



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

COURT (CHAMBER)

**CASE OF A. v. FRANCE**

*(Application no. 14838/89)*

JUDGMENT

STRASBOURG

23 November 1993

**In the case of A. v. France\***,

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

Mr R. RYSSDAL, *President*,

Mr Thór VILHJÁLMSSON,

Mr L.-E. PETTITI,

Mr B. WALSH,

Mr R. MACDONALD,

Mr C. RUSSO,

Mr J. DE MEYER,

Mr J.M. MORENILLA,

Sir John FREELAND,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 22 June and 26 October 1993,

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

## PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 26 October 1992, within the three-month period laid down in Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 14838/89) against the French Republic lodged with the Commission under Article 25 (art. 25) by a French national, Mrs A., on 15 February 1989. The applicant requested the Court not to disclose her identity.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby France recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 8 (art. 8).

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\* The case is numbered 40/1992/385/463. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

\*\* As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that she wished to take part in the proceedings and designated the lawyer who would represent her (Rule 30).

3. The Chamber to be constituted included ex officio Mr L.-E Pettiti, the elected judge of French nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 30 October 1992, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr B. Walsh, Mr R. Macdonald, Mr C. Russo, Mr J. De Meyer, Mr J.M. Morenilla and Sir John Freeland (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the French Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 9 February 1993 and the Government's memorial on 30 April. On 25 May the Secretary to the Commission informed the Registrar that the Delegate would submit oral observations.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 21 June 1993. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr B. GAIN, Head of the Human Rights Section,  
Legal Affairs Department, Ministry of Foreign Affairs,  
*Agent,*

Miss M. PICARD, magistrat,  
on secondment to the Legal Affairs Department, Ministry  
of Foreign Affairs,

Mrs M. PAUTI, Head  
of the Comparative Law and International Law Office,  
Public Freedoms and Legal Affairs Department, Ministry  
of the Interior,

Mr D. KINCHER, magistrat,  
on secondment to the Criminal Affairs and Pardons  
Department, Ministry of Justice, *Counsel;*

- for the Commission

Mr J.-C. GEUS, *Delegate;*

- for the applicant

Mr H. DUSSAUD, avocat, *Counsel.*

The Court heard addresses by Mr Gain, by Mr Geus and by Mr Dussaud.

## AS TO THE FACTS

### I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

6. Mrs A., a French national, is a cardiologist and lives in Paris.

7. On 23 July 1981 a Paris investigating judge charged her, together with five other persons including Mr Serge Gehrling, with attempted murder, infringement of the arms and ammunition legislation and infringement of the Law of 25 July 1980 on the protection and control of nuclear substances.

On the same day the investigating judge remanded Mrs A. in custody. She was released, subject to court supervision, on 26 March 1982 by decision of the Indictment Division of the Paris Court of Appeal.

On 7 March 1991 the judge made an order finding that the six persons charged, including the applicant, had no case to answer, as there was insufficient evidence against them.

#### **A. The contested recording and the filing of the applicant's complaint**

8. In July or August 1980 Mr Gehrling went to the Paris police headquarters. He informed Chief Superintendent (commissaire divisionnaire) Aimé-Blanc, the Head of the Central Office for the Prevention of Serious Crime, that Mrs A. had hired him to kill Mr Pierre De Varga, who was himself facing charges in relation to the attempted murder of Prince Jean de Broglie and was in custody in the Santé prison in Paris. Mr Gehrling volunteered to make a telephone call to Mrs A.'s home to discuss possible methods for carrying out the crime and to record the telephone conversation.

The Chief Superintendent accepted Mr Gehrling's offer. Once the recording was in his possession, he informed his superiors of the threat to Mr De Varga, but did not reveal the identity of his informant or the existence of the cassette.

9. When questioned on 22 September 1981 in connection with the investigation into the attempted murder of Mr De Varga, Chief Superintendent Aimé-Blanc told the investigating judge as follows:

"Gehrling called [Mrs A.] at 10.30 p.m. from my office. He got her to talk about the case and the conversation lasted a good quarter of an hour. I recorded this conversation with a tape recorder. I have kept the tape recording in question, which I hold at your disposal. ... I wish to make clear that I did not report this tape recording to my superior officer."

