and these copies could not bear three different numbers (see appendices 130 to 136 of the same report). So Mr L. could only have authorised expenditure in respect of one commitment slip relating to a single contract?

A Yes, that's true. But it's not my fault. The paperwork was entirely a matter for the administration.

...

Q As regards approval of expenditure by the Treasury inspectorate in respect of contracts where the fee was lower than its intervention threshold, was it still possible for the inspector to give his views on the advisability of proceeding?

A It is true that from the administrative-law point of view his approval does not seem to be required for the commitment of such sums. However, as far as I am concerned, and in view of my lack of technical experience of budgetary matters, I preferred on all occasions to seek the approval of the Treasury inspector, seeing that for me this represented a guarantee of lawfulness from the Minister's budgetary adviser. Therefore, if Mr L. had formally refused to sign the commitment slip, I would not have gone ahead. You tell me that there is a contradiction between what I am telling you and the splitting of the original project refused by Mr L. My reply is that I was advised to do things that way and that I made sure that Mr L. approved the three new contracts.

Having read through the above record, [Mr Stalport] stands by his statements and adds his signature to ours.”

28. By a 75-page letter of 30 June 1994 the Principal Public Prosecutor at the Brussels Court of Appeal transmitted to the President of the House of Representatives “a file disclosing, in [his] opinion, evidence of offences committed by Mr ... Guy Coëme ..., a former minister”. The letter went on to say: “These offences include forgery, uttering forged documents, fraud, misappropriation and corruption, committed as co-principal, as defined in Articles 66, 193, 196, 197, 213, 214, 246, 248, 491 and 496 of the Criminal Code. The acts concerned, which could be classified differently but would still constitute offences, ... were apparently committed at times when [he held] ministerial office ... Consequently, the provisions of Article 103 of the Constitution are applicable.”

After a summary of the case, the file set out the facts and the evidence against Mr Coëme regarding offences said to have been committed between 30 March 1981 and 8 December 1989. The letter implicated another minister, a former minister and eight other members of parliament, although the Principal Public Prosecutor considered that in respect of six of these prosecution was probably time-barred.

The Principal Public Prosecutor also mentioned a general problem concerning limitation of prosecution arising from the fact that under Article 25 of the Law of 24 December 1993, which had come into force on 31 December 1993, the limitation period had been extended from three to five years and the change applied to "all prosecutions brought before the Law's entry into force which have not yet become time-barred by that date". The Principal Public Prosecutor accordingly submitted the following opinion: "In the present case all the offences committed before 1 January 1988, at least, are subject to limitation. In respect of the offences committed after that date the first three-year time-limit, expiring on 1 January 1991, began to run. The first procedural step causing time to begin to run again occurred in August 1989, more specifically on 25 August 1989, when the information in writing was laid before the investigating judge."

The Principal Public Prosecutor sent this report to the President of the House of Representatives to enable the House to "exercise the prerogatives conferred on it by Article 103 of the Constitution". He further requested, in any event, the lifting of the parliamentary immunity of the three ministers implicated, including Mr Coëme and Minister M.

29. The House of Representatives, sitting on 1 July 1994 in plenary session, set up a special committee composed in accordance with the proportional representation rule. The special committee took evidence at separate hearings from the investigating judge, the court expert and Mr Coëme, assisted by his lawyers.

After deliberating on 8 July 1994, the special committee made a recommendation urging the House of Representatives to commit Mr Coëme for trial in the Court of Cassation, but not the other two ministers. With regard to Minister M., it expressed the following opinion:

"The special committee, rejecting all other legal argument put forward, decides to recommend that the House of Representatives should find

– that [Minister M.] should not be committed for trial in the Court of Cassation in connection with contracts nos. IN B040, 050 and 060, and

– that in connection with the other offences the House of Representatives is not required to give a ruling under Article 103 of the Constitution."

30. On 14 July 1994 this recommendation was adopted in exactly the same terms by the House of Representatives by 140 votes to 39, with 2 abstentions.

31. After the House of Representatives had reached this decision, the Principal Public Prosecutor at the Court of Cassation asked the President of the Court of Cassation, in the interests of the proper administration of justice, to appoint a judge of the Court, as a matter of urgency, as investigating judge, with the task of extending and continuing the investigation of the facts in close collaboration with the investigating judge dealing with the case.

32. By a decision of 21 July 1994 the President, allowing this application, appointed Judge F. to investigate the case.

33. On 9 May 1995 Judge F. sent the case file to the Principal Public Prosecutor at the Court of Cassation, so that the latter could make his submissions.

34. As a result of elections held in April 1995 Mr Hermanus sat as a member of the Council of the Brussels-Capital Region from 6 June 1995 onwards.

On 26 June 1995 the Principal Public Prosecutor at the Brussels Court of Appeal sent a letter to the Council of the Brussels-Capital Region asking it to inform him, "regard being had to the provisions of Articles 59 § 3 and 120 of the Constitution", whether it considered it necessary "to call for a stay of the proceedings brought when Mr Hermanus had not yet been invested with the functions [of a regional councillor]".

On 10 July 1995 the Council decided to "authorise" proceedings against Mr Hermanus involving investigation of the case before a criminal division of the Brussels Court of First Instance and to "reserve its decision regarding all other forms of proceedings until it [had] received fuller information, so as to be able to assess whether these [were] compatible with the continuance in office of the member concerned".

On 25 September 1995 the Principal Public Prosecutor at the Court of Cassation asked the President of the Council of the Brussels-Capital Region "to be so good as to request the Council of the Brussels-Capital Region to give a ruling as early as possible on the present application for the authorisation of proceedings against Mr Hermanus in the Court of Cassation".

On the advice of its Criminal Proceedings Committee, the Council decided at its sitting on 18 October 1995 to give the authorisation requested, considering that "connection between the offences [had been] established by the decision of 22 September 1995 of the Committals Division of the Brussels Court of First Instance, reached after the Council's decision of 10 July 1995 [and that] the questions of connection between the offences, the proportionality between the offences and the consequences of committal for trial in the Court of Cassation, and the reasonableness of the time taken to investigate the case [were] matters for the trial court on which the Criminal Proceedings Committee [did] not have to rule".

35. In the meantime the Committals Division of the Brussels Court of First Instance had decided, by an order of 22 September 1995, in respect of which the parties were not permitted to make submissions, to take the case out of the hands of the investigating judge it had been assigned to.

36. In addition to Mr Coëme, the prosecuting authorities at the Court of Cassation decided to prosecute before that court seven other defendants, including the other four applicants. They considered that the investigation had revealed a system for the illegal financing of the activities of certain politicians. This involved public authorities entering

into contracts for the provision of over-priced services so that the provider of the services could transfer a portion of the sums paid to third parties in order to cover the costs of the activities in question. The practices concerned consisted in negotiating and signing contracts for various opinion polls or surveys to be conducted mainly by “I” for the “benefit” of government ministries. The prices stipulated in these contracts were too high in relation to the real cost of the surveys carried out and their likely benefits. In addition, care had been taken to avoid the competitive procedure laid down for contracts entered into by the administrative authorities, which might have prevented “I” from winning some of these contracts, and internal checks carried out by the administrative authorities, mainly by Treasury inspectors, which might have revealed the fact that some of them were over-priced. In order to do so, care had been taken to ensure that the thresholds which triggered application of the regulations and circulars relevant to public works and supply contracts and of the administrative authorities' internal control procedures were not exceeded. The prosecuting authorities also accused some defendants (including Mr Javeau) of obtaining the payment of certain fees by false pretences. Lastly, they considered that although two of the applicants, Mr Stalport and Mr Mazy, had obtained no financial gain from these contracts, they had taken part in drawing them up.

37. At 11 a.m. on 3 November 1995 the Principal Public Prosecutor at the Court of Cassation held a meeting with the lawyers of five of the persons under investigation, including Mr Coëme and Mr Javeau, to inform them of the measures taken for organisation of the trial. He handed them copies of the summons he intended to serve on their clients and allegedly suggested that the case should come on in early January 1996. When the lawyers protested, he apparently put off the trial until 5 February 1996, despite the reservations they expressed about the shortness of the time they had been given to prepare their clients' defence. He also allegedly told them that the trial in the Court of Cassation would follow the procedure of the ordinary criminal courts.

Mr Stalport was not invited to this meeting. He explained that at that time he had not consulted a lawyer, not considering himself to be implicated.

38. By summonses served between 8 and 15 November 1995 the eight persons under investigation by the prosecuting authorities at the Court of Cassation were summoned to appear in that court on 5 February 1996, to answer various charges relating to offences allegedly committed in connection with public supply contracts awarded to “I”, at a time when Mr Coëme was a member of the government.

Mr Coëme was the only defendant to whom Article 103 of the Constitution applied; the others were summoned, pursuant to Articles 226 and 227 of the Code of Criminal Investigation, on account of the connection between the offences they stood accused of and the charges Mr Coëme had to answer.

39. By a summons served on 10 November 1995 Mr Stalport was summoned to appear in the Court of Cassation to answer the charges of forgery, accepting a bribe as a civil servant and fraud committed in connection with the allocation of public contracts with which he had been associated as head of the private office of Minister M., whom the

House of Representatives had not committed for trial in the Court of Cassation. According to the summons, he stood accused of the following offences:

“A. the first (Mr Coëme), second (Mr Javeau), third (Mr V.), fourth (Mr Hermanus), fifth (Mr Stalport), sixth (Mr H.), and seventh (Mr Mazy)

being a civil servant or public officer or the accomplice of a civil servant or public officer,

with fraudulent intent or the intention of causing harm, when making out official documents of his ministry, falsified their substance or circumstances, either by drafting contracts other than those allegedly drawn up by the parties, or by representing falsehoods as true facts, with a view to:

...

3. the second (Mr Javeau) and the fifth (Mr Stalport)

the fifth, being head of the private office of the Minister for the Brussels Region, with the fraudulent intent of making it possible for a contract to be awarded by circumventing the rules and procedures for public contracts and more especially with the intention of evading the scrutiny of the Treasury inspectors, substituted or caused to be substituted for a contract which had been turned down by the Treasury inspectors three contracts dated 15 June 1989, each for a sum lower than the threshold triggering intervention of the inspectorate, but which together had the same purpose as the one which had been turned down, namely research on small and medium-sized businesses;

(contracts IN B 040, B 050 and B 060 – see in particular: RE, vol. IV, pp. 13 to 19 and annexes 100 to 111; C 5, f 2, p. 179; C 12, f 5, pp. 2 and 4).”

40. On 18 January 1996 the lawyers of each of the defendants requested the Court of Cassation to put back the trial on the ground that it was impossible for them, in spite of all their efforts, to prepare their clients' defence satisfactorily.

41. As soon as the trial began, on 5 February 1996, the President of the Court of Cassation announced that the case would be investigated in accordance with the provisions of Article 190 of the Code of Criminal Investigation.

The hearing was given over to consideration of an application for an adjournment lodged by several defendants to give them the time they needed to be able to conduct their defence in accordance with their rights. The defendants concerned lodged pleadings to that end. By an interlocutory judgment of 6 February 1996 the Court of Cassation ruled that these defendants had had sufficient time to prepare their arguments regarding both the criminal and the civil aspects of the case.

42. At the hearing on 6 February 1996 Mr Coëme filed a first pleading concerning the fact that no legislation had been enacted to implement Article 103 of the Constitution, despite the expressly stated intention of the National Congress. This legislative deficiency had caused the provision originally intended to be transitional, adopted by the National Congress to fill the legal vacuum – namely Article 134 § 1 of the Constitution, which had later become the transitional provision of Article 103 – to remain in force indefinitely.

He submitted in the first place that although the constitutional revision of 5 May 1993 had replaced the words "and in so doing classify the offence and determine the appropriate sentence" in the transitional provision of Article 103 of the Constitution with "in the cases contemplated by the criminal law and applying the penalties laid down therein", this constitutional revision could not apply retrospectively to the charges against him concerning offences committed between 29 March 1981 and 30 November 1990 without breaching Article 7 § 1 of the Convention.

He further submitted that, although the transitional provision gave the Court of Cassation discretion to try ministers indicted by the House of Representatives as regards the question of their guilt and the penalties to be imposed, it did not confer on either the Court of Cassation or the House of Representatives an analogous power concerning the procedure to be followed in such proceedings. The Court of Cassation had therefore imposed the applicable procedural rules on its own authority, contrary to the principle that a tribunal's procedure must be established by law.

43. At the hearing on 6 February 1996 Mr Coëme filed a second pleading concerning the procedure followed by the special committee of the House of Representatives and reference of the case to the Court of Cassation.

44. At the hearing on 7 February 1996 Mr Stalport filed a pleading arguing that no provision of Belgian law permitted his committal for trial in the Court of Cassation as court of first instance. In a separate pleading he further submitted that there was no connection between the offence he stood accused of and the offence allegedly committed by Mr Coëme. If the Court of Cassation thought otherwise, it should refer a preliminary question to the Administrative Jurisdiction and Procedure Court as to whether legal provisions which permitted a defendant who was not a minister to be committed for trial in the Court of Cassation infringed the principles of equality and non-discrimination. He therefore asked the Court of Cassation to rule that it did not have jurisdiction to try him in the absence of any connection or, in the alternative, to submit to the Administrative Jurisdiction and Procedure Court the following preliminary question:

"In so far as Articles 226 and 227 of the Code of Criminal Investigation have the effect of referring to the Court of Cassation, sitting as a court of trial, criminal proceedings against a defendant who is not a minister, do they breach Articles 10 and 11 of the Constitution taken together with Articles 12, 13 and 147 of the Constitution?"

45. At the hearing on 8 February 1996 Mr Coëme filed a third pleading in which he asked the Court of Cassation to stay its decision on the prosecution's submissions until

the Administrative Jurisdiction and Procedure Court had answered the following preliminary question:

“Does the extension of the limitation period for criminal proceedings resulting from Article 21 of the Law of 17 April 1978 containing the preliminary part of the Code of Criminal Procedure, as amended by Article 25 of the Law of 24 December 1993, in so far as that provision applies to all prosecutions brought before its entry into force which were not yet time-barred on that date and introduces longer limitation periods, create discrimination contrary to Articles 10 and 11 of the Constitution in relation to the situation of persons who are subject, on account of the date on which their offences were committed, to the limitation period laid down in the former version of the above-mentioned Article 21?”

46. At the beginning of the hearing on 12 February 1996 the President read out an interlocutory judgment in which the Court of Cassation ruled that the case had been lawfully referred to it, that it had jurisdiction to hear it and that it was not necessary to refer to the Administrative Jurisdiction and Procedure Court the preliminary questions proposed by the defendants on the principle of connection. In the reasons for its judgment the Court of Cassation held: “The transitional provision in Article 103 of the Constitution ... applies both to the offences committed after the constitutional revision of 5 May 1993 and to those committed before it”. It went on to say that its discretion was limited by the obligation to follow certain procedural rules and added:

“Where the Court of Cassation is sitting as a court of trial it must comply, in procedural matters, with the provisions – directly applicable in Belgian law – of the Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights, with the Constitution, with the rules of the Judicial Code, with the common provisions applicable to all criminal proceedings and with the general principles of law.

