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

SECOND SECTION

CASE OF KOUA POIRREZ v. FRANCE
(Application no. 40892/98)

JUDGMENT

STRASBOURG

30 September 2003

FINAL

30/12/2003

In the case of Koua Poirrez v. France,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr A.B. BAKA, *President*,
Mr J.-P. COSTA,
Mr Gaukur JÖRUNDSSON,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI, *judges*,
and Mr T.L. EARLY, *Deputy Section Registrar*,

Having deliberated in private on 26 March 2002 and 9 September 2003,

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

PROCEDURE

1. The case originated in an application (no. 40892/98) against the French Republic 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 an Ivory Coast national, Mr Ettien Laurent Koua Poirrez ("the applicant"), on 12 March 1998.

2. The applicant was represented before the Court by Mr J.-F. Gondard, of the Seine-Saint-Denis Bar. The French Government ("the Government") were represented by their Agent, Mr R. Abraham, Director of Legal Affairs at the Ministry of Foreign Affairs.

3. The applicant complained, in particular, of a violation of Article 6 § 1 of the Convention and Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 on account of the refusal to award him an allowance for disabled adults and the length of the subsequent proceedings.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 13 March 2001, the Chamber declared the application partly admissible.

7. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*) but that additional information needed to be gathered, the parties replied in writing to each other's observations. Observations were also received from Mr Bernard Poirrez, the applicant's adoptive father, whom the President had granted leave to intervene in the written proceedings (Article 36 § 2 of the Convention and Rule 61 § 3). The Government replied to those comments (Rule 61 § 5).

8. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1966 and lives in the Paris area.

10. The applicant has been physically disabled since the age of seven. He was adopted by Mr Bernard Poirrez, a French national, under the terms of a judgment of 28 July 1987 of the Bouaké Court of First Instance. On 11 December 1987 the Bobigny *tribunal de grande instance* granted authority for the judgment to be executed.

11. In December 1987 the applicant applied for a declaration of French nationality. His application was found inadmissible on the ground that he was over 18 years old when it was submitted. He appealed to the Bobigny *tribunal de grande instance*, which gave judgment on 15 January 1988 declaring the application inadmissible. That judgment was upheld by the Paris Court of Appeal on 24 June 1993.

12. In the meantime, the Seine-Saint-Denis Occupational Counselling and Rehabilitation Board (*commission technique d'orientation et de reclassement professionnel* – "COTOREP") registered the applicant as 80% disabled and issued him with an invalids' card. In May 1990 he applied to the Family Allowances Office (*caisse d'allocations familiales* – "CAF") for the Paris area for an "allowance for disabled adults" (*allocation aux adultes handicapés* – "AAH"). In support of his application, he stated that he was a French resident of Ivory Coast nationality and the adopted son of a French national residing and working in France. His application was rejected on the ground that, as he was neither a French national nor a national of a country which had entered into a reciprocity agreement with France in respect of the AAH, he did not satisfy the relevant conditions laid down in Article L. 821-1 of the Social Security Code (see paragraph 24 below).

13. On 13 June 1990 the applicant brought his case before the Friendly Settlements Board of the Family Allowances Office.

14. In a decision of 6 September 1990, the Board confirmed the CAF's decision on the ground that the applicant did not satisfy the conditions laid down in Article L. 821-1 of the Social Security Code. The authorities noted that the Ivory Coast, of which the applicant was a national, had not signed a reciprocity agreement with France in respect of the AAH.

15. On 26 February 1991 the applicant lodged an application with the Bobigny Social Security Tribunal for judicial review of the decision rejecting his claim. The applicant and the CAF lodged their pleadings on 26 February and 25 April 1991 respectively.

16. In a judgment of 12 June 1991, the court decided to stay the proceedings pending the referral of a question to the European Court of Justice (ECJ) for a preliminary ruling. The question was whether the decision not to award the allowance for disabled adults to the applicant, a member of the family (adopted son) of a European Community national resident in the country of which the head of household (the adoptive parent) had the nationality (in accordance with French legislation) was compatible with the European provisions contained in the Treaty establishing the European Economic Community ("the EEC Treaty"). In a judgment of 16 December 1992 the ECJ replied to the question with a ruling that the refusal to award the benefit to the applicant was not incompatible with the relevant Articles of the EEC Treaty. It pointed out that the applicant's adoptive father could not claim to be a "migrant worker", which was the category to which the European provisions in question applied. It based that finding on the fact that the applicant's adoptive father, being French, had always lived and worked in France. The ECJ accordingly concluded that the applicant could not "rely on Community law in support of his application for a social security benefit awarded to migrant workers and members of the family". In doing so, it did not examine the question whether the refusal to award the applicant the allowance was, in general, compatible with Community law or not.

17. The applicant started receiving the minimum welfare benefit (*revenu minimum d'insertion* – "RMI") on 17 December 1991.