The next day, on the instructions of the investigating judge, he handed over the recording to the latter.

10. On 9 November 1981 Mrs A. laid a complaint, together with an application to join the proceedings as a civil party (constitution de partie

civile), against Mr Gehrling and Chief Superintendent Aimé-Blanc for invasion of privacy and breach of the confidentiality of telephone communications. She relied on Articles 368, 369 and 378 of the Criminal Code and on Article L.42 of the Post and Telecommunications Code (see paragraphs 18 and 22 below).

## **B. The investigation of the complaint**

### *1. Before the investigating judge*

11. On 28 January 1985 the judge assigned to the investigation of the case made an order finding that there was no case to answer. He began by noting that the conversation recorded did not concern private life:

"...

... the offences (délits) provided for and penalised under [Articles 368-1<sup>o</sup> and 369 of the Criminal Code] require not only an actual interference with another's private life, but also the intention to infringe a fundamental individual right.

...

In this case, the transcript of the recording obtained by Serge Gehrling shows that what [Mrs A.] said, apart from a few spontaneous remarks unrelated to the general subject-matter of the conversation, was extraneous to the complainant's emotional or personal life."

On the question of the alleged violation of Article L.42 of the Post and Telecommunications Code, the judge stated as follows:

"That provision expressly states that the protection of secrecy is extended to the person making the call or its recipient only if neither of them consents to the revelation concerned.

As one of the participants in the conversation, Serge Gehrling, had, by handing over the recording to Chief Superintendent Aimé-Blanc, manifested the consent required by the aforesaid provision, the offence was not made out."

### *2. In the Indictment Division of the Paris Court of Appeal*

12. On Mrs A.'s appeal, the Indictment Division of the Paris Court of Appeal upheld the above-mentioned order on 22 October 1985, on the following grounds:

"...

... as one of [the participants in the conversation], Gehrling, had consented to this disclosure [of the content of a telephone communication] by voluntarily handing over to Chief Superintendent Aimé-Blanc the tape recording, the offence [of breach of the

confidentiality of telephone communications] is not made out and the relevant order must be upheld in this respect.

...

... it appears that the conversation recorded between Gehrling and Mrs [A.] is entirely extraneous to the emotional or personal life of the woman concerned. On the contrary, Gehrling deliberately steered the conversation towards two matters, the preparation of the murder or a smuggling scheme, thereby seeking to prompt the recipient of his call to confirm the statements which he had made to Chief Superintendent Aimé-Blanc ...

In these circumstances, it appears that at no time did Gehrling try to make Mrs [A.] reveal a secret of her private, emotional, family or physical life, as he sought only to obtain statements concerning facts constituting serious breaches of the criminal law, matters which could not be classified as intimate."

### *3. In the Court of Cassation*

13. Mrs A. appealed on points of law; she complained, inter alia, of procedural irregularities in the designation of the members of the Indictment Division.

On 11 May 1987 the Criminal Division allowed the appeal and remitted the case to the Paris Indictment Division, composed differently.

### *4. In the Indictment Division of the Paris Court of Appeal*

14. On 13 January 1988 the Indictment Division again upheld the order finding that there was no case to answer, on the following grounds:

"The transcript of the tape recording made by Gehrling in the office of Superintendent Aimé-Blanc reveals that, apart from a few spontaneous remarks unrelated to the general subject-matter of the conversation, the words spoken at her home by [Mrs A.] allude to a plan to commit murder and to a smuggling operation. Gehrling deliberately steered the conversation towards these two subjects and systematically brought [Mrs A.] back to them during the call. [Mrs A.] was thus asked a series of questions through which Gehrling tried to get her to confirm the allegations which he had made to the superintendent;

The mutually corroborative statements of Lucien Aimé-Blanc and Serge Gehrling establish that the latter agreed to the disclosure of this conversation;

#### I. The alleged interference with the intimate side of the civil party's private life

In the first place, the offence punishable under Article 368 of the Criminal Code requires an actual interference with the intimate side of another person's private life. The unlawful viewing or interception must involve situations, activities, attitudes or words revealing states of mind, feelings, opinions or occupations which there is a legitimate desire to confine to a restricted circle, and which relate to family life, personal relations, personal finances, thought, health and leisure;