In giving the Court of Cassation the power to try ministers 'in those cases where the criminal law so provides', the framers of the Constitution were necessarily referring, as regards the form of procedure, to the one laid down by Parliament for such cases, namely the Code of Criminal Investigation, in so far as that is compatible with the provisions governing procedure before the Court of Cassation when it sits as a full court.

To that extent, this Court will apply the procedural rules laid down in Book II, Part One, Chapter II of the Code of Criminal Investigation, entitled 'The criminal courts'.

These rules, which are prescribed by law, accessible and foreseeable as to their effects, guarantee full exercise of the right to due process and to a fair trial.

In applying existing rules, the Court is not usurping the function of the legislature.”

47. The Court of Cassation ruled as follows on the connection between the offences charged and on the preliminary questions on that subject:

“As regards connection between the offences

The provisions of Articles 226 and 227 of the Code of Criminal Investigation are not the expression of a general principle of law, but form a rule which is common to and applicable to all criminal proceedings.

It is not necessary for a connection to have been previously found by a court of investigation.

It is for the court of trial to which a case has been referred by a lawful committal decision or direct summons to assess for itself whether there is a connection and, accordingly, the scope of the case and its jurisdiction with regard to the connected offences.

The effect of a connection is that all joint principals and accomplices implicated in the connected offences must be tried together by the same court. It follows that where there is a connection between offences with which a minister has been charged and offences of which other defendants stand accused the jurisdiction given by the Constitution to the Court of Cassation requires the trial of all the accused to be conducted by that court, which is highest in rank.

Article 147 of the Constitution delimits the powers of the Court of Cassation when it rules on appeals on points of law.

The Court's powers to try ministers include, thanks to the principle of connection, the power to try other defendants for whom, in that situation, to the exclusion of any other, it is the court empowered by law to try them for the purposes of Article 13 of the Constitution.

The rules on connection, which are generally applicable, do not entail an arbitrary difference in treatment between the defendants for the purposes of Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Moreover, the Court will have to assess, when it looks into the merits of the case, whether there is a connection between the offences listed in the summons, and on this point the objection should be dealt with together with the merits.

...

As regards discrimination and the preliminary questions

The accused have alleged that the fact that they have been arraigned before the Court pursuant to the rules on connection constitutes discrimination prohibited by Articles 10 and 11 of the Constitution.

They have asked for preliminary questions to be submitted to the Administrative Jurisdiction and Procedure Court seeking a ruling as to whether Articles 226 and 227 of

the Code of Criminal Investigation, in so far as their effect is to refer to the Court of Cassation, sitting as a court of trial, the prosecution of a defendant who is not a minister, are in breach of Articles 10 and 11 of the Constitution. The defendant Stalport raised the same question, referring to the same Articles of the Constitution taken together with Articles 12, 13 and 147 thereof.

Furthermore, the defendant Javeau asked for a question to be submitted to the Administrative Jurisdiction and Procedure Court on a contradiction between Articles 10 and 11 of the Constitution and Articles 226, 227, 479 and 501 § 2 of the Code of Criminal Investigation, while the defendants V., Hermanus and Mazy asked for a question on a contradiction between the above-mentioned Articles 10 and 11 and Articles 226, 227, 307, 501 § 2, 526 and 540 of the Code of Criminal Investigation and Articles 30, 31, 566, 753, 856, 1053, 1084 and 1135 of the Judicial Code 'in that they laid down general principles of law permitting the Court of Cassation to try them'.

Even if deprivation of the possibility of defending oneself before the courts of investigation and of access to a second level of jurisdiction and cassation proceedings did constitute a violation of Articles 10 and 11 of the Constitution, those Articles would be violated not by the provisions complained of in the pleadings but by Article 103 of the Constitution, which gives the Court of Cassation jurisdiction to try ministers under the conditions it lays down.

Article 26 § 1 (3) of the Special Law of 6 January 1989 on the Administrative Jurisdiction and Procedure Court provides that that court shall give a ruling, in the form of a judgment, on the merits of questions concerning contravention of Articles 10, 11 and 24 of the Constitution by one of the statutes, decrees or rules contemplated by Article 134 of the Constitution.

The defendants' applications do not come within the scope of the above-mentioned Article 26.”

48. After this judgment had been delivered, one of the defence lawyers, speaking on behalf of all the accused, said that the Court of Cassation was laying down the rules of the procedure to be followed on its own authority and expressed serious reservations about compliance with Article 6 of the Convention. He also asked whether the Court of Cassation intended to ask the registrar, pursuant to Article 190 § 2 of the Code of Criminal Investigation, to read out the 30,000 pages in the file, explaining that, having stated that it intended to follow the practice of the criminal courts, it was not right for the Court of Cassation to apply some rules but not others. The Court of Cassation did not grant this request.

49. At the hearing on 12 February 1996 the Principal Public Prosecutor began an address presenting the facts of the case, which continued on 13 February. At the beginning of this address he said:

“I shall deal with the charges against Mr Coëme, Mr Javeau and Mr V., but in respect of these last two defendants only in so far as the charges concerned are closely connected with those against Mr Coëme.

The Principal Advocate-General will speak about the other charges against Mr Javeau and Mr V. and those against Mr Hermanus.”

50. According to Mr Javeau and Mr Stalport, the President of the Court of Cassation interrupted the Principal Advocate-General's address at one point to remind him that the purpose of that stage of the proceedings was not for the prosecution to present its case.

51. On 16 February 1996 the Court of Cassation began to take evidence from the accused. It also heard the parties' submissions on the subject of fixing a timetable for the further proceedings and the order in which submissions should be made. The prosecution suggested that the defence case should be heard before the prosecution's. After deliberation, the President announced that the Court had

“fixed the order for submissions in the further proceedings as follows:

1. Examination of the accused (continued)

2. Civil party's submissions

3. Prosecution submissions

4. Defence submissions

5. Replies, if any”.

52. On 20 February 1996 Mr Stalport was examined, together with Javeau, about the offences he stood accused of.

The record of the hearing on 20 February includes the following information:

“At the public hearing of the Court of Cassation, sitting as a full court, on 20 February 1996, in the formal hearing room, where the following members were present and sitting:

President Stranard, Vice-President D'Haenens, Division President Marchal, Judges Ghislain, Rappe and Charlier, Division President Baeté-Swinnen, Judges Willems, Lahousse, Jeanmart, Verheyden, Verougstraete, Forrier, Boes, D'Hont, Waûters, Dhaeyer, Bourgeois and Huybrechts; Principal State Counsel Baron J. Velu, Principal Advocate-General du Jardin, Chief Registrar Vander Zwalmen, assisted by Registrar Sluys and Deputy Registrar Van Geem,

...

The accused Stalport stated: I was questioned for the first and last time on 16 March 1994 in the context of an investigation into allegations against [Minister] M. I was told that I was being interviewed as a witness and that I would not have to be cross-examined in his presence. At no time did I have the opportunity to present my case. I confirm the statements I made at the time of that interview.

...

Question to Mr Stalport:

Is it true that when you received the draft contract you transmitted it without further formality to the administration for scrutiny and that when the administration gave a favourable opinion you submitted the file to the Treasury inspector on 23 May 1989?

Mr Stalport's reply:

Yes, the project was part of a package submitted to the administration with a total cost of BEF 20,000,000. It was that [amount] which caused the unfavourable opinion, and also in part the points of divergence between the opinions of the administration and the Treasury inspectorate.

...

Question to Mr Stalport:

Why, in your opinion, notwithstanding the unfavourable opinion of the Treasury inspectorate, were three contracts signed on 15 June 1989 which now form the basis of the charge against you, and which, taken together, had exactly the same purpose, although the cost of each of them was limited to BEF 1,200,000?

Mr Stalport's reply:

After the refusal I asked the Minister about it. He confirmed that it was politically desirable to go ahead. I looked for a cheaper solution. A few weeks later my colleagues submitted a new project to me.

Question to Mr Javeau:

Does that not show that the original fee of BEF 4,800,000 was too high?

Mr Javeau's reply:

No, Mr Stalport has already answered that question. We altered the project.

Question to Mr Stalport:

According to the procedure in force, was the Minister not required, in the event of the Treasury inspector's refusal to approve the project, to ask the Budget Minister to arbitrate, and, should the latter's opinion also be unfavourable, to use the possibility of bringing the matter before the Cabinet, which would have had the last word on the subject?

Mr Stalport's reply

M. was also the Budget Minister. We wanted to launch a much more limited project and we did a preliminary study. I do not think the solution of splitting into three was adopted to evade Treasury scrutiny. If we had followed the administrative procedures the project would not have got off the ground. My job as head of the private office was to get things moving quickly. Although we did not follow the classic procedure, the project was nevertheless subjected to Treasury scrutiny.

...

Question to Mr Stalport:

Who in the private office decided to disregard the Treasury inspector's unfavourable opinion and split the contract up in such a way as not to be bound by the opinion in question?

Mr Stalport's reply:

The decision to continue was taken by the Minister, the solution consisting in a reduction of the scope of the original project. Whatever the amount committed, the Treasury inspectorate had the power to supervise and give an opinion. Even though the contract was limited from the financial point of view, everything was above board.

...

Question to Mr Stalport:

You stated in substance (p. 9540) that you were irked by the inflexibility and resistance to change of the Treasury inspectorate and that in your private office you were advised to do things differently, namely to split the contract into three parts so that the fees would be lower than the BEF 1,250,000 threshold triggering compulsory scrutiny by the Treasury inspectors, and you went on to say that despite doing things that way you had once again submitted the subdivided project to the Treasury inspector, who the second time had given a favourable opinion, and that splitting the project into three had led to a significant reduction in cost amounting to 25% of the overall fees. Do you stand by that assessment of your conduct?

Mr Stalport's reply:

Yes, because the Treasury inspection procedure took some time. We wanted to work quickly and we came back to another way of doing things, which nevertheless received the Treasury inspectorate's approval, but more quickly, even though supervision was maintained. I did not have much time and I had to find a solution by using a faster procedure, namely approval of the order to pay. I knew that I had to give an account of my actions to the Minister and I insisted that the Treasury inspector sign each file, as was done even where this was not mandatory.

Question to Mr Stalport:

Did you know of the memo sent to Mr C., a minister of the Executive Council of the Brussels-Capital Region on 11 September 1989 by Mr L., Inspector-General at the Treasury (p. 9270), pointing out that it was highly questionable to continue to implement the three contracts and calling on him to block payment by the Region of all invoices even where, from the formal point of view, these had been legally drawn up?

Mr Stalport's reply:

I found out about Mr L.'s criticisms afterwards. I do not know whether Mr L. knew of only one contract. In the allegations I think he referred to three contracts of BEF 1,500,000. So he was aware that there were three contracts.

In reply to the Court's question, Mr Javeau stated:

Splitting the contract was a means of dealing with real difficulties that had cropped up.

Question by the Principal Advocate-General:

The administration received three contracts and made only one commitment, believing that it was dealing with three copies of a single contract. Does Mr Stalport remember this misunderstanding, which happened with all three contracts?

Mr Stalport's reply:

The error would have been pointed out to me, but I had left on 18 June 1989."

53. On 4 March 1996 Mr Stalport filed a new pleading in which he argued that there was no connection between the charges against him and those against Mr Cöeme and that he should therefore stand trial in the appropriate place, namely the Criminal Court.

54. During the trial Mr Hermanus asked the Court of Cassation to submit a preliminary question to the Administrative Jurisdiction and Procedure Court about limitation of the prosecution. In the alternative, he requested it to find that the proceedings against him were time-barred. He further submitted that there was no connection between the offences he had been charged with and those Mr Coëme stood accused of. In addition, he

argued that his case had not been heard within a “reasonable time”. As regards the merits, he submitted that he had acted without any criminal intent.

55. The Court of Cassation gave judgment on 5 April 1996. It decided firstly that there was a connection between the offences with which Mr Coëme had been charged and those with which the other defendants had been charged, ruling as follows:

“For the purposes of Articles 226 and 227 of the Code of Criminal Investigation, a connection is the link between two or more offences. By its nature it requires, with a view to the proper administration of justice, and subject to the right to due process, that the cases be dealt with together and by the same court, which may thus determine whether each element of the alleged offences has been made out, and assess the admissibility of the evidence and the guilt of each of the defendants.

[Mr Coëme] and the [other] defendants have stood trial together for offences brought to light by the same investigation. These offences formed part of a system run by Camille Javeau which placed the 'I' association at the point of contact between the financial interests of scientific research and the personal interests of its directors and third parties. By the admission of Camille Javeau, this system consisted in seeking to sign contracts with the public authorities for surveys to be carried out by the 'I' association or by the [...] Institute, each of these contracts being accompanied by advantages for politicians whose power of decision-making, influence or promising future were intended to ensure the effectiveness and continuity of the system.

All the offences [Mr Coëme] and the [other] defendants were charged with link in with this system in such a way that there is a connection between them which justifies application of Articles 226 and 227 of the Code of Criminal Investigation.

Even if such application did cause in the present case all the disadvantages complained of by the defendants, it has not hindered the full exercise of their right to challenge the admissibility of the proceedings or the truth of the charges against them, to raise any argument they chose in their defence or to submit to the Court any applications they considered useful for the trial of their case.”

56. The Court of Cassation also refused, in the following terms, to submit a preliminary question to the Administrative Jurisdiction and Procedure Court on the subject of limitation:

“Guy Coëme submitted that extension of the limitation period 'in so far as it applie[d] to all prosecutions brought before its entry into force which were not yet time-barred on that date and introduce[d] longer time-limits, create[d] discrimination contrary to Articles 10 and 11 of the Constitution in relation to the situation of persons who [were] subject, on account of the date on which their offences were committed, to the limitation period laid down in the former version of Article 21'.

Jean-Louis Mazy submitted that the law introducing the new limitation period applied to all prosecutions brought before its entry into force which were not yet time-barred on that date, and that limitation of prosecution accordingly depended on the date of procedural steps causing time to begin to run again. He argued on that basis that in the present case application of Articles 25 and 26 of the Law of 24 December 1993 had created discrimination prohibited by Articles 10 and 11 of the Constitution.

Merry Hermanus likewise submitted that 'only the date of procedural steps causing time to begin to run again for limitation purposes determine[d] whether the new law or the old should be applied'.

[Mr Coëme] and the [other] defendants mentioned above requested the Court, in their final written submissions, to refer to the Administrative Jurisdiction and Procedure Court a preliminary question concerning what they alleged to be a contradiction between Articles 10 and 11 of the Constitution and Article 25 of the Law of 24 December 1993, which extended periods of limitation.

It appears from those final written submissions that the inequality of treatment they complained of results solely, according to the defendants themselves, from the date on which procedural steps in the investigation or prosecution were taken and from the effects of such steps on the running of time for the purposes of limitation, but not from the provisions of Article 25 of the Law of 24 December 1993.

Thus, they are criticising not a distinction allegedly created by that Law, but the necessary effects of any application of the law on criminal procedure in the course of time.