18. On 31 March 1993, on the strength of the reply from the ECJ, the Bobigny Social Security Tribunal rejected the application as ill-founded. The applicant appealed against that decision on 27 July 1993. He applied for legal aid on 23 November 1993.

19. On 14 January 1994 the Legal Aid Office at the Paris *tribunal de grande instance* rejected the application for legal aid to fund the applicant's appeal on the ground that the request was manifestly ill-founded. On 21 February 1994 the applicant appealed against that decision. In a decision of 5 May 1994 the President of the Legal Aid Office allowed the appeal.

20. In a judgment of 19 June 1995, the Paris Court of Appeal upheld the decision of 31 March 1993. It referred to the provisions of Article L. 821-1 of the Social Security Code in the wording then applicable and to the lack of a reciprocity agreement between France and the country of the applicant's nationality in respect of the allowance.

21. On 2 May 1996 the applicant appealed to the Court of Cassation on points of law. The applicant and the CAF lodged their pleadings on 1 August and 21 October 1996 respectively. On 2 June 1997 a reporting judge was appointed. He filed his report on 10 October 1997. A hearing before the Court of Cassation took place on 27 November 1997. In a judgment of 22 January 1998, the Court of Cassation dismissed the appeal lodged by the applicant and worded as follows:

> "With regard to the applicant's ground of appeal that '... Article 26 of the Covenant of New York prohibits any discrimination, including on grounds of national origin; that, in refusing to award Mr Koua Poirrez an allowance for disabled adults on grounds of his nationality, the Court of Appeal disregarded the binding nature of that provision, which it subsequently breached by refusing to apply ...' "

22. The Court of Cassation ruled as follows:

> "Article 26 of the International Covenant of New York of 19 December 1966, which prohibits any discrimination on grounds of national origin, cannot be construed as forbidding all nationality criteria on which domestic law makes the availability of a right conditional.
>
> After reiterating the terms of Article L. 821-1 of the Social Security Code, which restricts the right to an award of the allowance for disabled adults to French nationals and nationals of a country that has signed a reciprocity agreement, the Court of Appeal properly decided that Mr Koua Poirrez, an Ivory Coast national, could not claim that allowance in the absence of a reciprocity agreement between France and the Ivory Coast. ..."

23. Following the enactment of the Act of 11 May 1998, which lifted the nationality condition for awards of non-contributory allowances, the applicant reapplied for an allowance for disabled adults from 1 June 1998. His application was rejected by the CAF, whereupon he applied to the Social Security Tribunal again. In a judgment of 11 June 1999 that court declared his application ill-founded on the ground that the applicant had not complied with the formal conditions governing the submission of his application for the allowance because he had not submitted to the CAF all the documentary evidence of his financial situation. The applicant appealed. According to information provided by the Government and undisputed by the applicant, the COTOREP re-examined the applicant's claim, at the request of the CAF, and awarded him the allowance for the period from June 1998 to November 2000. It is not apparent from the file whether the applicant continued to receive the benefit after that date. In any event, the applicant has not made any complaint regarding the current period and has not alleged that the allowance has been withdrawn.

II. RELEVANT LAW

A. Domestic law

24. The Disabled Persons Act of 30 June 1975 (Law no. 75-534) provides for the benefit of an allowance for disabled adults. Article L. 821-1 of the Social Security Code, as worded prior to the entry into force of the Act of 11 May 1998, provided for the award of this minimum income to any disabled person, subject to the fulfilment of certain conditions:

> "Any French national or national of a country that has signed a reciprocity agreement in respect of benefits payable to disabled adults resident in metropolitan France ... who is over the age of entitlement to the special education allowance provided for in Article L. 541-1 and whose permanent disability is at least equal to the percentage determined by decree, shall receive an allowance for disabled adults if they are not eligible for an old-age or invalidity or employment-injury benefit under a social security or retirement pension scheme or special legislation of an amount at least equal to that of the allowance."

25. The Aliens (Conditions of Entry, Residence and Asylum) Act of 11 May 1998 (Law no. 98-349) abolished the nationality condition. Since that Act was passed, any foreign national lawfully resident in France may claim the allowance.

26. With regard to another benefit, namely the supplementary allowance paid by the National Solidarity Fund, the Court of Cassation has ruled that the refusal to award the benefit solely on the ground of their foreign nationality to claimants resident in France who received an invalidity pension under the French scheme breached Article 14 of the Convention and Article 1 of Protocol No. 1 (Social Division, judgment of 14 January 1999, published in the *Bulletin*).