That is not the case of remarks relating to a criminal conspiracy likely to lead to an attempt on the life of a third person and to prejudice public order;

Consequently, in this case, the words spoken by [Mrs A.] at her home and recorded without her knowledge by Gehrling, who had called her with the sole purpose of talking about a plan to murder Mr De Varga of which she was allegedly the instigator, and who had systematically kept the conversation on that subject and that of a smuggling operation, fall outside the sphere of private life;

It follows that Gehrling is not guilty of the offence (délit) of invasion of privacy;

Secondly, the retention and disclosure of recordings or documents obtained by stealth or without the knowledge of another person are punishable under the first paragraph of Article 369 of the Criminal Code only when they relate to the intimate side of that person's private life;

The tape recording of the conversation between the complainant and Gehrling contains remarks which manifestly have no connection whatsoever with the private lives of the persons involved;

Consequently, Lucien Aimé-Blanc is not guilty of the offence of which he is accused;

## II. The alleged breach of the confidentiality of telephone communications

While it is an offence under Article 42 of the Post and Telecommunications Code for a third person to divulge the content of telephone calls, the confidentiality of which the provision is designed to protect, either of the interlocutors may agree to disclosure, which then ceases to be criminal;

In the present case, it being noted that the complainant has not criticised in this respect the decision that there was no case to answer, Lucien Aimé-Blanc is not guilty of the offence in question, since it was established during the proceedings that Serge Gehrling had implicitly agreed to the possible disclosure of the telephone conversation by handing over voluntarily the recording made on his own initiative for that very purpose;"

### *5. In the Court of Cassation*

15. Mrs A. lodged a further appeal on points of law, which the Court of Cassation dismissed on 8 November 1988.

16. The first ground of appeal was based on the violation of Article 191 of the Code of Criminal Procedure and again related to the composition of the Paris Indictment Division. The Court of Cassation took the view that the submission was unfounded.

17. The second ground of appeal, based on the violation of Articles 368 and 369 of the Criminal Code and Article 593 of the Code of Criminal Procedure, related to the reasons given in the order finding that there was no case to answer; the submission was worded as follows:

"... the contested decision found that Aimé-Blanc and Gehrling had no case to answer in respect of the charge of invasion of Mrs [A.'s] privacy;

...

firstly, the act of invasion of another's privacy is perpetrated by the recording of words spoken in a private place and in the absence of the consent of the person who pronounces them as regards the recording of his statements; ...

secondly, the decision, which ... recognises ... that the alleged murder plot was not the sole subject of the telephone conversation in question, but does not report the statements extraneous to that purpose which could strictly concern the private life of the complainant, does not make it possible for the Court of Cassation to carry out its review and does not satisfy the essential conditions for its legal validity;

and finally, the decision, which states that 'the words spoken by Mrs [A.] at her home ... fall outside the sphere of private life' whereas it notes elsewhere that the telephone conversation included 'spontaneous remarks unrelated to the general subject-matter of the conversation', and which thus recognises that statements were made which were capable of concerning the strictly private life of the complainant, is vitiated by a contradiction and does not satisfy the essential conditions for its legal validity;"

The Criminal Division declared the submission inadmissible, for the following reasons:

"The wording of the impugned decision makes it possible for the Court of Cassation to satisfy itself that, in order to uphold the investigating judge's order, the Indictment Division, after examining all the facts alleged by the complainant, replied to the main arguments in the latter's memorials and stated the reasons on the basis of which it considered that it was able to infer that the constituent elements of the offences of which the defendants were accused had not been made out;

Under Article 575 of the Code of Criminal Procedure, in the absence of an appeal by the prosecution, a civil party is barred from contesting independently the merits of such grounds in support of an appeal to the Court of Cassation against a decision of that type, even if those grounds contain errors of law or are contradictory;"

## II. THE RELEVANT DOMESTIC LAW

### A. The Criminal Code

18. Three provisions of the Criminal Code are relevant to this case:

#### Article 368

"It is an offence punishable by a term of imprisonment of not less than two months and not more than one year and by a fine of not less than 2,000 francs and not more than 50,000 francs, or by one of the above penalties only, intentionally to interfere with the intimate side of another person's private life:

1° By intercepting, recording or transmitting with any kind of device words spoken in a private place by another person without that person's consent;

..."