The questions raised do not fall within the scope of Article 26 of the Special Law of 6 January 1989 on the Administrative Jurisdiction and Procedure Court, and there is accordingly no call to ask them."

57. The Court of Cassation further held that the proceedings against Mr Coëme and Mr Hermanus were not time-barred, ruling in the following terms:

"In the field of criminal procedure, new legislation is of immediate effect, so that it applies to all criminal proceedings brought before the date of its entry into force which are not yet time-barred on that date pursuant to the previous legislation.

Prosecution of offences not subject to limitation on 31 December 1993 will become time-barred, unless the running of time has been suspended, on expiry of a period of five years from the time of the offences , which may be extended where the case arises by a further period of five years from any act causing time to begin to run again lawfully performed before expiry of the first five-year period.

Since limitation of prosecution consists in the extinction, in society's interest, through the lapse of a certain length of time, of the power to prosecute a suspect, statutes of limitation

do not affect the substance of the law. Where they extend the limitation period they do not aggravate the penalty applicable at the time when the offence was committed or punish an act or omission which was not punishable at the time it was committed. Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 15 of the International Covenant on Civil and Political Rights are not applicable to them.

The Court must take the date of the judgment as the material time for assessing once and for all whether prosecution is time-barred, and the nature of the offence is determined not according to the penalty applicable but according to the penalty imposed. From the outset, limitation of prosecution of an act which in principle constitutes an offence may be influenced by the penalty imposed. If the Court, after declaring the offences of forgery and uttering forgeries made out, were to accept that there were extenuating circumstances, thus altering the nature of these crimes [*crimes*] and giving them the status of less serious indictable offences [*délits*], the limitation period for these offences would be the one laid down for *délits*, namely five years.

Where a number of criminal acts are committed successively in execution of a single criminal design and thus form only one offence, that offence is only consummated, and the running of time for the purposes of limitation only begins, with regard to all of the acts concerned, when the last of them is committed, provided, however, that each previous criminal act is not separated from the later criminal act by an interval longer than the applicable limitation period, unless the running of time has been retriggered or suspended.

...

The offences for which [Mr Coëme] and [Mr Hermanus] have stood trial were committed:

– in the case of G. Coëme, between 29 March 1981 and 1 December 1989, the last being committed on 30 November 1989;

...

– in the case of Mr Hermanus, between 1 December 1987 and 1 March 1988, the last being committed on 29 February 1988;

...

These offences, if made out, constitute execution of a single criminal design. For each of the defendants the running of time for the purposes of limitation only began, with regard to all of the offences in which they are implicated, when the last of those offences was committed, which in the present case was not separated from the others by an interval longer than the limitation period in force.

The Law of 24 December 1993, which raised from three to five years the limitation period for the prosecution of less serious indictable offences, and consequently of crimes reclassified as such, is applicable to [Mr Coëme] and [the other defendants] since the three-year limit had not been reached when that Law came into force and the running of time had been validly retriggered as regards [Mr Coëme] and [the other defendants] on 22 February 1991 by the Audit Commission's report no. 480 (p. 14690), an investigative measure carried out during the former three-year limitation period.

...

Consequently, the original limitation period of five years began to run:

– in the case of G. Coëme, on 30 November 1989;

...

– in the case of Mr Hermanus, on 29 February 1988.

The running of time during this period was validly retriggered on 10 June 1992 by the Audit Commission's report no. 2337.

It follows that prosecution is not time-barred in respect of any of the offences referred to in the summons."

58. The Court of Cassation found Mr Coëme guilty of most of the offences he had been charged with and sentenced him to two years' imprisonment, suspended for five years, and a fine of BEF 1,000, adjusted to BEF 60,000. It also disqualified him from exercising any of the rights listed in Article 31 of the Criminal Code for a period of five years and ordered him jointly with another defendant to pay the civil party – "I" – the sums of BEF 476,000, BEF 31,970 and BEF 42,070.

59. The Court of Cassation found Mr Mazy guilty as charged and sentenced him to nine months' imprisonment, suspended for three years, and a fine of BEF 500, adjusted to BEF 30,000.

60. The Court of Cassation sentenced Mr Stalport to six months' imprisonment, suspended for one year, and a fine of BEF 26, adjusted to BEF 1,560, after declaring him guilty as charged on the basis of the following considerations:

"On 30 May 1989 the Treasury inspectorate gave an unfavourable opinion (p. 18684) on a draft contract in which the 'I' association undertook to carry out for the Brussels Region 'a preliminary study of all businesses in the Brussels area', the total cost amounting to BEF 4,800,000 net of VAT (p. 18689, at 18694).

On 15 June 1989 three contracts, each for an inclusive price of BEF 1,200,000, were signed by [Minister] M., representing the Brussels Region, and Camille Javeau, representing 'I' (p. 18699 at 18710).

In these contracts 'I' undertook to carry out a 'preliminary study'

(a) among small and medium-sized businesses operating as sub-contractors (first contract);

(b) among all businesses receiving subsidies from the Brussels Region' (second contract); and

(c) among all small and medium-sized businesses geared for exports (third contract).

On 15 June 1989, when these contracts were signed, they were transmitted under the Minister's signature to the administration (p. 18681). On 30 June 1989 the Treasury inspectorate approved the commitment slip for one of the three contracts without making any comment (p. 18680).

It is clear from a comparison of the initial draft contract with the three new contracts that, although the scope and price of the initial contract were reduced in the three new contracts, it was still the same concept with the same initial aim, in other words the same work.

It is apparent from the statements of Jean-Louis Stalport (p. 9540)[[2]] and Camille Javeau (p. 2905)[[2]] that the purpose of severing the original contract was to evade the mandatory scrutiny of the Treasury inspector.

The approval of the Treasury inspector alluded to by Jean-Louis Stalport is the countersignature required for commitment of the expenditure, which was added on 30 June 1989, after the contract was signed, and reveals nothing about the desire for transparency alleged by the defendant (p. 1304).

Neither the assertion that, if the contract had not been severed, it would have been approved in any case nor the assertion that the three contracts were submitted to the non-mandatory scrutiny of the Treasury inspector can justify the artificial severance of the contract.

The fraudulent intent required for the charge to be made out need exist only in the mind of the perpetrator of the offence.

It is sufficient for co-principals to have provided necessary assistance in the commission of the offence or to have directly caused it to be committed, to have had positive knowledge of the facts constituting the main offence and to have conspired, as defined by law, to commit the offence.

With the fraudulent intent of satisfying the request of Camille Javeau, approved by Minister M., Jean-Louis Stalport provided the necessary assistance in the commission of the offence within the time agreed. ...”

61. The Court of Cassation then found Mr Hermanus guilty as charged and sentenced him to one year's imprisonment, suspended for five years, and a fine of BEF 500, adjusted to BEF 30,000. It also disqualified him from exercising any of the rights listed in Article 31 of the Criminal Code for a period of five years.

62. The Court of Cassation held that Mr Hermanus had been tried within a reasonable time, on the following grounds:

“It appears from the case file

– that on 7 August 1989 the Audit Commission transmitted the initial report to the Brussels public prosecutor (p. 1120, at 1094);

– that the information in writing calling for an investigation in respect of Camille Javeau and a person or persons as yet unidentified was lodged on 25 August 1989 (p. 1085);

– that numerous reports had to be compiled on account of the many interviews and investigative measures made necessary by the nature of the offences the defendants were accused of;

– that the nature of the offences made it necessary on 20 October 1989 to appoint a court expert (p. 283) to study and analyse thousands of documents and items of computer data; that in that connection it should be noted that the accounts of the 'I' association and those of the ... Institute were interconnected in such a way as to complicate the expert's task; that after filing a preliminary memorandum on 26 December 1989 (p. 358, at 337), an analysis of Camille Javeau's bank accounts on 26 November 1990 (p. 373, at 367), a memorandum replying to Camille Javeau's observations on 6 December 1990 (p. 460, at 440) and a memorandum on the French-speaking Community's contract no. D/100 on 24 September 1991 (p. 664, at 659) the expert filed the successive parts of his report on 29 December 1993, 7 January 1994, 21 January 1994, 4 February 1994, 3 March 1994 and 22 March 1994 (pp. 18256 at 18157, 17939 at 17769, 19406 at 19156, 18909 at 18811, 17285 at 17228, and 20576 at 20464);

– that while the expert was compiling his report and later the investigation continued without a break, as evidenced by the records and inventories;

– that the investigative measures taken as a result show that the interconnections between the offences made it necessary to verify the statements of the numerous persons concerned and to cross-check the evidence obtained before the prosecution could make their submissions;

– that as early as 30 June 1994 the file was communicated to the President of the House of Representatives by the Principal Public Prosecutor at the Brussels Court of Appeal on account of the fact that the file appeared to contain evidence that offences had been committed by Guy Coëme, P. M. and W. C. at a time when they held ministerial office and that the latter was still a minister on the date when the file was sent (p. 26645, at 26572).

At its meeting in plenary session on 14 July 1994 the House of Representatives indicted Guy Coëme and committed him for trial in the Court of Cassation.

On 21 July 1994, allowing an application by the Principal Public Prosecutor, the President of the Court of Cassation appointed Judge F. as the investigating judge in the present case with the task of extending and continuing the investigation of the facts in close collaboration with Investigating Judge V.E., who, as matters stood, remained responsible for the same offences in so far as there was evidence of offences committed by persons other than Guy Coëme.

On 9 May 1995 [Judge F.] communicated his file to the Principal Public Prosecutor at the Court of Cassation.

On an application made on 15 June 1995 by the Principal Public Prosecutor at the Brussels Court of Appeal, the Council of the Brussels-Capital Region, sitting on 10 July 1995, authorised the prosecution of Regional Councillor Merry Hermanus 'by investigation of the case before a criminal division of the Brussels Court of First Instance'. When Investigating Judge V.E. was taken off the case by order of the Committals Division on 22 September 1995, the Council of the Brussels-Capital Region, sitting on 18 October 1995, decided, allowing an application of 25 September 1995 by the Principal Public Prosecutor at the Court of Cassation, to authorise the prosecution of Merry Hermanus in this Court.

The summons to appear for trial on 5 February 1996 was signed on 8 November 1995.

On account of the possible connection between the offences with which [Mr Coëme] and [the other defendants] had been charged, the case against each of them could not be dissociated from the case against the others, regard being had to procedural rules.

Accordingly, the Court finds no delay in the prosecution of the case. ...”

63. Mr Javeau was sentenced to two years' imprisonment, with half of that term suspended, and a fine of BEF 500, adjusted to BEF 30,000.

64. As a result of his conviction Mr Stalport had to resign from his position as administrator of various public limited companies under Belgian law, pursuant to Article 1 of the royal decree of 24 October 1996. The decision to disqualify Mr Hermanus from exercising the rights listed in Article 31 of the Criminal Code deprived him of all his

functions, namely the posts of regional councillor, deputy mayor, secretary-general of the Ministry of the French-speaking Community and chairman of the *SDRB*.

II. RELEVANT DOMESTIC LAW

A. The Constitution

65. The relevant provisions of the Constitution read as follows:

Article 12

"Individual liberty is guaranteed. No one may be prosecuted save in the cases and under the procedure prescribed by law ..."

Article 13

"No one may be removed against his will from the jurisdiction of the court empowered by law to try him."

Article 59

"No member of either House may be committed for trial, prosecuted by direct summons or arrested in connection with a criminal matter while Parliament is in session without the authorisation of the House to which he belongs, except in cases where an offence is discovered while it is being committed.

...

The detention or prosecution of a member of either House shall be stayed throughout the session if the House concerned so requires."

Article 120

"Any member of a [regional or community] council shall enjoy the immunities laid down in Articles 58 and 59."

Article 147

"There shall be a Court of Cassation for Belgium.

The Court of Cassation shall not determine cases on their merits, save for the trial of ministers and members of community or regional governments."

B. The constitutional provisions applicable at the material time, since repealed

66. The first paragraph of Article 103 of the Co-ordinated Constitution of 17 February 1994 (former Article 90 of the Constitution of 7 February 1831) provided:

"The House of Representatives is empowered to indict ministers and commit them for trial in the Court of Cassation, which alone shall have jurisdiction to try them, sitting as a full court, save as provided by statute with regard to a civil action brought by an injured party and crimes or less serious indictable offences allegedly committed by ministers otherwise than in the performance of their official duties."

67. The second paragraph of Article 103 of the Co-ordinated Constitution of 17 February 1994 (former Article 134 of the Constitution of 7 February 1831) provided:

"The cases of responsibility, the penalties to be imposed on ministers and the manner of proceeding against them, either on a charge accepted by the House of Representatives or as the result of a prosecution brought by the injured parties, shall be laid down by law."

The Constitution of 7 February 1831 included an Article 139 which provided in particular: "It is necessary to make provision, in separate legislation, and as soon as possible, for the following: ... 5. the responsibility of ministers and other government agents." This Article was repealed on 14 June 1971.

68. The Law of 12 June 1998 amending the Constitution replaced Article 103 of the Constitution by a new provision which states: "Ministers shall be tried only by the Court of Appeal", whether for "offences they have allegedly committed in the performance of their duties" or for "offences they have allegedly committed otherwise than in the performance of their duties for which they are tried during their term of office" (Article 103 § 1).

The new text further provides: "The procedure for the prosecution and trial of ministers shall be laid down by law" (Article 103 § 2).

69. The relevant legislation is the Special Law of 25 June 1998 governing the criminal responsibility of ministers (and the Special Law of 25 June 1998 governing the criminal responsibility of members of community and regional councils). "The Brussels Court of Appeal alone is empowered to try a minister for offences allegedly committed in the performance of his official duties", whereas "for the trial of a minister during his term of office for offences he has allegedly committed otherwise than in the performance of his duties the courts having jurisdiction shall also include the Court of Appeal for the place where the offence was committed, the place where he lives or the place where he has been found" (Article 1). The Special Law lays down the rules for the conduct of the prosecution and investigation, the procedure before the Court of Appeal and the procedure for an appeal on points of law. Title VI of the Special Law lays down two special provisions, one of these being Article 29, which expressly provides:

“Co-principals and accomplices implicated in an offence for which a minister is prosecuted and the perpetrators of connected offences must be prosecuted and tried at the same time as the minister.”

C. The transitional provision

70. Pending the enactment of a law on procedure, and in order to avoid the paralysis of the criminal justice system in cases concerning ministers during the time it would take to bring in legislation, the National Congress adopted in 1831 a transitional provision specifying the scope of the jurisdictions of the House of Representatives and the Court of Cassation.

In its original version, former Article 134 of the Constitution, which later became the transitional provision of Article 103, was worded as follows:

“Until such time as provision for the purpose has been made by law, the House of Representatives shall have discretion to indict a minister and the Court of Cassation to try him, and in so doing classify the offence and determine the appropriate sentence.”