B. Recommendation of the Committee of Ministers No. R (92) 6

27. Recommendation No. R (92) 6 on a coherent policy for people with disabilities, adopted by the Committee of Ministers of the Council of Europe on 9 April 1992, cross-refers to its Appendix, which provides, *inter alia*, as follows:

> "...
>
> **2. Aims**
>
> All people who are disabled or are in danger of becoming so, regardless of their age and race, and of the nature, origin, degree or severity of their disablement, should have a right to the individual assistance required to enable them to lead a life as far as possible commensurate with their ability and potential. Through a coordinated set of measures they should be enabled to:
>
> ...

– have a minimum livelihood, if appropriate by means of social benefits;

...

4. General directives

To implement this policy States should take the following steps:

...

– ensure that people with disabilities enjoy a respectable standard of life, if necessary by means of economic benefits and social services;

...

Social provisions remain, however, in many spheres an essential means of either activating and supporting self-help or initiating and promoting rehabilitation and integration processes. ...

IX. Social, economic and legal protection

1. Scope and principles

1.1. In order to avoid or at least to alleviate difficult situations, sidelining and discrimination, to guarantee equal opportunity for people with disabilities, and to develop personal autonomy, economic independence and social integration, they should have the right to economic and social security and to a decent living standard by:

– a minimum livelihood;

– specific allowances; and

– a system of social protection.

1.2. If there is a global system of economic and social protection for the population as a whole, people with disabilities should be able to benefit fully from it, and their specific needs must be taken into consideration. In so far as this does not exist, a specific system must be established for continuous provision for people with disabilities.

1.3. Socio-economic protection must be ensured by financial benefits and social services. This protection must be based on a precise assessment of the needs and the situation of people with disabilities which must be periodically reviewed in order to take into account any changes in personal circumstances which had been the reason for such protection.

1.4. Economic protection measures must be considered as one of the elements of the integration process for people with disabilities.

2. Economic and social security

2.1. In addition to social benefits granted to people with disabilities as well as to other people (for example unemployment benefits), the economic and social security system should grant:

– special benefits in cash or in kind, for people with disabilities, covering rehabilitation and other special needs, such as medical treatment, vocational training, technical aids, access to and adaptation of housing, transport and communication facilities;

– special financial support for families who have a child with a disability;

– adequate assistance, for example installation allowances or investment loans for people with disabilities wishing to become self-employed;

– a minimum livelihood covering their and their families' basic needs and requirements for people with a degree of disablement which prevents them from working;

– benefits for people who need the continuous assistance of another person because of their disablement;

– benefits to people who are unable to seek employment because of care provided to a person with a disability;

– where financial assistance is given up in order to take up employment, this financial assistance should be protected and guaranteed if employment proves unfeasible;

...”

28. This recommendation also states that “the exercise of basic legal rights of people with disabilities should be protected, including being free from discrimination”.

C. The European Social Charter

29. The European Committee of Social Rights, in Conclusions concerning Article 12 of the Charter in respect of France (15th report, reference period 1997-1998; Conclusions XV-1, vol. 1, p. 262, Council of Europe Publishing, 2000), states as follows:

“The Committee notes that Act no. 98-349 on entry of foreign nationals into France, their residence in the country and the right of asylum brings the French Social Security Code into line with the Social Charter. The reciprocity requirement for awarding the AAH and the FSV supplementary allowances to foreigners had been found in breach of the Charter by the Committee since supervision cycle VI for the former and XIII-2 for the latter. Since this requirement has been lifted – the only condition now applied is that the beneficiary be lawfully resident in France (new Article L 816-1 of the Social Security Code) – nationals of all Contracting Parties are now on an equal footing with French nationals. The Committee considers that the situation is now in conformity with Article 12 para. 4 of the Charter.”

THE LAW

30. In the first place, the applicant challenged the Court's decision of 13 March 2001 declaring his application partly admissible in that it rejected as manifestly ill-founded his complaint about the procedure concerning his application for French nationality.

31. The Court considers that the arguments advanced by the applicant are not such as to call into question its decision on that point.

I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1

32. The applicant complained of a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1. Those provisions are worded as follows:

Article 14 of the Convention

"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."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Applicability of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1

1. Arguments before the Court

33. The Government contended that the right of property protected by Article 1 of Protocol No. 1 did not include non-contributory benefits such as the allowance for disabled adults. That allowance took the form of assistance rather than an actual right to payment or an acquired right, as could be seen from the fact that, under French law, it was not a predetermined allowance and was subject to conditions. The Government submitted that *Gaygusuz v. Austria* (judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV) supported their contention since, in their view, the Court had expressly pointed out that entitlement to a social benefit was linked to the payment of contributions. In the Government's submission, the decisions given in *Michael Matthews*, in which they agreed with the British Government's submissions, did not enable it to be determined whether or not the benefit in question was a "possession" within the meaning of Article 1 of Protocol No. 1 (see *Michael Matthews v. the United Kingdom*, no. 40302/98, decision of 28 November

2000 and judgment of 15 July 2002). The Government submitted that the complaint was therefore inadmissible *ratione materiae*.