#### **Article 369**

"It is an offence, punishable by the penalties set out in Article 368, knowingly to keep, to bring, or intentionally to allow to be brought, to the attention of the public or of a third person, or to use publicly or otherwise any recording or document obtained by means of one of the actions described in that Article.

..."

#### **Article 378**

"... any person who reveals secrets entrusted to him by reason of his status or profession, or of his temporary or permanent duties, except in those cases where he is obliged or authorised by law to lay an information, shall be liable to a term of imprisonment of not less than one month and not more than six months and to a fine of not less than 500 francs and not more than 15,000 francs.

..."

19. Since the events in this case the relevant French case-law and legislation have evolved.

20. By its Derrien judgment of 13 June 1989, the Criminal Division of the Court of Cassation held that "although Articles 81 and 151 of the Code of Criminal Procedure permit an investigating judge to order, subject to certain conditions, the interception or recording of telephone conversations, no statutory provision authorises officers of the criminal investigation branch to carry out such operations in connection with a preliminary police inquiry" (Bulletin criminel (Bull.) no. 254; Recueil Dalloz Sirey (D.S.) 1989, informations rapides, p. 219).

On 24 November 1989, the Court of Cassation, in plenary session, declared void telephone tapping which had not been effected as part of a judicial investigation:

"...

It appears from the impugned judgment and the evidence produced in the proceedings that, having been informed that Christian Baribeau was engaged in drug-trafficking and had in particular had as a customer André Salmeron, the police, on their own initiative, requested Salmeron to telephone Baribeau with a view to fixing a rendez-vous for a drugs delivery and recorded their conversation on cassette, then drew up a report on this operation; at the time fixed for the rendez-vous, the police were therefore able to follow Salmeron into Baribeau's home, arrest the occupants and proceed with a search;

In order to refuse to annul the report describing the interception and recording of this conversation, the Court of Appeal held that the police had not used a technical device to intercept and record all the telephone conversations conducted from a subscriber's telephone;

In making this ruling, when, without having obtained a warrant for this purpose from a judge, the police had, unknown to Baribeau, intercepted and recorded statements made by him on a telephone line which had been assigned to him, the Court of Appeal disregarded the above-mentioned provisions." (Bull. no. 440; D.S. 1990, case-law, p. 34)

21. Law no. 91-646 of 10 July 1991 concerning the confidentiality of telecommunications did not amend Articles 368, 369 and 378 of the Criminal Code, but introduced a new Article 186-1 which is worded as follows:

"Any depository or agent of the public authorities, any agent of the public telecommunications operator or any agent of another operator of an authorised telecommunications network or of another provider of telecommunications services who, acting in the performance of his duties or on the occasion of the performance of his duties, has ordered, committed, or facilitated, in circumstances not covered by the cases provided for by law, the interception or diversion of communications issued, transmitted or received through telecommunications technology, or the use or disclosure of their content, shall be liable to a term of imprisonment of not less than three months and not more than five years and to a fine of not less than 5,000 francs and not more than 10,000 francs.

..."

## **B. The Post and Telecommunications Code**

22. Under Article L.42 of the Post and Telecommunications Code,

"Any person who, without the authorisation of the person making the communication or the recipient thereof, discloses, publishes or uses the content of a communication transmitted by radioelectric means or reveals its existence shall be liable to the penalties prescribed in Article 378 of the Criminal Code."

This provision was repealed by the above-mentioned Law of 10 July 1991.

## **C. The Civil Code**

23. Article 9 of the Civil Code provides as follows:

"Everyone has the right to respect for his private life.

Judges may, without prejudice to a right to compensation for the damage sustained, order any measures, such as seizure, attachment and others, that may prevent or cause to cease an interference with the intimate side of private life; in the event of urgency such measures may be ordered on an interlocutory application."

## PROCEEDINGS BEFORE THE COMMISSION

24. Mrs A. applied to the Commission on 15 February 1989. She claimed that the recording of one of her telephone conversations had disregarded her right to respect for her private life and her correspondence, guaranteed under Article 8 (art. 8) of the Convention.