71. In Volume II (Political and administrative laws) of the *Novelles* survey of 1935 it was argued that this provision concerned both ministers' ordinary responsibility and a responsibility specific to their official duties, the following point being made (nos. 723 to 725, p. 236):

“Where it is a matter of offences defined in the Criminal Code, the penalties laid down in that Code are applicable. Where, on the contrary, the Criminal Code has nothing to say about the offences concerned, on a provisional basis, pending the enactment of legislation governing the question, the House of Representatives has discretion to indict ministers and the Court of Cassation to try them, and in so doing classify the offence and determine the appropriate sentence.”

72. In his *Mercuriale* address of 1 September 1976 marking the opening of a new judicial session (*Journal des Tribunaux*, 1976, pp. 653-54, at 4 and 5, and pp. 658-59, at 19) Principal Public Prosecutor Delange said that under the transitional provision of Article 103 of the Constitution (Article 90 at that time) ministers were criminally responsible for all offences defined by the criminal law, the Court of Cassation not having any discretion in the matter (it could, at the most, add charges and penalties but not reduce ministers' ordinary criminal responsibility in any way). He further observed: “As regards the procedure in the Court of Cassation, it would appear that in the absence of legislation the ordinary rules of criminal law should apply by analogy” (p. 669).

73. In the constitutional revision of 5 May 1993 the transitional provision of Article 103 was amended to read as follows:

“Until such time as provision for the purpose has been made by means of the law referred to in paragraph 2, the House of Representatives shall have discretion to indict a minister

and the Court of Cassation to try him in the cases contemplated by the criminal law and applying the penalties laid down therein."

74. However, as Parliament never legislated save on a temporary basis, the transitional provision remained in force until the constitutional revision of 1998 (see paragraph 68 above).

D. Laws for the implementation of former Article 103 of the Constitution

75. Various laws for the implementation of Article 103 of the Constitution have been adopted. These were temporary responses to specific circumstances.

76. The first of these laws was enacted after a duel in 1865 between a member of the House of Representatives and the Minister of Defence. Both men had used their weapons. As this conduct constituted a criminal offence, the Principal Public Prosecutor at the Court of Cassation expressed the intention of preferring charges. Since one of the two antagonists was a minister, it was for the House of Representatives to indict him and an application was made to that effect. However, the House of Representatives allowed this application only on condition that legislation was first brought in.

77. In the report of the special committee appointed by the House to consider the constitutional issues arising from this duel, Mr Delcour made the following comments on the bill that had been tabled:

"Our committee, gentlemen, was also of the opinion that the Court of Cassation has jurisdiction to rule on offences committed by accomplices of a minister or connected offences which might be imputed to persons other than the minister facing charges. It referred to general legal principles.

It would not be rational, in Mr Dalloz's opinion, for the Court of Cassation, which, on account of the large number of judges who sit in it, its rank in the judicial hierarchy and the solemnity of its procedure, provides defendants with more safeguards than the ordinary courts, not to have jurisdiction to rule on offences committed by accomplices and connected offences. Provision is already made for that in Article 479 of the Code of Criminal Investigation. Where a public officer charged with an offence has accomplices who are not themselves public officers, the public officer does not follow his accomplices to the Criminal Court, they follow him to the higher court.

...

It is undoubtedly in the general interest for a minister who has committed a crime or less serious indictable offence to be handed over to the courts, because, as I observed above, no one may lay claim to impunity in Belgium. But side by side with this general interest there is another public interest which is no less respectable, that of the minister's complete freedom to manage public affairs at any particular time. The House of Representatives is the judge of this latter interest, to which the former, it would seem,

must give way in certain circumstances. Let us assume that the Minister of Defence has committed an indictable offence: the country is in a critical situation and he alone can properly ensure its defence. In such a serious situation, should not the House of Representatives be able to make the interests of justice take second place behind that other, even weightier public interest, the defence of the State and public safety?

...

The Court of Cassation will observe the procedure laid down by the Code of Criminal Investigation, according to the nature of the offence referred to it. When dealing with a less serious indictable offence, it will comply with the relevant existing provisions, whereas when dealing with a crime it will comply with the Code's provisions governing assize courts. In the latter case, since the Court of Cassation sits without a jury, it is clear that the provisions of the Code of Criminal Investigation concerning that part of the procedure cannot be applied."

78. The law entitled "Law on offences committed by ministers otherwise than in the performance of their official duties" was adopted on 19 June 1865. It provided, *inter alia*:

Article 1

"Crimes and less serious indictable offences committed by a minister otherwise than in the performance of his official duties shall be referred to the Court of Cassation, sitting as a full court ..."

Article 7

"The Court of Cassation shall observe the procedure laid down in the Code of Criminal Investigation ..."

Article 9

"Summary offences committed by ministers shall be dealt with by the lower courts under the ordinary procedure."

Article 10

"The present Law shall come into force on the day following its publication and shall remain in force for one year only ..."

79. In accordance with the provisions of this law the Minister of Defence and the member of the House of Representatives were committed for trial in the Court of Cassation, tried and convicted. The relevant parts of the Court of Cassation's judgment of 12 July 1865 read as follows:

"Whereas the indivisibility of the procedure is a necessary consequence of the indivisibility of the offence and requires the whole proceedings to be assigned to the highest-ranking court which has jurisdiction to try one of the defendants;

Whereas this public-policy principle, which is universally accepted in case-law, was enshrined in a law promulgated in Belgium, the Law of 24 Messidor Year IV, governing the prosecution of the accomplices of a representative of the people or a member of the Executive Directory indicted by the legislature and committed for trial in the High Court of Justice; whereas it has subsequently been confirmed in new legislation by the way it was applied in Article 501 of the Code of Criminal Investigation;

"Whereas, since Lieutenant-General Baron C., the Minister of Defence, must be tried by the Court of Cassation, pursuant to the Law of 19 June 1865, that court is, according to the principle stated above, legally seized of the proceedings brought at the same time against representative D., co-defendant;

...

"For these reasons, [the Court] finds both defendants guilty of the offence of fighting a duel without causing injury and the first defendant guilty of the offence of provoking that duel."

80. On 3 April 1995 the Federal Parliament enacted a second law providing for the temporary and partial implementation of Article 103 of the Constitution. This law concerned only the investigative measures which could be ordered by the House of Representatives and it was provided that it was to remain in force for only nine weeks.

In its opinion of 23 March 1995 on the bill which formed the basis for this law, the Legislation Section of the *Conseil d'Etat* expressed the following views:

"The bill as it stands uses these broad powers in a very limited way, but Parliament should use them to define not only the offences which ministers may possibly commit but also the penalties which may be imposed on them or the procedure to be followed for their prosecution, both before and after indictment proper. Such legislation is likely to cause difficulties on account of the uncertainty which it may leave, for example, about how proceedings brought in such conditions would be continued."

81. On 17 December 1996 Parliament enacted a third law providing for the temporary and partial implementation of Article 103 of the Constitution. This concerned federal ministers. It empowered the House of Representatives to order investigative measures in respect of a minister and laid down the conditions and specified the procedures for carrying out such measures. The Special Law of 28 February 1997 concerned ministers of the community and regional councils. These two laws remained in force until 1 January 1998.

E. Preliminary questions to the Administrative Jurisdiction and Procedure Court

82. Pursuant to Article 26 § 1 of the Special Law of 6 January 1989, the Administrative Jurisdiction and Procedure Court has jurisdiction to give a preliminary ruling, in the form of a judgment, on questions concerning, firstly, contravention by one of the statutes, decrees or rules contemplated by Article 26 *bis* (134) of the Constitution of the rules laid down by or pursuant to the Constitution to determine the respective powers of the State, the Communities and the Regions; secondly, any conflict between decrees or rules as contemplated by Article 26 *bis* (134) of the Constitution promulgated by different legislative authorities; and, lastly, contravention by one of the statutes, decrees or rules contemplated by Article 26 *bis* of the Constitution of Articles 6, 6 *bis* or 17 of the Constitution. Articles 6 and 6 *bis* of the Constitution, which became Articles 10 and 11 after the revision of 17 February 1994, enshrine the principles of the equality of all Belgian citizens before the law and enjoyment of recognised civil rights and freedoms without discrimination.

83. Under Article 26 § 2 of the Special Law, a court before which a preliminary question has been raised must in principle seek a ruling on the matter from the Administrative Jurisdiction and Procedure Court. However, this is not mandatory where the action is inadmissible for procedural reasons based on rules which are not themselves the subject of an application for a preliminary ruling. Similarly, a court whose decisions are open to challenge in the form of an ordinary appeal, a petition to reopen proceedings, an appeal on points of law or an application for judicial review in the *Conseil d'Etat* is also exempted from this obligation either when the Administrative Jurisdiction and Procedure Court has already given a ruling on a question or appeal having the same object or when it considers that the reply to the preliminary question is not essential for it to be able to give judgment, or when it is manifestly apparent that the law, decree or rule contemplated in Article 26 *bis* (134) does not contravene any rule or Article of the Constitution contemplated in Article 26 § 1.

84. When the Special Law of 6 January 1989 was at the drafting stage, the Minister of Justice justified the obligation to refer a preliminary question by the need to avoid any risk of arbitrary assessment by the courts of the expediency of doing so.

F. The Code of Criminal Investigation

85. Article 21 § 1 of the Law of 17 April 1878 containing the preliminary part of the Code of Criminal Procedure formerly provided:

“Prosecution shall be time-barred after ten years in the case of a crime, three years in the case of less serious indictable offences and six months in the case of summary offences, counting from the day when the offence was committed.”

86. Article 25 of the Law of 24 December 1993 amended the above provision, which now reads as follows:

“Prosecution shall be time-barred after ten years in the case of a crime, five years in the case of less serious indictable offences and six months in the case of summary offences, counting from the day when the offence was committed.”

87. The papers on the drafting history of the Law of 24 December 1993 include the following observations on Article 25:

“The new limitation period applies where the current period has not yet expired, without any retrospective effect. That is also the minister's opinion.

...

Third case: an offence is committed before 1 January 1992 and a step retriggering the running of time is taken on 15 December 1993. Given that Article 22 has never been amended, it is a moot point whether prosecution for the offence would become time-barred on 15 December 1996 or on 15 December 1998. ...

The rapporteur considers that the three-year period which began on 15 December 1993 would become five years on 1 January 1994. Proceedings would in that case become time-barred on 15 December 1998 instead of 15 December 1996. The new limitation period applies where the current period has not yet expired, without any retrospective effect. That is also the minister's opinion.” (Doc. Parl. Ch., S.O. 1993-94, no. 1211/8, p. 11).

88. Circular no. 2/94 of 10 January 1994 on this point from the Principal Public Prosecutor at the Mons Court of Appeal includes, *inter alia*, the following instruction:

“It follows that, where a step which causes time to begin to run again is taken before prosecution becomes time-barred, the limitation period is extended by five years counting from the last relevant step retriggering the running of time.”

89. Article 22 of the Law of 17 April 1878 containing the preliminary part of the Code of Criminal Procedure, which was not amended by the Law of 24 December 1993, provides:

“For the purposes of limitation of prosecution, time shall be caused to run again only by procedural steps in the investigation or prosecution of an offence taken within the time-limit laid down by the previous Article.

Such steps shall cause time to begin to run again for a new period of equal length, even for persons who are not directly affected by them.”

90. Article 190 § 2 of the Code of Criminal Investigation makes the following provision as regards the conduct of trials before the Criminal Court:

“The public prosecutor, the civil party or his counsel shall present the facts of the case; the reports, if any have been drawn up, shall be read out by the registrar; witnesses for the

defence and the prosecution shall give evidence, where appropriate, and any objections heard and determined; any exhibits capable of establishing guilt or innocence shall be shown to the witnesses and the parties; the defendant shall be questioned; the defendant and any persons liable under civil law shall present their defence; the public prosecutor shall sum up and make his final submissions; the defendant and any persons liable for the offence under civil law shall have the right to reply."

91. The concept of "connection" is defined in Articles 226 and 227 of the Code of Criminal Investigation.

Article 226 provides: "[The Court of Appeal] shall rule, in a single judgment, on connected offences in respect of which the documentary evidence has been placed before it at the same time."

Article 227 provides:

"Offences are connected either where they have been committed at the same time by more than one person acting together or where they have been committed by different persons, even at different times and in various places, but as the result of a conspiracy between them beforehand, or where the offenders have committed some of the offences in order to obtain the means to commit the others, to facilitate or consummate commission of those other offences or to ensure that they will go unpunished."

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION TAKEN ALONE AND IN CONJUNCTION WITH ARTICLES 13 AND 14

92. Relying on Article 6 of the Convention, the applicants submitted that in many respects during the criminal proceedings against them they had suffered a denial of a fair trial and infringements of the right to due process. They further alleged that these defects had breached Articles 13 and 14 of the Convention.

The relevant provisions of Article 6 of the Convention provide as follows:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

...

(b) to have adequate time and facilities for the preparation of his defence;

..."

93. The requirements of paragraphs 2 and 3 (b) of Article 6 are to be seen as particular aspects of the right to a fair trial guaranteed by paragraph 1 (see, among other authorities, *Van Geyseghem v. Belgium* [GC], no. 26103/95, § 27, ECHR 1999-I, and the Poitrimol v. France judgment of 23 November 1993, Series A no. 277-A, p. 13, § 29). The Court considers that it is appropriate to examine the complaints in the light of paragraph 1 of Article 6, taken in conjunction, where necessary, with its other paragraphs and the other provisions of the Convention, which provide:

Article 13 – Right to an effective remedy

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

Article 14 – Prohibition of discrimination

"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."

A. The lack of implementing legislation

94. The applicants submitted that the fact that they had been tried by the Court of Cassation, in the absence of any legislation to implement Article 103 of the Constitution, had infringed Article 6 §§ 1, 2 and 3 (b) of the Convention.

Mr Mazy, Mr Stalport, Mr Hermanus and Mr Javeau further alleged that the decision to join the proceedings on account of a connection constituted a violation of Article 6 § 1 of the Convention and discrimination contrary to Article 14.

95. The Court will examine first the case of Mr Coëme and then the case of the other applicants.

1. The case of Mr Coëme

96. Like the other applicants, Mr Coëme submitted that the rules governing the procedure to be followed by the Court of Cassation were established neither by statute nor by the Constitution. He argued on that basis that the Court of Cassation had acted as both legislator and judge at the same time, in breach of Article 6 § 1 of the Convention. Any judicial authority had to be subject to procedures intended to guarantee the integrity of its decisions to the persons within its jurisdiction and to safeguard the right to due

process, a principle which the House of Representatives had fully understood in 1865. The fact that there was no statute governing procedure had in the present case led the Court of Cassation to establish an *ad hoc* procedure, making up for Parliament's failure to legislate. By laying down the applicable procedural rules itself, even by analogy, the Court of Cassation had manifestly disregarded the principle of the separation of powers as regards enactment and application of the criminal law. Even though, by a process of elimination, the procedure followed by the Court of Cassation could not be anything other than the procedure laid down for the criminal courts, this was not sufficient to satisfy the requirement of an accessible and foreseeable procedure.

According to Mr Coëme, this also constituted a breach of Article 6 § 2 of the Convention, in so far as that provision laid down the principle "*nullum judicium sine lege*".