34. In the applicant's submission, the allowance for disabled adults amounted to a "possession" within the meaning of Article 1 of Protocol No. 1 and the refusal to award it to him had breached his right to peaceful enjoyment of that possession. He argued that the refusal had been based on a discriminatory criterion, namely the fact of his being a foreign national from a non-European Union country that had not signed a reciprocity agreement in respect of the allowance for disabled adults. He submitted that the concept of "possession" had been widely extended by the Court's case-law.

The applicant also pointed out, among other things, that in *Diop*, which concerned the crystallisation of retirement pensions paid to foreign nationals, the Paris Administrative Court of Appeal, whose judgment was upheld by the *Conseil d'Etat* on 30 November 2001, had dismissed the argument advanced by the Minister for the Economy, Finance and Industry that the pension was not a "possession" within the meaning of Article 1 of Protocol No. 1 because no correlation could be established between the contributions paid and the pensions awarded by the State, which, moreover, funded that special scheme from its budget. The applicant, referring to further examples of administrative case-law, inferred from this that the distinction as to whether the benefit was contributory or not was invalid. He also referred to the example of the minimum welfare benefit (that he had received for a time), which varied according to any income from a professional activity and which could potentially be claimed by anyone aged 25 who had never worked and which was not subject to any nationality condition. Accordingly, he considered himself entitled to a right that had been unlawfully denied him for discriminatory reasons regarding his nationality.

35. Mr Bernard Poirrez, the applicant's adoptive father, who had been given leave to intervene in the present proceedings, submitted that the AAH was a "possession" within the meaning of Article 1 of Protocol No. 1.

2. The Court's assessment

36. The Court reiterates that Article 14 complements the other substantive provisions of the Convention and its Protocols. It has no independent existence, since it has effect solely in relation to the "rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not necessarily presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts in issue fall within the ambit of one or more of the latter (see *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, judgment of 28 May 1985, Series A no. 94, p. 35, § 71, and *Inze v. Austria*, judgment of 28 October 1987, Series A no. 126, p. 17, § 36).

37. The Court also points out that it has already held that the right to emergency assistance - in so far as provided for in the applicable legislation – is a pecuniary right for the purposes of Article 1 of Protocol No. 1. That provision is therefore applicable without it being necessary to rely solely on the link between entitlement to emergency assistance and the obligation to pay "taxes or other contributions" (see *Gaygusuz*, cited above, p. 1142, § 41). In that connection, the Court considers that the fact that, in that case, the applicant had paid contributions and was thus entitled to emergency assistance (ibid., pp. 1141-42, § 39) does not mean, by converse implication, that a non-contributory social benefit such as the AAH does not also give rise to a pecuniary right for the purposes of Article 1 of Protocol No. 1.

38. In the instant case, it was not disputed that the applicant had been registered as 80% disabled and issued with an invalids' card. His claim for an allowance for disabled adults was refused solely on the ground that he was neither a French national nor a national of a country that had signed a reciprocity agreement in respect of the AAH.

Accordingly, the Court notes that the allowance could be awarded both to French nationals and to nationals of a country that had signed a reciprocity agreement with France to that end.

39. In the Court's view, the fact that the applicant's country of origin had not signed such an agreement, whereas the applicant had been issued with an invalids' card, resided in France, was the adopted son of a French citizen residing and working in France and, lastly, had previously been receiving the minimum welfare benefit, did not in itself justify refusing him the allowance in question. As the allowance is moreover intended for persons with a disability, the Court also refers to Recommendation No. R (92) 6 of the Committee of Ministers, adopted on 9 April 1992 (see paragraph 27 above), which is aimed at the adoption of a policy and measures adapted to the needs of persons with disabilities, and to the conclusions of the European Committee of Social Rights (see paragraph 29 above).

40. Furthermore, the Court notes that the nationality condition for the award of the allowance was abolished by the Act of 11 May 1998. The AAH has therefore been awarded without any distinction on grounds of nationality since that Act was enacted. The applicant has indeed received it since June 1998, that is immediately after the Act was passed.

41. The Court considers finally that the refusal to award the allowance to the applicant prior to June 1998 was based on criteria – possession of French nationality or the nationality of a country having signed a reciprocity agreement with France in respect of the AAH – which amount to a distinction for the purposes of Article 14 of the Convention.

42. Having regard to all the foregoing considerations, the Court holds that the applicant had a pecuniary right for the purposes of Article 1 of

Protocol No. 1 and that Article 14 of the Convention is also applicable in the instant case.