25. The Commission declared the application (no. 14838/89) admissible on 30 March 1989. In its report of 2 September 1992 (made under Article 31) (art. 31), it expressed the opinion, by nine votes to one, that there had been a violation of Article 8 (art. 8). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment\*.

## FINAL SUBMISSIONS BY THE GOVERNMENT TO THE COURT

26. In their memorial the Government "ask the Court to find that the application was submitted after the six-month period prescribed by Article 26 (art. 26) of the Convention, in the alternative that the domestic remedies have not been exhausted and in the further alternative that the complaint is unfounded".

## AS TO THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 8 (art. 8)

27. Mrs A. claimed to be the victim of a violation of Article 8 (art. 8), according to which:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

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\* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 277-B of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

## **A. Government's preliminary objections**

28. The Government raised two objections as to the admissibility of the applicant's case, as they had already done before the Commission.

### *1. Whether the application was out of time*

29. They contended in the first place that the application had been filed out of time. In their opinion, the second decision of the Indictment Division of the Paris Court of Appeal (see paragraph 14 above) constituted, for the purposes of Article 26 (art. 26) in fine of the Convention, the "final [domestic] decision" on the alleged interference with Mrs A.'s private life. The appeal on points of law had had no prospect of succeeding because the civil party had sought to challenge the grounds of the decision finding no case to answer (Article 575 of the Code of Criminal Procedure; Court of Cassation, Criminal Division, 22 January 1960, 24 July 1961 and 20 June 1985, Bull. nos. 338, 351 and 238). Accordingly, the six-month period for filing an application with the Commission had begun to run on 13 January 1988, the date of the above-mentioned decision, and Mrs A. had instituted the Strasbourg proceedings belatedly.

Mrs A. and the Commission's Delegate contested this objection.

30. The Court reiterates that an appeal to the Court of Cassation is one of the remedies that should in principle be exhausted in order to comply with Article 26 (art. 26). Even supposing that it was probably bound to fail in this specific case, the filing of the appeal was thus not a futile step. It consequently had the effect at the very least of postponing the beginning of the six-month period (see the B. v. France judgment of 25 March 1992, Series A no. 232-C, pp. 46-47, para. 42). The objection that the application was out of time must therefore be dismissed.

### *2. The failure to exhaust domestic remedies*

31. In the alternative the Government pleaded the failure to exhaust domestic remedies. Mrs A. had neglected to bring a civil action in the ordinary courts against Mr Gehrling, and possibly Chief Superintendent Aimé-Blanc, for compensation and to institute proceedings for damages in the administrative courts in respect of the State's liability on account of the conduct of one of its officials.

32. Like the applicant and the Commission, the Court notes that Mrs A. laid a complaint, together with an application to join the resulting criminal proceedings as a civil party, alleging invasion of privacy and breach of the confidentiality of telephone communications and pursued the said proceedings to their conclusion (see paragraphs 10-17 above). She cannot be criticised for not having had recourse to legal remedies which would have been directed essentially to the same end and would in any case not have offered better chances of success (see, *mutatis mutandis*, the Crémieux

v. France judgment of 25 February 1993, Series A no. 256-B, p. 60, para. 30, and the decision of the Commission of 29 October 1963 on the admissibility of application no. 1727/62, *Boeckmans v. Belgium*, Convention Yearbook, vol. 6, pp. 386-402). Accordingly, the objection alleging failure to exhaust domestic remedies must also be dismissed.

## **B. Merits of the complaint**

33. Mrs A. took the view that the recording of her telephone conversation with Mr Gehrling was incompatible with her right to respect for her private life and correspondence, guaranteed by Article 8 (art. 8).

### *1. Whether there was an interference*

34. The Government in substance contested the applicability of Article 8 (art. 8); they maintained that there had been neither invasion of privacy nor interference by a public authority.

On the first point, the Government drew attention to the fact that the recording in question had been made on the initiative and with the consent of one of the interlocutors; they argued further that the conversation intercepted had dealt exclusively and deliberately with matters - preparations of a criminal nature - which fell outside the scope of private life.