97. The Government submitted that it could not be inferred that the procedure before the Court of Cassation was not laid down by domestic law merely because the procedure to be followed for the trial of ministers was laid down neither by the Constitution nor by any implementing legislation. The procedure to be followed was the procedure which existed for the ordinary criminal courts, and this was perfectly foreseeable in the light of the teachings of case-law and legal theory, and also on account of the fact that the other three types of procedure – those laid down for the assize courts, juvenile courts and military courts – were obviously not applicable. The Court of Cassation had therefore not acted as an *ad hoc* legislature, nor had it gone beyond the bounds of a reasonable interpretation of existing law by applying the procedure of the ordinary criminal courts, while introducing a number of modifications made necessary by the constitutional requirement that it had to sit as a full court.

98. The Court observes in the first place that the Convention "is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective; this is particularly so of the rights of the defence in view of the prominent place held in a democratic society by the right to a fair trial, from which they derive" (see the Artico v. Italy judgment of 13 May 1980, Series A no. 37, pp. 15-16, § 33). According to the case-law, the object of the term "established by law" in Article 6 of the Convention is to ensure "that the judicial organisation in a democratic society [does] not depend on the discretion of the Executive, but that it [is] regulated by law emanating from Parliament" (see Zand v. Austria, application no. 7360/76, Commission's report of 12 October 1978, Decisions and Reports (DR) 15, pp. 70 and 80). Nor, in countries where the law is codified, can organisation of the judicial system be left to the discretion of the judicial authorities, although this does not mean that the courts do not have some latitude to interpret the relevant national legislation.

99. A tribunal "is characterised in the substantive sense of the term by its judicial function, that is to say determining matters within its competence on the basis of rules of law and after proceedings conducted in a prescribed manner" (see the Belilos v. Switzerland judgment of 29 April 1988, Series A no. 132, p. 29, § 64). It must also satisfy a series of other conditions, including the independence of its members and the length of their terms of office, impartiality and the existence of procedural safeguards.

There is no doubt that the Court of Cassation, which in Belgian law was the only court which had jurisdiction to try Mr Coëme, was a "tribunal established by law" (see, *mutatis mutandis*, Prosa and Others v. Denmark, application no. 20005/92, Commission decision of 27 June 1996, unreported).

100. The Court notes that no legislation implementing Article 103 of the Constitution was in force when the applicants stood trial in the Court of Cassation (see paragraphs 75, 80 and 81 above). Yet Article 103 § 2 required Parliament to lay down the procedure before the Court of Cassation, and Article 139 of the Constitution of 7 February 1831 insisted on the need to do so as soon as possible. However, assisted by his counsel and his lawyers, Mr Coëme was not in total ignorance of the procedural rules which would be applied during the trial. He could not have been unaware that the procedure of the ordinary criminal courts would probably be followed, as this could have been inferred from legal theory and case-law, although this was limited to the Court of Cassation's judgment of 12 July 1865 (see paragraph 79 above). He could also have deduced this from Article 7 of the Law of 19 June 1865, even though that law had been enacted only to deal with a specific set of circumstances. The Principal Public Prosecutor at the Court of Cassation apparently reached that conclusion himself and advised the representatives of some of the applicants accordingly at the interview on 3 November 1995. When the trial opened on 5 February 1996 (see paragraph 41 above) the President of the Court of Cassation himself confirmed that the procedure of the ordinary criminal courts would be followed, announcing that the case would be tried in accordance with the provisions of Article 190 of the Code of Criminal Investigation.

101. However, the Government acknowledged that the procedure of the ordinary criminal courts could not be adopted as such by the Court of Cassation sitting as a full court. In its interlocutory judgment of 12 February 1996 (see paragraph 46 above) the Court of Cassation announced that the rules governing the procedure in the ordinary criminal courts would be applied only in so far as they were compatible "with the provisions governing the procedure in the Court of Cassation sitting as a full court". As a result, the parties could not ascertain in advance all the details of the procedure which would be followed. They could not foresee in what way the Court of Cassation would amend or modify the provisions governing the normal conduct of a criminal trial, as established by the Belgian parliament.

In so doing, the Court of Cassation introduced an element of uncertainty by not specifying which rules were contemplated in the restriction adopted. Even if the Court of Cassation had not made use of the possibility it had reserved for itself of making certain changes to the rules governing procedure in the ordinary criminal courts, the task of the defence was made particularly difficult because it was not known in advance whether or not a given rule would be applied in the course of the trial.

102. The Court reiterates that the principle that the rules of criminal procedure must be laid down by law is a general principle of law. It stands side by side with the requirement that the rules of substantive criminal law must likewise be established by law and is enshrined in the maxim "*nullum judicium sine lege*". It imposes certain specific

requirements regarding the conduct of proceedings, with a view to guaranteeing a fair trial, which entails respect for equality of arms. The principle of equality of arms requires that each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent (see, among other authorities, the De Haes and Gijsels v. Belgium judgment of 24 February 1997, *Reports of Judgments and Decisions* 1997-I, p. 238, § 53). The Court further observes that the primary purpose of procedural rules is to protect the defendant against any abuse of authority and it is therefore the defence which is the most likely to suffer from omissions and lack of clarity in such rules.

103. Consequently, the Court considers that the uncertainty caused by the lack of procedural rules established beforehand placed the applicant at a considerable disadvantage *vis-à-vis* the prosecution, which deprived Mr Coëme of a fair trial for the purposes of Article 6 § 1 of the Convention.

104. That being so, the Court considers that it is not necessary to rule on the alleged violation of paragraphs 2 and 3 (b) of Article 6, since the arguments put forward on the latter point coincide, in substance, with those examined under paragraph 1.

2. The case of the other applicants

105. Mr Mazy, Mr Stalport, Mr Hermanus and Mr Javeau further alleged that the decision to join the prosecutions on account of a connection between the cases had removed them against their will from the jurisdiction of the court which should by law have heard their case, in breach of Article 6 § 1 of the Convention, and that this constituted discrimination contrary to Article 14 of the Convention taken in conjunction with Article 6 § 1.

The applicants pointed out that neither the Constitution nor statute law gave the Court of Cassation the power to try persons other than government ministers. The Court which in the natural order of things should have tried them was the Criminal Court, as was apparent both from the very text of Article 103 of the Constitution and from the text of Article 13 thereof read alone or in conjunction with Article 147. The Court of Cassation's decision on an alleged connection, which was not sufficiently reasoned, had constituted treatment derogating from ordinary law and had infringed their defence rights by depriving them, without any reasonable justification, of a series of important safeguards which would have been available to any other defendant and from which Mr Coëme, who had been tried at the same time as them, had benefited in part when his case was investigated by the House of Representatives.

106. The Government emphasised that the rules on connection laid down by Articles 226 and 227 of the Code of Criminal Investigation were applicable in all criminal cases. Legal theory and case-law were unanimous and consistent on this point. Mr Coëme and Mr Javeau were standing trial as co-principals or accomplices implicated in certain offences and the other applicants for various offences committed in connection with the activities of the “I” association. Even though the judicial authorities were not obliged to

join the cases, joinder in the present case was either fully justified to avoid the risk of contradictory decisions or desirable for reasons of coherence, to save having more than one trial and in short to ensure the proper administration of justice. It was a perfectly reasonable and rational decision which provided the best means of assessing and focusing on the criminal conduct of the various accused, and the applicants could not complain that the Court of Cassation's jurisdiction to try them had not been laid down by law or that it was not foreseeable.

107. The Court reiterates that organisation of the judicial system and jurisdiction in criminal cases cannot be left to the discretion of the judicial authorities, and notes that it was Article 103 of the Constitution which, until the 1998 reform (see paragraphs 68 and 69 above), required government ministers, exceptionally, to be tried by the Court of Cassation. However, there was no provision extending the Court of Cassation's jurisdiction to defendants other than ministers for offences connected with those for which ministers were standing trial (see, for the same reasoning applied to the contrary case, Crociani and Others v. Italy, joined applications nos. 8603/79, 8722/79, 8723/99 and 8729/79, Commission decision of 18 December 1980, DR 22, pp. 147 and 219). The need for such a provision appears all the more clearly because the issue now seems to have been settled by Article 29 § 1 of the Special Law of 25 June 1998 on the criminal responsibility of ministers, which provides: “Co-principals and accomplices implicated in an offence for which a minister is prosecuted and the perpetrators of connected offences must be prosecuted and tried at the same time as the minister” (see paragraph 69 above).

Admittedly, as the Government submitted, application of the rules on connection, laid down in Belgium by Articles 226 and 227 of the Code of Criminal Investigation, was foreseeable in the light of the teachings of legal theory and case-law, and in particular of the Court of Cassation's judgment of 12 July 1865, even though the latter concerned a duel and pointed out that “a duel is an indivisible complex offence” and that “the indivisibility of the procedure is a necessary consequence of the indivisibility of the offence” (see paragraph 79 above). In the present case these indications cannot justify the conclusion that the rule on connection was “established by law”, especially since the Court of Cassation, the supreme Belgian judicial authority, itself decided, not having referred the question to the Administrative Jurisdiction and Procedure Court, that summoning persons who had never held ministerial office to stand trial before it was the result of applying Article 103 of the Constitution rather than the provisions of the Code of Criminal Investigation or the Judicial Code (see paragraph 47 above).

108. Since the connection rule was not established by law, the Court considers that the Court of Cassation was not a tribunal “established by law” within the meaning of Article 6 to try these other four applicants. Having regard to that conclusion, the Court considers it unnecessary to rule on the alleged violation of Article 14, since the arguments put forward on that point coincide in substance with those examined under Article 6.

109. With regard to the complaint of these four applicants relating to the lack of a law on procedure and the resulting uncertainty, the Court, having regard to the above conclusion, does not consider it necessary to rule on that point.

110. In conclusion, the Court finds that, in respect of Mr Coëme and the other applicants, there has been a violation of Article 6 § 1.

B. The preliminary questions to the Administrative Jurisdiction and Procedure Court

111. Mr Mazy, Mr Stalport, Mr Hermanus and Mr Javeau submitted that the Court of Cassation's refusal to refer to the Administrative Jurisdiction and Procedure Court preliminary questions about the connection rule and the extension of the limitation period had been arbitrary and in breach of Articles 6 § 1 and 13 of the Convention. The complaint raised in substance by Mr Coëme was confined to the preliminary question concerning limitation.

112. The applicants asserted that Article 26 § 2 of the Special Law of 6 January 1989 required the Court of Cassation to refer to the Administrative Jurisdiction and Procedure Court the preliminary questions they had raised, whose seriousness could not be open to question. The express purpose of that obligation was to preserve the Administrative Jurisdiction and Procedure Court's monopoly over interpretation of the Constitution and to avoid any risk of arbitrary assessment in this respect by the court dealing with the case concerned. The arbitrariness of the refusal to submit the preliminary questions was also evident from the flagrant contradictions in the judgments of the Court of Cassation and the submissions of its Principal Public Prosecutor, on which the Court of Cassation had based its decision. Further, their applications had manifestly constituted exercise of a remedy within the meaning of Article 13 of the Convention, since their purpose was precisely to submit to a relevant authority the question of violations of rights and freedoms set forth in the Convention (Articles 6 and 14) and the Belgian Constitution.

113. The Government submitted that, where domestic law made provision for a system of preliminary questions, it was reasonable and logical for the court dealing with an application for a reference to consider whether it was required to raise the question proposed. It was in accordance with the functioning of all preliminary question systems for the court to check whether it was empowered or required to raise such a question. In the Belgian system, courts were required in particular to verify whether the alleged violation of Articles 10 and 11 of the Constitution was indeed the result of a legal rule which could be submitted to the scrutiny of the Administrative Jurisdiction and Procedure Court in accordance with the Special Law of 6 January 1989. The applicants' complaints concerned the way Article 26 § 2 of the Special Law on the Administrative Jurisdiction and Procedure Court should be interpreted. In raising that issue, they were asking the Court to re-examine a point that was a matter for domestic law only, and was therefore not within its jurisdiction. Even though it had been challenged, the Court of Cassation's decision not to refer the preliminary questions proposed was reasonable and not in any way arbitrary, so that it could not be in breach of Article 6 of the Convention. Nor could it be in breach of Article 13, since the preliminary question mechanism could not be regarded as a remedy.

114. The Court observes, firstly, that the Convention does not guarantee, as such, any right to have a case referred by a domestic court to another national or international authority for a preliminary ruling. It further refers to its case-law to the effect that the "right to a court", of which the right of access is one aspect, is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard (see, among other authorities, the Brualla Gómez de la Torre v. Spain judgment of 19 December 1997, *Reports* 1997-VIII, p. 2955, § 33). The right to have a preliminary question referred to a court cannot be absolute either, even where a particular field of law may be interpreted only by a court designated by statute and where the legislation concerned requires other courts to refer to that court, without reservation, all questions relating to that field. As the Government submitted, it is in accordance with the functioning of such a mechanism for the court to verify whether it is empowered or required to refer a preliminary question, first satisfying itself that the question must be answered before it can determine the case before it. However, it is not completely impossible that, in certain circumstances, refusal by a domestic court trying a case at final instance might infringe the principle of fair trial, as set forth in Article 6 § 1 of the Convention, in particular where such refusal appears arbitrary (see *Dotta v. Italy* (dec.), no. 38399/97, 7 September 1999, unreported, and *Predil Anstalt S.A. v. Italy* (dec.), no. 31993/96, 8 June 1999, unreported).

115. The Court considers that that was not so in the present case. The Court of Cassation took account of the applicants' complaints relating to application of the rules on connected offences and the Law of 24 December 1993, and of their request for preliminary questions to be submitted to the Administrative Jurisdiction and Procedure Court. It then ruled on the matter in decisions grounded on sufficient reasons which do not appear to be tainted by any arbitrariness. The Court further observes that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see the Brualla Gómez de la Torre judgment cited above, p. 2955, § 31, and the Edificaciones March Gallego S.A. v. Spain judgment of 19 February 1998, *Reports* 1998-I, p. 290, § 33).

116. In conclusion, the Court considers that the refusal to refer preliminary questions did not breach Article 6 § 1.

117. In view of the above decision in respect of Article 6 § 1, the Court considers it unnecessary to look at the case under Article 13 of the Convention; this is because the requirements of that provision are less strict than, and are here absorbed by, Article 6 § 1 (see, among other authorities, the Pudas v. Sweden judgment of 27 October 1987, Series A no. 125-A, p. 17, § 43, and the Hentrich v. France judgment of 22 September 1994, Series A no. 296-A, p. 24, § 65).