B. Compliance with Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1

1. Arguments before the Court

43. The Government submitted that the applicant's complaint based on discrimination contrary to Article 14 was ill-founded. They pointed out that the distinction made, prior to the 1998 Act, between nationals and foreigners when awarding the allowance for disabled adults pursued a legitimate aim, which was a balance between the State's welfare income and expenditure. The requirement of proportionality had also been satisfied, as foreign nationals had not been deprived of all resources since they were entitled to, among other things, the RMI. The Government also pointed out that, although the applicant had been unable to acquire French nationality by declaration, he could have requested his naturalisation and benefited from the allowance for disabled adults without being disqualified by the nationality condition.

44. The applicant disputed that submission, considering that the allowance for disabled adults was an actual pecuniary right acquired subject to fulfilment of the conditions as to a maximum income limit and a particular disability rate, which had been the case when he had first applied in 1990. The CAF's refusal to award him the allowance had thus infringed his right on the ground of his nationality.

45. Mr Bernard Poirrez submitted that nationality was also referred to in Articles 2 § 2, 3 and 4 of Protocol No. 4, and that it had served as a basis for discrimination regarding awards of the allowance in question.

2. The Court's assessment

46. According to the Court's case-law, a distinction is discriminatory, for the purposes of Article 14, if it "has no objective and reasonable justification", that is if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised". Moreover the Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (see, *inter alia*, *Gaygusuz*, cited above, p. 1142, § 42; *Larkos v. Cyprus* [GC], no. 29515/95, § 29, ECHR 1999-I; and *Thlimmenos v. Greece* [GC], no. 34369/97, § 40, ECHR 2000-IV). However, very weighty reasons would have to be put forward before the Court could regard a difference of treatment based exclusively on the ground of nationality as compatible with the Convention (see *Gaygusuz*, cited above, p. 1142, § 42).

47. In the instant case, the Court notes in the first place that the applicant was legally resident in France, where he received the minimum welfare benefit, which is not subject to the nationality condition. It reiterates that the domestic authorities' refusal to award him the allowance in issue was based exclusively on the fact that he did not have the requisite nationality, which was a precondition for obtaining the allowance under Article L. 821-1 of the Social Security Code as applicable at the material time.

48. In addition, it has not been established, or even alleged, that the applicant did not satisfy the other statutory conditions entitling him to the social benefit in question. In that connection, the Court can only note that the applicant did receive the AAH after the 11 May 1998 Act had abolished the nationality condition. He was therefore in a like situation to that of French nationals or nationals of a country that had signed a reciprocity agreement as regards his right to receive the benefit. The Court notes that the Court of Cassation also considered that the refusal – solely on grounds of foreign nationality – to award the supplementary allowance payable by the National Solidarity Fund to a claimant resident in France who received an invalidity pension under the French scheme breached Article 14 of the Convention and Article 1 of Protocol No. 1 (see paragraph 26 above).

49. The Court therefore finds the arguments advanced by the Government unpersuasive. The difference in treatment regarding entitlement to social benefits between French nationals or nationals of a country having signed a reciprocity agreement and other foreign nationals was not based on any "objective and reasonable justification" (see, conversely, *Moustaquim v. Belgium*, judgment of 18 February 1991, Series A no. 193, p. 20, § 49). Even though, at the material time, France was not bound by reciprocity agreements with the Ivory Coast, it undertook, when ratifying the Convention, to secure "to everyone within [its] jurisdiction", which the applicant indisputably was, the rights and freedoms defined in Section I of the Convention (see *Gaygusuz*, cited above, p. 1143, § 51).

50. There has accordingly been a breach of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

51. The applicant maintained that the proceedings had not been conducted within a reasonable time as required by Article 6 § 1 of the Convention, the relevant part of which provides:

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

1. Arguments before the Court

52. The Government's primary submission was that the complaint was inadmissible because it was incompatible *ratione materiae* with the provisions of Article 6 § 1. The applicant could not claim to have a "civil right" within the meaning of that provision, since the legislation applicable at the material time did not entitle him to obtain the allowance in question.

53. In the alternative, the Government submitted that the complaint based on the excessive length of the proceedings was ill-founded on account of the undeniable complexity of the case (illustrated, among other things, by the need for the trial judge to refer a question to the European Court of Justice for a preliminary ruling) and on account of its reduced importance on the merits, which meant there was no need for special diligence (since the applicant was entitled to the RMI). The Government also stressed that the applicant had instituted numerous proceedings and that the courts dealing with the case had been sufficiently diligent in deciding it. While acknowledging a certain period of inactivity before the Paris Court of Appeal and the Court of Cassation, they reiterated that the first had considered it necessary to obtain an opinion from Principal State Counsel and that the Court of Cassation had conducted the proceedings diligently from the time of the reporting judge's appointment in June 1997.