As to the second, the Government affirmed that Mr Gehrling, who bore sole responsibility for instigating and carrying out the contested scheme, was not an official of the French State and was not acting on the latter's behalf. The fact that the public authorities had provided resources, such as premises and equipment, and had not opposed the undertaking in question was not sufficient to render them responsible for the interference.

35. The Commission and the applicant rejected this argument. They considered that a telephone conversation did not lose its private character solely because its content concerned or might concern the public interest. In addition, the recording was made on police premises with the assistance of a Chief Superintendent, who retained in his possession the relevant tape.

36. The Court observes that the undertaking complained of by the applicant depended on Mr Gehrling and Mr Aimé-Blanc working together. They can hardly be dissociated from each other. The former played a decisive role in conceiving and putting into effect the plan to make the recording, by going to see the Chief Superintendent and then telephoning Mrs A. Mr Aimé-Blanc, for his part, was an official of a "public authority". He made a crucial contribution to executing the scheme by making available for a short time his office, his telephone and his tape recorder. Admittedly, he did not inform his superiors of his actions and he had not sought the prior authorisation of an investigating judge, but he was acting in the performance of his duties as a high-ranking police officer. It follows that the public

authorities were involved to such an extent that the State's responsibility under the Convention was engaged.

In any event the recording represented an interference in respect of which the applicant was entitled to the protection of the French legal system.

37. Furthermore the interference in issue undoubtedly concerned Mrs A.'s right to respect for her "correspondence" (see, inter alia, the *Kruslin v. France* judgment of 24 April 1990, Series A no. 176-A, p. 20, para. 26); the Government did not moreover dispute this.

In these circumstances it is not necessary to consider whether it also affected her "private life".

### *2. Whether the interference was justified*

38. The Government conceded that the interference - if interference there had been - had not been "in accordance with the law". It had not been consistent with the French law that had been in force at the material time (1980) because it had not been effected pursuant to a judicial procedure and had not been ordered by an investigating judge. The subsequent legislation - the Law of 10 July 1991 (see paragraph 22 above) - made an interception of the type in question a punishable offence.

39. Like the Commission, the Court notes that the contested recording had no basis in domestic law; it therefore finds a breach of Article 8 (art. 8).

This finding makes it unnecessary for the Court to rule on compliance with the other requirements of paragraph 2 of the aforementioned Article (art. 8-2) (see, inter alia, *mutatis mutandis*, the *Kruslin v. France* judgment, cited above, Series A no. 176-A, p. 25, para. 37).

## II. APPLICATION OF ARTICLE 50 (art. 50)

### 40. Under Article 50 (art. 50),

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

### **A. Damage**

41. Mrs A. claimed 250,000 French francs in respect of alleged damage arising from the failure to comply with the requirements of the Convention. According to the Government, she could complain only of purely non-pecuniary and symbolic damage.

The Delegate of the Commission suggested that the pecuniary damage should be made good by reimbursing the costs incurred in having the interference with private life established.

42. The Court is of the opinion that the applicant may have sustained non-pecuniary damage, but considers that the present judgment affords her sufficient just satisfaction in that respect.

### **B. Costs and expenses**

43. Mrs A. also claimed the reimbursement of the costs and expenses which she had incurred first before the French courts and then before the Convention institutions (Mr Dussaud: 60,000 francs, plus value added tax, for representing her before the investigation authorities and in Strasbourg; Mr Lemaître: 9,000 francs for her two appeals to the Court of Cassation).

The Delegate of the Commission supported her claim; the Government did not express an opinion.

44. Having regard to the criteria which it applies in this field, the Court awards the applicant 50,000 francs for all her costs and expenses.

## **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. Dismisses the Government's preliminary objections;
2. Holds that there has been a violation of Article 8 (art. 8);
3. Holds that the finding of this violation constitutes sufficient just satisfaction for any non-pecuniary damage sustained;
4. Holds that the respondent State is to pay to the applicant, within three months, 50,000 (fifty thousand) French francs in respect of costs and expenses;
5. Dismisses the remainder of the applicant's claims.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 November 1993.

Rolv RYSSDAL  
President

Marc-André EISSEN  
Registrar