C. Independent and impartial tribunal

118. Mr Mazy and Mr Stalport submitted that the Court of Cassation could not be regarded as an independent and impartial tribunal within the meaning of Article 6 § 1 of

the Convention, and referred in particular to the role habitually played by the Principal Public Prosecutor at the Court of Cassation and his role in the handling of the present case. They observed, firstly, that on 3 November 1995 the Principal Public Prosecutor at the Court of Cassation had held a meeting at which he informed the participants that the proceedings would be conducted according to the ordinary rules of the Code of Criminal Investigation; this was confirmed at the first hearing held by the Court of Cassation. That meant that he had previously been at least informed of the Court of Cassation's decision as to the procedure to be followed. Secondly, referring to the role traditionally played by the Principal Public Prosecutor at the Court of Cassation, which the Court had had occasion to assess when dealing with the Delcourt, Borgers, Vermeulen and Van Orshoven cases (see the judgments in the cases of Delcourt v. Belgium, 17 January 1970, Series A no. 11; Borgers v. Belgium, 30 October 1991, Series A no. 214-B; Vermeulen v. Belgium, 20 February 1996, *Reports* 1996-I; and Van Orshoven v. Belgium, 25 June 1997, *Reports* 1997-III), and particularly the traditional practice whereby the Principal Public Prosecutor's Office participated in drafting the court's judgments, they observed that the confusion between the respective roles of the Court of Cassation and the Principal Public Prosecutor's Office there was particularly striking. The Government would find it hard to prove that any measures whatsoever had been taken to establish the necessary distance between the Court of Cassation and the Principal Public Prosecutor's Office there – the prosecution in the present case. They noted on the contrary that during the trial the representatives of the Principal Public Prosecutor had taken their places in the raised part of the courtroom on the same level as the judges and used to enter and leave the hearing room in the company of the judges of the Court of Cassation. They likewise considered it symptomatic that the names of the persons composing the Court of Cassation and the representatives of its Principal Public Prosecutor were listed in the same paragraph in the hearing records (see paragraph 52 above) and that the Court's judgment reproduced the prosecution pleadings practically word for word.

119. With regard to the independence and impartiality of the Court of Cassation, the Government submitted that the applicants had not adduced any evidence of concrete facts or events supporting their argument, in which they had referred to a “traditional practice” of participation by the Principal Public Prosecutor's Office in the drafting of the Court of Cassation's judgments. That practice had ceased on the very day of the Borgers judgment (in criminal cases) and the Vermeulen judgment (in civil cases). The Government noted, firstly, that the Court of Cassation had not yet been constituted on 3 November 1995; the nineteen judges (fifteen ordinary members and four substitutes) had not been appointed until a few weeks before the first hearing on 5 February 1996. It had therefore been materially impossible for the Principal Public Prosecutor's Office to be informed of the procedure chosen by a court not yet constituted. It was, however, obvious that the procedure mentioned by the Principal Public Prosecutor was the only one possible and foreseeable. The Government also observed that the two members of the Principal Public Prosecutor's Office had not sat on the same bench as the Court of Cassation itself but had a separate seat facing the seat of the two registrars and closer to the bar of the court than to the judges' bench. Moreover, throughout the trial and the judges' deliberations, these two officers of the court had avoided all contact with the court when not in hearings. Lastly, the Court of Cassation had on several occasions given a clear sign of its

independence *vis-à-vis* the Principal Public Prosecutor's Office. In particular, on 12 February 1996, according to Mr Javeau and Mr Stalport themselves, it had asked the Principal Advocate-General to confine his remarks to the facts of the case and not make submissions for the prosecution (see paragraph 50 above) and it had not accepted the prosecution's suggestion that the defence case should be heard before the prosecution's (see paragraph 51 above). The similarities between the judgment and the prosecution's submissions did not justify a legitimate doubt about the Court of Cassation's impartiality.

120. The Court reiterates that in order to establish whether a tribunal can be considered "independent" for the purposes of Article 6 § 1, regard must be had, *inter alia*, to the existence of safeguards against outside pressures and the question whether it presents an appearance of independence (see, among many other authorities, the Findlay v. the United Kingdom judgment of 25 February 1997, *Reports* 1997-I, p. 281, § 73, and the Incal v. Turkey judgment of 9 June 1998, *Reports* 1998-IV, p. 1571, § 65). The Court observes in that connection that the findings of the Delcourt judgment on the question of the independence of the Court of Cassation and its Principal Public Prosecutor's Office are still fully valid (see the Delcourt judgment cited above, pp. 17-19, §§ 32-38).

121. As for impartiality within the meaning of Article 6 § 1, there are two tests for assessing whether a tribunal is impartial: the first consists in seeking to determine the personal conviction of a particular judge in a given case and the second in ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect (see, among other authorities, *mutatis mutandis*, the Gautrin and Others v. France judgment of 20 May 1998, *Reports* 1998-III, pp. 1030-31, § 58). Only the second test is relevant in the instant case. In this respect, however, even appearances may be of a certain importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public and above all, as far as criminal proceedings are concerned, in the accused (see, among other authorities, the Hauschildt v. Denmark judgment of 24 May 1989, Series A no. 154, p. 21, § 48, and the Pullar v. the United Kingdom judgment of 10 June 1996, *Reports* 1996-III, p. 794, § 38). In deciding whether there is a legitimate reason to fear that a court lacks independence or impartiality, the standpoint of the accused is important but not decisive. What is decisive is whether this fear can be held to be objectively justified (see, *mutatis mutandis*, the Hauschildt judgment cited above, p. 21, § 48, and the Gautrin and Others judgment cited above, pp. 1030-31, § 58).

122. The Court must therefore ascertain whether the applicants objectively had a legitimate reason to fear that the court in which they stood trial lacked independence and impartiality. On that point, the Court is not aware of any circumstance capable of justifying the concerns caused, in the applicants' submission, by the fact that at the meeting on 3 November 1996 the Principal Public Prosecutor indicated what procedure would be followed. It would appear in fact that this information was supplied at a time when the judges who would try the case had not yet been designated and had not yet had the opportunity to consider the question which arose in that respect on account of Parliament's failure to legislate. Moreover, there is no justification for the concerns about the existence of certain relations of subjection or dependency between the Court of

Cassation and its Principal Public Prosecutor's Office, caused, in the applicants' submission, by the other facts they mentioned. In the Court's opinion, the two circumstances referred to by the Government in support of their argument that the Court of Cassation was independent of the Principal Public Prosecutor's Office, and in particular the assertion made by Mr Javeau and Mr Stalport about the President's intervention when the Principal Advocate-General was presenting the facts of the case, remove all legitimate foundation from the doubts the applicants may have felt in this respect.

123. In conclusion, the applicants could not legitimately entertain doubts about the independence and impartiality of the Court of Cassation.

D. Mr Stalport's interview on 16 March 1994

124. Mr Stalport also complained that he had been convicted on the basis of his statements on 16 March 1994 and had thus been deprived of the safeguards attending a fair trial. He submitted that he had not been heard on the subject of the offences he was charged with except when he was interviewed on 16 March 1994 in the context of the investigation being conducted in the proceedings against Minister M. Having been questioned as a witness, he was not informed that he had the right not to reply to the questions he was asked. He had never been heard as a defendant after the Principal Public Prosecutor at the Court of Cassation had brought proceedings against him. Lastly, the Court of Cassation had expressly taken some of the statements he had made on 16 March 1994 to constitute a confession, ruling in particular, when dealing with the offence he had been charged with: “It is apparent from the statements of Jean-Louis Stalport ... that the purpose of severing the original contract was to evade the mandatory scrutiny of the Treasury inspector.” He observed that in the John Murray case (John Murray v. the United Kingdom judgment of 8 February 1996, *Reports* 1996-I, p. 49, § 45), the Court had held: “The right to remain silent under police questioning and the privilege against self-incrimination are generally recognised international standards which lie at the heart of the notion of a fair procedure under Article 6”.

125. In the Government's submission, there was no conclusive evidence that Mr Stalport had at any time been obliged – or could have believed himself to be obliged – to incriminate himself. It was a police officer who had interviewed him on 16 March 1994 and no oath had been taken. Mr Stalport, whose conviction had not been based on his statements alone, had therefore not been prevented from exercising his right to remain silent, to defend himself effectively or to request additional investigative measures, which Mr Javeau had successfully done in the Court of Cassation. In the Government's opinion, the true purpose of the principle prohibiting self-incrimination was to prevent a participant in the judicial process being obliged to tell the truth under oath and on pain of a penalty if he lied, only to have his own declarations used against him later and to be accused of an offence.

126. The Court reiterates that the right not to give evidence against oneself, that is the right to remain silent and not to incriminate oneself, lies at the heart of the notion of fair

trial (see the John Murray judgment, loc. cit., and the Funke v. France judgment of 25 February 1993, Series A no. 256-A, p. 22, § 44; see also the Saunders v. the United Kingdom judgment of 17 December 1996, *Reports* 1996-VI, pp. 2064-65, §§ 68 and 71).

127. The Court notes that Mr Stalport's complaint essentially concerns the fact that the statement he gave on 16 March 1994 was used in the criminal proceedings against him. The Court must therefore ascertain whether the use made by the prosecution of this statement unjustifiably infringed his right not to incriminate himself. It must examine that question in the light of all the circumstances of the case.

128. In dealing with the charge relating to the three contracts signed on 15 June 1989, the Court of Cassation held in its judgment of 5 April 1996 that it was apparent from the statements of Mr Stalport and Mr Javeau that the purpose of severing the original contract, in respect of which the Treasury inspectorate had given an unfavourable opinion, had been to evade the mandatory scrutiny of the Treasury inspector (see paragraph 60 above). It appears from the statements referred to by the Court of Cassation that it must have based this inference on Mr Javeau's remarks, as reported in the record of his interview on 8 June 1993 (see paragraph 21 above) not on a confession allegedly to be found in the record of the interview with Mr Stalport on 16 March 1994 (see paragraph 27 above). Mr Stalport had always asserted, both at that interview and when he was questioned on 20 February 1996 (see paragraph 52 above), that the purpose of the decision to sever the initial contract had not been to evade the scrutiny of the Treasury inspector. That being so, it cannot be considered that in order to establish Mr Stalport's guilt the Court of Cassation made use of evidence obtained from him against his will, by coercion or by oppression.

129. Consequently, the Court does not consider that the fairness of the proceedings was impaired by the use of evidence obtained by coercion.

130. Accordingly, there has been no violation of Article 6 § 1 of the Convention.

E. Reasonable time

131. Mr Hermanus submitted that his case had not been heard within a reasonable time. He asserted that his situation had been affected as soon as Mr Javeau was arrested in 1989, as the press had cast doubt on his integrity, which had led him to lodge a complaint for defamation with the investigating judge on 28 August 1989. Yet the Court of Cassation, sitting as the court of first and last instance, had not given judgment until six and a half years later. The applicant pointed out that the offences he stood accused of, which were known to the investigating judge from the outset, were so simple and lacking in complexity that the judgment of 5 April 1996 devoted only half a page to them. In addition, few of the documents in the investigation file concerned him. This applied in particular to the court expert's report, most of which related to facts which were not included in the charges against him. The alleged complexity of the prosecution was merely the result of the authorities' determination to establish the existence of a “system” in which all the defendants were involved. Application of the connection rule was

justified by the requirements of the administration of justice only where the rights of the defence were respected. Yet he could have been tried separately on the charges against him as early as 1994, if not before, and this would not have prevented the prosecution from arguing that the offences he stood accused of formed part of a system.

132. The Government pointed out that the applicant had not criticised the attitude of the judicial authorities, and could have no valid criticism to make. Referring to what the Court of Cassation had said on this point in its judgment of 5 April 1996, they observed that in spite of the complexity of the case the judicial authorities had constantly taken new investigative measures, concurrently with the completion of a particularly burdensome expert report. The applicant's complaints were essentially directed against application of the connection rule, which had been reasonable in view of Mr Hermanus's close involvement in the criminal system that had been set up. The central role of the “I” association and Mr Javeau in the system for funding political activities necessarily required all the offences to be dealt with together and therefore all the accused who had been involved in them to be tried together.

1. Period to be taken into consideration

133. In the Court's opinion, the period to be considered began on 28 August 1991 when a search was carried out at the home of Mr Hermanus and at his offices (see paragraph 19 above). It reiterates that in criminal matters the “reasonable time” referred to in Article 6 § 1 begins to run as soon as a person is “charged”: this may occur on a date prior to the case coming before the trial court, such as the date of arrest, the date when the person concerned was officially notified that he was to be prosecuted or the date when the preliminary investigations were opened. The term “charge”, for the purposes of Article 6 § 1, may be defined as “the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence”, a definition that also corresponds to the test whether the situation of the suspect has been “substantially affected” (see the Hozee v. the Netherlands judgment of 22 May 1998, *Reports* 1998-III, p. 1100, § 43, and the Eckle v. Germany judgment of 15 July 1982, Series A no. 51, p. 33, § 73). Although the press campaign mentioned by the applicant cannot be equated with such “notification”, the searches carried out on 28 August 1991 can (see Neubeck v. Germany, application no. 9132/80, Commission's report of 12 December 1983, DR 41, p. 13).

134. Moreover, it has not been contested that the period to be taken into consideration ended on 5 April 1996, when the Court of Cassation's judgment was delivered (see paragraph 55 above).

135. It therefore lasted four years, seven months and eight days.

2. Reasonableness of the length of the proceedings

136. The reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with regard to the criteria laid down in the Court's case-

law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II, and the Philis v. Greece (no. 2) judgment of 27 June 1997, *Reports* 1997-IV, p. 1083, § 35).

137. The Court notes in the first place that the case was complex. The judicial authorities had to deal with a large number of separate offences. That circumstance and the very nature of the charges made it necessary for the persons entrusted with the investigation of the case to undertake the long task of reconstructing the offences, gathering evidence and deciding, in respect of each of the persons apparently implicated, what offences they should be charged with. All this explains the size of the file, which Mr Mazy, Mr Stalport and Mr Javeau themselves mentioned in their written submissions to the Court. In addition, the case raised thorny legal questions which, before being posed to the applicants and then to the Court of Cassation, had to be answered by the Belgian judicial authorities. Lastly, the offices held by some of the suspects, including Mr Hermanus himself, required the prosecuting authorities to apply to organs of the legislative power for “authorisation” to prosecute them or a decision whether to commit them for trial.

138. As regards Mr Hermanus's conduct, no delay seems to be imputable to him.

139. Having examined the case in the light of the parties' observations, the Court has not found any period of inactivity imputable to the Belgian judicial authorities. Moreover, the applicant did not criticise the way those authorities had dealt with the case, but challenged their decision to consider the offences he had been charged with together with the charges against other persons on the ground that there was a connection between them. By using their discretionary power in that way they indubitably took the risk of delaying committing Mr Hermanus for trial. However, the fact that the offences with which Mr Javeau and the other accused were charged had been brought to light by the same investigation and the interdependence of the charges, noted by the Court of Cassation in its judgment of 5 April 1996 (see paragraph 55 above), might reasonably be thought to exclude severing the charges against Mr Hermanus from the rest of the investigation.

140. Article 6 “commands that judicial proceedings be expeditious, but it also lays down the more general principle of the proper administration of justice” (see the Boddaert v. Belgium judgment of 12 October 1992, Series A no. 235-D, pp. 82-83, § 39). In the circumstances of the present case, the conduct of the judicial authorities was compatible with the fair balance to be maintained between the various aspects of this fundamental requirement.