54. The applicant contested that submission. He argued that the dispute did concern a "civil right" within the meaning of Article 6 § 1 because he should have been awarded the allowance in issue on account of his registered invalidity and regardless of his nationality. He pointed out, in particular, that he could rely on that right on the basis of provisions of European law that took precedence over French law. He referred to a judgment of the Court of Cassation of 17 October 1996 upholding an award of the AAH to an Algerian on the ground that there was an agreement between Algeria and the EEC, and to a judgment of the Haute-Savoie Social Security Tribunal of 15 May 1997 basing its decision to award the benefit on the Lomé Convention. Lastly, the applicant disputed the Government's submissions regarding the length of the proceedings, arguing that his case had not been sufficiently complex to justify the length of the proceedings and that the real reason for the excessive length had been the lack of diligence on the part of the French authorities.

55. Mr Bernard Poirrez submitted that the length of the proceedings was unreasonable and that the responsibility for this lay principally with the authorities, which had failed to grasp or, more seriously, had breached the hierarchy of legal norms.

2. The Court's assessment

56. Regarding the applicability of Article 6 § 1 of the Convention, the Court refers to its finding that the applicant was entitled to the AAH, which was a pecuniary right for the purposes of Article 1 of Protocol No. 1 (see paragraph 42 above). Accordingly, the Court concludes that the right was a

"civil" one. Furthermore, it cannot be disputed that this pecuniary "right" was the subject of a "dispute" before the domestic courts (see also *Mennitto v. Italy* [GC], no. 33804/96, §§ 23 et seq., ECHR 2000-X).

57. Article 6 § 1 is therefore applicable in the instant case.

58. The Court notes that the period to be considered started on 13 June 1990 when the case was referred to the Friendly Settlements Board and ended on 22 January 1998 with the judgment of the Court of Cassation. It therefore lasted seven years, seven months and nine days for three levels of jurisdiction.

59. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria laid down in its case-law, especially the complexity of the case and the conduct of the applicant and the relevant authorities (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

60. It agrees with the Government that there was a certain degree of complexity in the instant case.

61. With regard to the conduct of the parties, the Court considers that the applicant cannot be criticised for having taken full advantage of the remedies available to him. With regard to the domestic authorities, it does not find any significant period of inactivity attributable to them. The Court also reiterates that the length of the proceedings before the ECJ, namely over eighteen months in the present case, cannot be taken into consideration (see *Pafitis and Others v. Greece*, judgment of 26 February 1998, *Reports* 1998-I, p. 459, § 95).

62. Lastly, the financial stakes in the proceedings, although substantial, are not decisive in the instant case because the applicant received the RMI from 17 December 1991 (see paragraph 17 above).

63. Having regard to the foregoing, the Court considers that the length of the proceedings did not exceed the "reasonable time" required by Article 6 § 1.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The applicant claimed 184,000 French francs (FRF), that is 28,050 euros (EUR), for the pecuniary loss sustained as a result of the difference in amount between the RMI and the AAH between 1990 and 1998. He also claimed FRF 500,000 (EUR 76,224) for the non-pecuniary damage sustained as a result of the refusal to grant him French nationality, FRF 200,000 (EUR 30,489) for the French State's resistance and FRF 100,000 (EUR 15,244) for the length of the proceedings.

67. Mr Bernard Poirrez, the third party, claimed FRF 400,000 (EUR 60,979) for non-pecuniary damage distinct from that sustained by his son, and FRF 100,000 (EUR 15,244) for the length of the proceedings.

68. The Government submitted, *inter alia*, that the applicant could not claim compensation for the refusal to grant him French nationality, that he had ceased to be a victim since the 1998 Act was passed and that, in any event, a finding of a violation of Article 14 of the Convention and of Article 1 of Protocol No. 1 would not give rise to a right to any compensation.

Regarding the complaint based on the length of the proceedings, they submitted that, in respect of the amounts claimed under that head and under the head of costs and expenses, the sum of FRF 40,000 (EUR 6,079.96) would be appropriate just satisfaction.

Lastly, the Government maintained that Mr Bernard Poirrez could not claim any compensation under Article 41 because he was not an applicant.

69. The Court reiterates first of all that, under Article 36 § 2 of the Convention and Rule 61 § 3 of the Rules of Court, the President of the Court may, among other things, invite any person concerned who is not the applicant to submit written comments or take part in hearings. Mr Bernard Poirrez was given leave to intervene, which conferred only third-party and not applicant status on him, as is evident from the wording of the above-cited provisions.

70. With regard to the applicant, the Court reiterates that the complaint based on the refusal to grant him French nationality was rejected by the Court's decision of 13 March 2001 declaring his application partly admissible. Accordingly, no just satisfaction can be awarded under that head.

As to the rest, without wishing to speculate as to the amount of AAH to which the applicant was entitled and the date on which he could have claimed it, the Court must nonetheless take into account the fact that he undoubtedly suffered pecuniary and non-pecuniary damage. Making an assessment on an equitable basis, as is required by Article 41 of the Convention, it awards him EUR 20,000 to cover all the heads of damage.

B. Costs and expenses

71. The applicant claimed FRF 40,000 net of tax (EUR 6,079.96) for costs and expenses, having regard to the "extent of the research and the dilution of the proceedings over time".

72. The Government did not directly express a view, their submissions covering the applicant's claims regarding his complaint under Article 6 and for costs (see paragraph 68 above).

73. If the Court finds that there has been a violation of the Convention, it may award an applicant not only the costs and expenses incurred before the Strasbourg institutions, but also those incurred before the national courts for the prevention or redress of the violation (see, among other authorities, *Hertel v. Switzerland*, judgment of 25 August 1998, *Reports* 1998-VI, p. 2334, § 63). An award in respect of costs and expenses before the Court can be made only in so far as they have been actually and necessarily incurred and are reasonable as to quantum (see, for example, *Kress v. France* [GC], no. 39594/98, § 102, ECHR 2001-VI).

74. In the instant case, the Court finds the amounts claimed by the applicant for costs manifestly excessive. Furthermore, as no breakdown has been provided, there is no way of ascertaining the extent to which they were incurred for the prevention or redress of just the violations found by the Court. That being so, in the light of the written and oral steps evidently taken by his lawyer, the Court awards the applicant EUR 3,000 under this head.

C. Default interest

75. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Dismisses* unanimously the Government's preliminary objections;

2. *Holds* by six votes to one that there has been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1;

3. *Holds* unanimously that there has been no violation of Article 6 § 1 of the Convention;

4. *Holds* unanimously

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros) in respect of all heads of damage, plus EUR 3,000 (three thousand euros) in respect of costs and expenses, plus any tax that may be chargeable;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in French, and notified in writing on 30 September 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence EARLY
Deputy Registrar

András BAKA
President

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

A.B.B.
T.L.E.

DISSENTING OPINION OF JUDGE MULARONI

(Translation)

I cannot share the opinion of the majority that there has been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

Article 1 of Protocol No. 1 protects the right of property. It seems to me that, until now, the Court has tended to interpret that Article restrictively, considering that States enjoy a very wide margin of appreciation in the area.

The Court has clarified the notion of "possession" in its case-law: Article 1 of Protocol No. 1 applies only to existing possessions (see *Marckx v. Belgium*, judgment of 13 June 1979, Series A no. 31, p. 23, § 50); where a debt is concerned, it must be sufficiently established to be enforceable (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59).

The majority have found a violation of Article 1 of Protocol No. 1 taken in conjunction with Article 14 of the Convention, basing their finding on *Gaygusuz v. Austria* (judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1130 et seq.). To my mind, however, there is an essential difference between the two cases, namely the payment of contributions.

In *Gaygusuz* (pp. 1141-42, § 39) the Court followed the Commission's reasoning and concluded that Article 14, taken in conjunction with Article 1 of Protocol No. 1, was applicable (and had been violated), after finding that "[e]ntitlement to the social benefit is therefore linked to the payment of contributions to the unemployment insurance fund, which is a precondition for the payment of unemployment benefit ... It follows that there is no entitlement to emergency assistance where such contributions have not been made".

With regard to the right to a pension, the Court has specified that that right is not, as such, guaranteed by the Convention, even if it has acknowledged that it can be assimilated to a property right where, for example, an employer has given a more general undertaking to pay a pension on conditions that can be considered to be part of the employment contract (see *Azinas v. Cyprus*, no. 56679/00, §§ 32-34, 20 June 2002).

Admittedly, in *Mennitto v. Italy* ([GC], no. 33804/96, ECHR 2000-X), the Court concluded that Article 6 § 1 was applicable regarding the grant of allowances to families caring for disabled members of their household directly in their own homes. In that case, however, the committee in charge of ensuring that the claims met the statutory requirements had considered that the applicant's son satisfied the conditions entitling the families concerned to payment of the allowance. The Court concluded that Article 6 § 1 was applicable after finding that the Administrative Court and the

Consiglio di Stato had affirmed that the administrative authorities had no discretion and that the *Consiglio di Stato* had held that the Region was under a duty to provide the necessary funds to guarantee payment of the allowance to beneficiaries in the amount laid down by law. The Court also noted that the applicant had already received two monthly instalments, so that he could have been led to believe that he did indeed have such a right.

In the light of the foregoing, I have grave doubts as to the possibility of concluding that Article 1 of Protocol No. 1 is applicable (and, consequently, that there has been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1). I do not see how, in the present case, the allowance for disabled adults, in so far as it constitutes a non-contributory social benefit, can be regarded as a "possession" within the meaning of Article 1 of Protocol No. 1.

Having said that, I am nonetheless a long way from concluding that there has not been a violation of the Convention.