141. There has accordingly been no violation of Article 6 § 1 of the Convention in this respect.

II. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

142. Mr Coëme and Mr Hermanus submitted that application of the new law on limitation of prosecution had breached Article 7 of the Convention, which provides:

"1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

143. The applicants asserted that the principle of the immediate application of the new law on limitation of prosecution and Parliament's express intention required the Court of Cassation to find that the proceedings against them had become time-barred on 22 February 1996, that is five years after the event which had caused time to begin to run again on 22 February 1991. But in its judgment of 5 April 1996 the Court of Cassation had ruled that time had begun to run again and extended a limitation period which had already lapsed, this being illegal given that an initial five-year period had begun to run on 30 November 1989 in Mr Coëme's case and on 29 February 1988 in Mr Hermanus's case. In addition, it had restarted the limitation period a second time, although this was not permissible under Article 22 of the Code of Criminal Investigation, taking into consideration the date of 10 June 1992. The applicants argued on that basis that the Court of Cassation had effectively applied Article 25 of the Law of 24 December 1993 retrospectively. That had breached Article 7 of the Convention, in that determination of the period during which an offence could be punished was certainly as much a part of the concept of "penalty" as the measure imposed pursuant to the law as a punishment. Article 7, they argued, enshrined the principle of the foreseeability of the elements of an offence and the relevant penalty, which included the foreseeability of prosecution.

144. The Government rejected these allegations. They submitted that the extensive interpretation of Article 7 made by the applicants was not compatible with its text. Article 7 admittedly prohibited retrospectiveness, but that prohibition concerned only charges and penalties and was not therefore applicable to procedural rules, and in particular to limitation. Following the applicants' interpretation would create a serious obstacle making it difficult for States to introduce the necessary changes to criminal procedures and to take account of the courts' excessive caseloads. In the alternative, the Government submitted that, even if Article 7 had to be considered to apply also to limitation of criminal proceedings, its only scope would be to prevent limitation becoming an issue again once prosecution had become time-barred. It was only in such a case that there would be retrospectiveness, in that the new law would have to "go back in time" from the date of its entry into force in order to be able to annul a time-bar. But nothing like that had taken place in the present case. On 31 December 1993, when the new law had come into force, the proceedings had not yet become time-barred according to the rules formerly applicable and the Court of Cassation had applied from the time of the offences in issue the new limitation period laid down by the Law of 24 December 1993. The

Government noted that limitation concerned not the offences but only prosecution. It was part of the procedural rules immediately affected by a new law in all proceedings then in progress.

145. The Court reiterates that, according to its case-law, Article 7 embodies, *inter alia*, the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*). While it prohibits in particular extending the scope of existing offences to acts which previously were not criminal offences, it also lays down the principle that the criminal law must not be extensively construed to an accused's detriment, for instance by analogy. It follows that offences and the relevant penalties must be clearly defined by law. This requirement is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him criminally liable.

When speaking of "law" Article 7 alludes to the very same concept as that to which the Convention refers elsewhere when using that term, a concept which comprises statute law as well as case-law and implies qualitative requirements, including those of accessibility and foreseeability (see the Cantoni v. France judgment of 15 November 1996, *Reports* 1996-V, p. 1627, § 29; and the S.W. and C.R. v. the United Kingdom judgments of 22 November 1995, Series A nos. 335-B and 335-C, pp. 41-42, § 35, and pp. 68-69, § 33, respectively). The Court must therefore verify that at the time when an accused person performed the act which led to his being prosecuted and convicted there was in force a legal provision which made that act punishable, and that the punishment imposed did not exceed the limits fixed by that provision (see Murphy v. the United Kingdom, application no. 4681/70, Commission decision of 3 and 4 October 1972, Collection 43, p. 1). Since the term "penalty" is autonomous in scope, to render the protection afforded by Article 7 effective the Court must remain free to go behind appearances and assess for itself whether a particular measure amounts in substance to a "penalty" within the meaning of this provision (see the Welch v. the United Kingdom judgment of 9 February 1995, Series A no. 307-A, p. 13, § 27). While the text of the Convention is the starting-point for such an assessment, the Court may have cause to base its findings on other sources, such as the *travaux préparatoires*. Having regard to the aim of the Convention, which is to protect rights that are practical and effective, it may also take into consideration the need to preserve a balance between the general interest and the fundamental rights of individuals and the notions currently prevailing in democratic States (see, among other authorities, the Airey v. Ireland judgment of 9 October 1979, Series A no. 32, pp. 14-15, § 26, and the Guzzardi v. Italy judgment of 6 November 1980, Series A no. 39, pp. 34-35, § 95).

146. Limitation may be defined as the statutory right of an offender not to be prosecuted or tried after the lapse of a certain period of time since the offence was committed. Limitation periods, which are a common feature of the domestic legal systems of the Contracting States, serve several purposes, which include ensuring legal certainty and finality and preventing infringements of the rights of defendants, which might be impaired if courts were required to decide on the basis of evidence which might have

become incomplete because of the passage of time (see the Stubbings and Others v. the United Kingdom judgment of 22 October 1996, *Reports* 1996-IV, pp. 1502-03, § 51).

147. The Court notes that in its judgment of 5 April 1996 the Court of Cassation found Mr Coëme and Mr Hermanus guilty, among other offences, of forgery and uttering forgeries, classified as crimes (*crimes*) by the Criminal Code. However, by accepting that there were extenuating circumstances it treated these acts, like the other offences it found to have been made out, as less serious indictable offences (*délits*). In Belgian law the classification of an offence is determined not according to the penalty applicable but according to the penalty actually applied. The date of the judgment must therefore be the standpoint for determining what period must elapse before prosecution becomes time-barred. That being so, the Court of Cassation had regard to the limitation period for less serious indictable offences. Subsequently, applying the provisions of the Law of 24 December 1993 immediately, and after noting that the offences found to have been made out were not time-barred on the date of its entry into force, it held that the correct limitation period was five years from the time of the offences, which period could be extended, where the case arose, by a new five-year period counting from a measure causing time to begin to run again lawfully taken before expiry of the first five-year period (see paragraph 57 above).

148. The Court notes that the solution adopted by the Court of Cassation was based on its case-law to the effect that laws modifying the rules on limitation were thenceforth to be regarded in Belgium as legislation on matters of jurisdiction and procedure. It accordingly followed the generally recognised principle that, save where expressly provided to the contrary, procedural rules apply immediately to proceedings that are under way (see the Brualla Gómez de la Torre judgment cited above, p. 2956, § 35).

149. The extension of the limitation period brought about by the Law of 24 December 1993 and the immediate application of that statute by the Court of Cassation did, admittedly, prolong the period of time during which prosecutions could be brought in respect of the offences concerned, and they therefore detrimentally affected the applicants' situation, in particular by frustrating their expectations. However, this does not entail an infringement of the rights guaranteed by Article 7, since that provision cannot be interpreted as prohibiting an extension of limitation periods through the immediate application of a procedural law where the relevant offences have never become subject to limitation.

The question whether Article 7 would be breached if a legal provision were to restore the possibility of punishing offenders for acts which were no longer punishable because they had already become subject to limitation is not pertinent to the present case and the Court is accordingly not required to examine it, even though, as Mr Hermanus maintained, the Court of Cassation, in the proceedings against him, held that time had been caused to run again by a measure which did not have that effect on the date when it was taken.

150. The Court notes that the applicants, who could not have been unaware that the conduct they were accused of might make them liable to prosecution, were convicted of

offences in respect of which prosecution never became subject to limitation. The acts concerned constituted criminal offences at the time when they were committed and the penalties imposed were not heavier than those applicable at the material time. Nor did the applicants suffer, on account of the Law of 24 December 1993, greater detriment than they would have faced at the time when the offences were committed (see, *mutatis mutandis*, the Welch judgment cited above, p. 14, § 34).

151. Consequently, the applicants' rights under Article 7 of the Convention were not infringed.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

152. Article 41 of the Convention provides:

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

A. Damage

1. Mr Coëme

153. Mr Coëme asserted that the pecuniary damage resulting from the alleged violations of the Convention amounted to 22,660,749 Belgian francs (BEF), of which BEF 20,544,024 represented lost income from his activities as member of Parliament, mayor and municipal councillor and as director on the board of three companies, which he was unable to carry on between May 1996 and December 1998 or June 1999, and BEF 2,116,725 represented the amount of fines, confiscations and sums he was ordered to pay civil parties, plus the costs of the criminal proceedings and registration fees. He also asked the Court to take into account certain advantages enjoyed by members of Parliament, but without quantifying these. He submitted that the causal link between this damage and the violation of the Convention was incontestable since he could not have been convicted if the safeguards set forth in the Convention had been respected. He claimed nothing for non-pecuniary damage.

154. The Government submitted that the applicant had not duly proved the existence of pecuniary damage.

155. The Court fails to see any causal link between the violation of Article 6 § 1 of the Convention and the pecuniary damage. It cannot speculate as to what the outcome of proceedings compatible with Article 6 § 1 might have been. It accordingly dismisses the applicant's claims under this head (see, as the most recent authority, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 73, ECHR 1999-II, and the Demir and Others v. Turkey judgment of 23 September 1998, *Reports* 1998-VI, p. 2660, § 63). Further, it considers that in the

absence of any claim for non-pecuniary damage there is no reason to award the applicant any sum under that head.

2. Mr Mazy

156. Mr Mazy asserted that he had suffered substantial pecuniary and non-pecuniary damage on account of the alleged violations of the Convention. He specified that his pecuniary damage amounted to BEF 7,369,768, of which BEF 6,722,000 represented lost income from his post of managing director of a company, which he was unable to keep on account of his conviction, and BEF 647,768 represented the amount of fines, confiscations and settlements with civil parties following his conviction, plus the costs of the criminal proceedings and registration fees. On the other hand, he did not quantify his claim for non-pecuniary damage.

157. The Government submitted that this applicant had not duly proved the existence of pecuniary damage. They further submitted that the non-pecuniary damage which Mr Mazy alleged he had suffered was not specified in sufficient detail.

158. In the absence of any causal link between the violation of Article 6 § 1 of the Convention and the pecuniary damage, the Court dismisses the applicant's claims under this head (see paragraph 155 above). On the other hand, it considers that Mr Mazy undoubtedly suffered non-pecuniary damage on account of the violations it has found. Because of the seriousness of the damage sustained, it cannot be made good by the mere finding of these violations. Having regard to the circumstances of the case, the Court decides on an equitable basis to award the sum of BEF 300,000 under this head.

3. Mr Stalport's heirs

159. Mr Stalport's wife and daughters claimed BEF 68,680 in respect of the pecuniary damage sustained by their husband and father, that being the amount of the fine and the costs of the criminal proceedings that he had had to pay after his conviction. They further observed that he had been unable to continue to work as administrator of various companies on account of the penalty imposed on him. They submitted that the applicant's appearance in the Court of Cassation had been a harrowing experience, that that court did not have jurisdiction to try him and that the procedure it had followed was unlawful. The exceptional nature of the trial, which had lasted more than five months, and the heavy media coverage had diminished the trust his associates had formerly placed in him and had hindered the normal, unperturbed performance of his duties as director-general, in addition to the injury to his reputation and that of his family. The ordeals he had been through and his conviction had not been unrelated to the decline in his state of health. Mr Stalport's wife and daughters therefore sought just satisfaction reflecting these heads of pecuniary and non-pecuniary damage and asked the Court to award a sum on an equitable basis.

160. The Government submitted that it had not been duly proved that this applicant had suffered pecuniary damage. Arguing that only the non-pecuniary damage sustained by Mr

Stalport could be taken into account, they noted in the first place that this damage had not been quantified, which made it impossible to defend the claim properly. They further submitted that the injury to Mr Stalport's reputation and the damage to his professional standing, even supposing the latter to be distinct from the alleged pecuniary damage, resulted not from the alleged violations of the Convention but from his prosecution and conviction. Lastly, the heavy media coverage had been the result of the defendants' high profile and the nature of the offences they had been charged with.

161. In the absence of any causal link between the violation of Article 6 § 1 of the Convention and the pecuniary damage, the Court dismisses the claims under this head (see paragraph 155 above). On the other hand, it considers that Mr Stalport undoubtedly suffered non-pecuniary damage on account of the violations it has found (see paragraph 158 above). Having regard to the circumstances of the case, the Court decides on an equitable basis to award the sum of BEF 300,000 under this head.

4. Mr Hermanus

162. Mr Hermanus asserted that he had suffered considerable pecuniary damage on account of the costs resulting from the judgment of 5 April 1996 itself and the loss of remuneration from the work he had been unable to carry on owing to the five-year disqualification from exercising the rights listed in Article 31 of the Criminal Code. He noted that as a result of this disqualification he had lost all the posts which made up his professional life (secretary-general of the Ministry of the French-speaking Community, regional councillor for the Brussels-Capital Region, deputy mayor, chairman of the *SDRB* and company administrator) and through which he had earned an income of BEF 8,679,619 in 1995. The fines, the costs of the criminal proceedings and photocopying charges accounted for the sum of BEF 211,240. He further submitted that he had sustained considerable non-pecuniary damage on account of the loss, for a time at least, of the posts he held, as a result of the heavy media attention paid to the trial and attacks by his political opponents.

163. The Government contested the existence of duly proved pecuniary damage. They likewise contested the – unquantified – claim for non-pecuniary damage, referring to their submissions on damage to professional standing and media coverage in their observations on the non-pecuniary damage allegedly sustained by Mr Stalport.

164. In the absence of any causal link between the violation of Article 6 § 1 of the Convention and the pecuniary damage, the Court dismisses the applicant's claims under this head (see paragraph 155 above). On the other hand, it considers that he undoubtedly suffered non-pecuniary damage which cannot be made good by the mere finding of Convention violations (see paragraph 158 above). In the circumstances of the case, the Court decides on an equitable basis to award the sum of BEF 300,000 under this head.

5. Mr Javeau

165. Mr Javeau assessed the various heads of pecuniary damage resulting from the alleged violations of the Convention at BEF 19,000,000 for loss of income, BEF 7,613,927 for fines, contributions, compensation, confiscations, orders to pay civil parties, the costs of the criminal proceedings and registration fees, in respect of which he had in fact paid on 25 May 1999 the sum of BEF 1,559,749, of which BEF 606,745 represented his share of a judgment debt resulting from a civil action brought on the basis of the conviction of 5 April 1996, BEF 182,307 were the costs of copying and photocopying the file in the criminal proceedings and summoning witnesses and BEF 421,075 were for accountants' and tax experts' fees, plus BEF 39,654,441 representing the sums owed on 25 May 1999 on account of a recalculation of his tax liability carried out right at the start of the proceedings against him. He also referred to immeasurable non-pecuniary damage which could only be assessed *ex aequo et bono*, a matter which he left to the Court's discretion. He submitted in particular that he had suffered “character assassination” through the mere fact of being tried by the Court of Cassation, amid exceptional media attention, psychological pressure and publicity.

166. The Government contested the existence of duly proved pecuniary and non-pecuniary damage (which had, moreover, not been quantified), referring in particular to their submissions on media coverage in their observations on the non-pecuniary damage allegedly sustained by Mr Stalport.

167. In the absence of any causal link between the violation of Article 6 § 1 of the Convention and the pecuniary damage, the Court dismisses the applicant's claims under this head (see paragraph 155 above). On the other hand, it considers that he undoubtedly suffered non-pecuniary damage which cannot be made good by the mere finding of Convention violations (see paragraph 158 above). In the circumstances of the case, the Court decides on an equitable basis to award the sum of BEF 300,000 under this head.

B. Costs and expenses

1. Mr Coëme

168. The applicant claimed reimbursement of the sum of BEF 1,222,580 for the costs he had incurred before the special committee of the House of Representatives and the Court of Cassation and the sum of BEF 229,510 for costs and expenses before the Court and the Commission, a total of BEF 1,452,090.

169. The Government submitted that, as the applicant had failed to establish that the sums claimed for costs before the special committee of the House of Representatives and the Court of Cassation had been incurred to prevent or obtain redress for the alleged violations of the Convention, the claim on this point should be dismissed. They also cast doubt on some items of the costs and expenses claimed for the proceedings before the Convention institutions, and in particular the costs claimed for attending the hearing on 2 March 1999, amounting in total to 1,381.60 French francs (FRF). In their submission, these costs had nothing to do with the means employed to ensure compliance with the safeguards set forth in the Convention. Other items claimed under this head, namely sums

of FRF 1,200 and BEF 17,250 and the sums for travelling expenses, were excessive. With regard to the other sums claimed, they left the decision to the Court's discretion.

170. If the Court finds that there has been a violation of the Convention, it may award the applicant not only the costs and expenses incurred before the Convention institutions, but also those incurred before the national courts for the prevention or redress of the violation (see, among other authorities, the Hertel v. Switzerland judgment of 25 August 1998, *Reports* 1998-VI, p. 2334, § 63). In the present case the Court notes that the applicant did not incur such costs and expenses before the special committee of the House of Representatives. Consequently, it must dismiss the claim on this point. On the other hand, the lack of clarity noted by the Court with regard to the rules governing the procedure to be followed in the Court of Cassation certainly caused the applicant to incur additional costs during the proceedings before it. The Court considers it reasonable to award him BEF 200,000 under this head. Mr Coëme is likewise justified in claiming the payment of his costs and expenses for the proceedings before the Commission and the Court, including the cost of drafting a pleading on the question of friendly settlement submitted under Article 38 § 1 (b) of the Convention. In respect of those proceedings the Court, ruling in equity on the basis of the information in its possession, awards him BEF 200,000.

2. Mr Mazy

171. This applicant claimed payment of BEF 460,190 for his costs and expenses before the Convention institutions and BEF 1,000,000 for the costs of the proceedings in the Court of Cassation.

172. The Government accepted that some of the sums claimed by the applicant might, at least in part, correspond to the means he had employed before the national authorities to ensure compliance with the Convention. However, the applicant had not established that there was such a relation in respect of the majority of the items of costs that he asserted he had incurred in the Court of Cassation. In their written observations on the question of just satisfaction of 29 July 1999 the Government further submitted that the applicant was not justified in claiming reimbursement of the costs and expenses incurred before the Convention institutions as he had not proved that he had actually incurred them, having supplied only an estimate of their quantum.

173. Referring to its considerations in relation to Mr Coëme's claim (see paragraph 170 above), the Court considers that the applicant must necessarily have borne certain additional costs during the proceedings in the Court of Cassation in view of the shortcomings it has noted with regard to the connection rule and the rules governing procedure. Ruling on an equitable basis, as required by Article 41 of the Convention, the Court awards him the sum of BEF 300,000 for costs and expenses before the Court of Cassation and the sum of BEF 460,000 for his representation before the Commission and then the Court, which the applicant has proved that he incurred by producing a bill of costs (see, among other authorities, the Zimmermann and Steiner v. Switzerland judgment of 13 July 1983, Series A no. 66, p. 14, § 36).

3. Mr Stalport's heirs

174. Mr Stalport's wife and daughters sought payment of BEF 687,040 for his costs and expenses before the Convention institutions and BEF 872,600 for the costs of the proceedings in the Court of Cassation.

175. The Government accepted that some of the sums claimed by the applicant might, at least in part, correspond to the means he had employed before the national authorities to ensure compliance with the Convention. However, Mr Stalport's heirs had not established that there was such a relation in respect of a substantial portion of the costs that they asserted he had incurred in the Court of Cassation. In their written observations of 29 July 1999 on the question of just satisfaction the Government further submitted that Mr Stalport's heirs were justified in claiming only reimbursement of BEF 400,000 for costs and expenses incurred before the Convention institutions, not having proved that he had actually paid the remainder of the sum claimed. They also argued that the lack of precision of the claim and the supporting documentary evidence made it impossible to assess the object, the validity or the reasonableness of the costs claimed.

176. Referring to its considerations in relation to Mr Mazy's claim (see paragraph 173 above), and ruling on an equitable basis, as required by Article 41 of the Convention, the Court awards the sum of BEF 300,000 for Mr Stalport's costs and expenses before the Court of Cassation and the sum of BEF 460,000 for his representation before the Commission and then the Court, in respect of which a bill of costs has been produced.

4. Mr Hermanus

177. The applicant claimed BEF 264,480 for costs and expenses incurred for the proceedings before the Council of the Brussels-Capital Region, BEF 1,250,000 for the proceedings in the Court of Cassation and BEF 497,547 for costs and expenses before the Court and the Commission, making a total of BEF 2,012,027.

178. The Government submitted that as the applicant had failed to establish that the sums claimed for costs before the Council of the Brussels-Capital Region and the Court of Cassation had been incurred to prevent or obtain redress for the alleged violations of the Convention, the claim on this point should be dismissed. With regard to costs and expenses for the proceedings before the Convention institutions, they noted that some work included in a bill of costs of 3 January 1997 had nothing to do with those proceedings. They left assessment of the other sums claimed to the Court's discretion.

179. Referring to its considerations in relation to the claims of Mr Coëme and Mr Mazy (see paragraphs 170 and 173 above), and ruling on an equitable basis, as required by Article 41 of the Convention, the Court dismisses the claim relating to the proceedings before the Council of the Brussels-Capital Region and awards Mr Hermanus the sum of BEF 300,000 for costs and expenses before the Court of Cassation. Having taken account of the Government's argument that certain items of costs had nothing to do with the

proceedings before the Convention institutions, it awards the sum of BEF 460,000 for the costs incurred before the Commission and then the Court.

5. Mr Javeau

180. Mr Javeau sought reimbursement of BEF 1,119,270 for the costs of the proceedings in the Court of Cassation and BEF 573,973 for costs and expenses before the Convention institutions, of which BEF 23,973 represented the costs of his attendance at the hearing on 2 March 1999.

181. The Government submitted that as the applicant had failed to establish that the sums claimed for costs in the Court of Cassation and the fees of the four lawyers who had assisted him in that court had been incurred to prevent or obtain redress for the alleged violations of the Convention, the claim on this point should be dismissed. The same applied to the fees of his three lawyers in the Strasbourg proceedings, in so far as the bills of these lawyers gave only an overall total, did not specify what services they related to and made no distinction between costs and fees. The Government did not contest the costs of the applicant's attendance on 2 March 1999.

182. Referring to its considerations in relation to Mr Mazy's claim (see paragraph 173 above), and ruling on an equitable basis, as required by Article 41 of the Convention, the Court awards Mr Javeau the sum of BEF 300,000 for costs and expenses before the Court of Cassation and the sum of BEF 460,000 for the costs of his representation before the Commission and then the Court.

C. Default interest

183. According to the information available to the Court, the statutory rate of interest applicable in Belgium at the date of adoption of the present judgment is 7% per annum.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention in respect of Mr Coëme, in that the lack of implementing legislation governing the procedure for the trial of ministers under Article 103 of the Constitution deprived him of a fair trial;

2. *Holds* unanimously that it is not necessary to examine the complaints raised on that account under paragraphs 2 and 3 of Article 6 of the Convention;

3. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention in that the Court of Cassation was not a tribunal “established by law” within the meaning of Article 6 to try Mr Mazy, Mr Stalport, Mr Hermanus and Mr Javeau;

4. *Holds* unanimously that it is not necessary to examine the complaint raised on that account under Article 14 of the Convention;

5. Holds unanimously that it is not necessary to examine the complaint of Mr Mazy, Mr Stalport, Mr Hermanus and Mr Javeau that no law on procedure had been enacted pursuant to Article 103 of the Constitution;

6. Holds by four votes to three that there has been no violation of Article 6 § 1 of the Convention on account of the Court of Cassation's refusal to submit the preliminary questions concerning the connection rule and extension of the limitation period to the Administrative Jurisdiction and Procedure Court;

7. Holds unanimously that it is not necessary to examine the complaint under Article 13 of the Convention concerning the refusal to submit the preliminary questions to the Administrative Jurisdiction and Procedure Court;

8. Holds by four votes to three that there has been no violation of Article 6 § 1 of the Convention as regards the allegation that the Court of Cassation is not an independent and impartial tribunal;

9. Holds by four votes to three that there has been no violation of Article 6 § 1 of the Convention as regards the interview with Mr Stalport;

10. Holds unanimously that there has been no violation of Article 6 § 1 of the Convention as regards the length of the criminal proceedings against Mr Hermanus;

11. Holds unanimously that there has been no violation of Article 7 of the Convention;

12. Holds unanimously that the respondent State is to pay, within three months from the date on which the present judgment becomes final in accordance with Article 44 § 2 of the Convention, BEF 300,000 (three hundred thousand Belgian francs), for non-pecuniary damage, to Mr Mazy, to Mr Hermanus, to Mr Javeau and to the heirs of Mr Stalport;

13. Holds unanimously that the respondent State is to pay, within the same three-month period, for costs and expenses, BEF 400,000 (four hundred thousand Belgian francs) to Mr Coëme and BEF 760,000 (seven hundred and sixty thousand Belgian francs) to Mr Mazy, to Mr Hermanus, to Mr Javeau and to the heirs of Mr Stalport;

14. Holds unanimously that simple interest at an annual rate of 7% shall be payable on these sums from the expiry of the above-mentioned three months until settlement;

15. Dismisses unanimously the remainder of the claims for just satisfaction.

Done in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 22 June 2000.

Erik FRIBERGH Christos ROZAKIS

Registrar President

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

(a) concurring opinion of Mr Conforti;

(b) partly concurring, partly dissenting opinion of Mr Baka;

(c) partly dissenting opinion of Mr Lorenzen joined by Mr Rozakis.

C.L.R.

E.F.

CONCURRING OPINION OF JUDGE CONFORTI

(Translation)

The only part of the judgment on which I disagree with the majority is the reasoning which led it to distinguish the position of Mr Coëme from that of the other applicants.

In my opinion, the essential element which breached Article 6 of the Convention in the present case, as regards both the procedure followed for Mr Coëme and application of the connection rule to the other applicants, was the lack of legislation implementing Article 103 of the Constitution at the time of the trial in the Court of Cassation.

It is true that, as far as Mr Coëme was concerned, the Court of Cassation did already have jurisdiction under Article 103. It is also true that, regard being had to legal theory and to the information provided by the Principal Public Prosecutor to the lawyers of some of the applicants, the applicants concerned could have expected that the procedure of the ordinary criminal courts would be applied to them. However, in a country of codified law like Belgium – where the rules of procedure are essentially a matter for Parliament and where successive Constitutions over a period of more than a hundred and fifty years have called on Parliament to adopt rules to be followed for the indictment and trial of ministers – it cannot be considered that the procedure was established by law. To say that, for Mr Coëme, it was simply a matter of equality of arms and the fairness of the procedure is to play down the most important aspect of the case.

I must make it clear that the above remarks are not intended to suggest that the Belgian Court of Cassation as such, which I hold in high esteem, is not a tribunal established by law. The requirement that a tribunal must be “established by law”, laid down by Article 6 § 1 of the Convention, is obviously not satisfied where, although the tribunal concerned is legally constituted, the procedural rules to be applied in a particular case have not been established by law, and that is the position that our Court found to obtain as regards the connection rule.

In conclusion, I consider that Mr Coëme was not tried by a tribunal established by law for the purposes of Article 6 any more than the applicants tried on account of the connection rule were.

PARTLY CONCURRING, PARTLY DISSENTING OPINION OF JUDGE BAKA

I fully share the concurring opinion of Judge Conforti that the procedural rules to be applied by the Court of Cassation in Belgium had not been established in the present case. Consequently, I also consider that because of this procedural deficiency Mr Coëme was not tried by a tribunal established by law for the purposes of Article 6 § 1 of the Convention. His position in that respect did not differ from that of the other applicants.

On the other hand, I agree with the dissenting opinion of Judge Lorenzen. If the Court finds that a national court was not established by law under Article 6 § 1, either because it was not legally constituted or – as was the situation in the present case – because its procedure has not been established, this finding makes it unnecessary to examine further some of the other Article 6 § 1 complaints. That is why I voted against the majority under points 6, 8 and 9 in the operative part of the judgment.

PARTLY DISSENTING OPINION OF JUDGE LORENZEN JOINED BY JUDGE ROZAKIS

I agree with the finding of the majority in paragraph 108 of the judgment that the connection rule was not established by law and that accordingly the Court of Cassation was not a tribunal “established by law” within the meaning of Article 6 of the Convention to try Mr Mazy, Mr Stalport, Mr Hermanus and Mr Javeau.

The Court has held in a number of judgments that if a violation of Article 6 § 1 has been found because a court was not independent and impartial, it is not necessary to consider other complaints under Article 6 relating to the proceedings in that court (see for example the Findlay v. the United Kingdom judgment of 25 February 1997, *Reports of Judgments and Decisions* 1997-I, pp. 282-83, § 80, and the Incal v. Turkey judgment of 9 June 1998, *Reports* 1998-IV, p. 1573, § 74).

That case-law is in my opinion applicable *a fortiori* to situations where a violation of Article 6 § 1 has been found because the court does not fulfil the requirements to be considered “established by law”. Accordingly, I do not find it necessary to examine the alleged violations of Article 6 § 1 under I.B (the preliminary question to the Administrative Jurisdiction and Procedure Court), I.C (whether the Court of Cassation was an independent and impartial tribunal) and I.D (whether the use of Mr Stalport's interview on 16 March 1994 as evidence infringed his right to a fair trial). The complaint of Mr Hermanus concerning the length of the proceedings raises on the other hand an issue which is not covered by the finding that the Court of Cassation could not be considered “established by law” in his case. However, for the reasons expressed in the judgment, I agree that there has been no violation of Article 6 § 1 in this respect.

[1]. *Note by the Registry*. The Court's decision is obtainable from the Registry.

1. See the record of the interview on 16 March 1994, replies to the second and third questions, quoted in paragraph [2]7 above.

[2]. See the record of the interview on 8 June 1993, paragraph 21 above.