In my opinion, this case goes to the heart of Article 8 of the Convention. The Court's interpretation of that provision has evolved concerning rights affecting the private and family sphere of human beings, which is the most intimate of spheres, and one in respect of which the Court must ensure that their dignity and their private and family life are protected by the States signatory to the Convention. The Court has held that these States must in the first place respect the private and family life of anyone within their jurisdiction, but also remove the obstacles and restrictions which hinder the free development of the personality, and assume broader and broader positive obligations.

The Court has held, *inter alia*, that "private life" is a broad term not susceptible to exhaustive definition and that Article 8 protects a right to identity and personal development, and the right to establish and develop relationships with other human beings and the outside world (see *Bensaid v. the United Kingdom*, no. 44599/98, § 47, ECHR 2001-I).I note also that the applicant was adopted by a French citizen. Authority to execute the judgment delivered on 28 July 1987 by the Bouaké Court of First Instance was given by a French court on 11 December 1987. France thus acknowledged the existence of family life between the applicant and his father, of French nationality, and family life is protected by Article 8 of the Convention.

As the Court held in *Marckx* (cited above, pp. 14-15, § 31), "by proclaiming in paragraph 1 the right to respect for family life, Article 8 signifies firstly that the State cannot interfere with the exercise of that right otherwise than in accordance with the strict conditions set out in paragraph 2. As the Court stated in the 'Belgian Linguistic' case, the object of the Article is 'essentially' that of protecting the individual against arbitrary interference by the public authorities (judgment of 23 July 1968, Series A no. 6, p. 33, § 7). Nevertheless it does not merely compel the State

to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective 'respect' for family life".

I consider that, in the present case, Article 8 is applicable either from the point of view of private life or from the point of view of family life.

As regards Article 14, the Court's case-law has established very important principles regarding the interpretation of this provision.

Firstly, inasmuch as Article 14 has no independent existence, its application does not necessarily presuppose the violation of one of the substantive rights guaranteed by the Convention, just as it does not presuppose a direct interference by the national authorities with the rights guaranteed by such a provision. It is necessary but it is also sufficient for the facts of the case to fall "within the ambit" of one or more of the provisions in question (see, among many other authorities, *Karlheinz Schmidt v. Germany*, judgment of 18 July 1994, Series A no. 291-B, p. 32, § 22, and *Petrovic v. Austria*, judgment of 27 March 1998, *Reports* 1998-II, p. 585, § 22). Secondly, Article 14 covers not only the enjoyment of the rights that States are obliged to safeguard under the Convention but also those rights and freedoms that fall within the ambit of a substantive provision of the Convention and that a State has chosen to guarantee, even if in so doing it goes beyond the requirements of the Convention. This principle was expressed for the first time by the Court in the *Case "relating to certain aspects of the laws on the use of languages in education in Belgium"* (cited above, pp. 33-34). The Court's reasoning was similar in *Abdulaziz, Cabales and Balkandali v. the United Kingdom* (judgment of 28 May 1985, Series A no. 94, p. 35, § 71).

Applying the above principles to the instant case, I consider that, although Article 8 of the Convention does not guarantee, as such, the right to an allowance for disabled adults, the application falls "within the ambit" of that provision.

I conclude from this that Article 14 taken in conjunction with Article 8 is applicable here. In my view, once the French legal system had granted disabled adults the right to an allowance, it could not, without rendering Article 14 ineffective, do so on a discriminatory basis.

As pointed out by the majority (see paragraphs 47 and 48 of the present judgment), the applicant was lawfully resident in France, where he was entitled to the minimum welfare benefit, which is not subject to a nationality condition. The domestic authorities' refusal to grant him the allowance for disabled adults was based exclusively on the fact that he did not have the requisite nationality, which was a precondition for obtaining the allowance under Article L. 821-1 of the Social Security Code as applicable at the material time. Moreover, it has not been established, or even alleged, that the applicant did not satisfy the other statutory conditions entitling him to the social benefit in question. Like the majority (see paragraph 49 of the

judgment), I find that the difference in treatment regarding entitlement to social benefits between French nationals or nationals of a country having signed a reciprocity agreement and other foreign nationals was not based on any "objective and reasonable justification", especially as the applicant had been adopted by a French citizen. Even though, at the material time, France was not bound by reciprocity agreements with the Ivory Coast, it undertook, when ratifying the Convention, to secure "to everyone within [its] jurisdiction" the rights and freedoms defined in Section I of the Convention.

To my mind, the difference in treatment was discriminatory in so far as there was no reasonable relationship of proportionality between the means used and the aim sought to be achieved.

Accordingly, I find that there has been a violation of Article 14 of the Convention taken in conjunction with Article 8.

I voted in favour of awarding the applicant a sum in just satisfaction and for costs and expenses, since the Court could (and, in my humble opinion, should), as it has previously done in a number of cases, have examined the applicant's complaint *ex officio* under Article 14 taken in conjunction with Article 8, even though the applicant did not expressly rely on the latter Article.