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

COURT (CHAMBER)

CASE OF KRASKA c. SUISSE

(Application no. 13942/88)

JUDGMENT

STRASBOURG

19 April 1993

In the case of Kraska v. Switzerland[*],

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 F. MATSCHER,
Mr J. DE MEYER,
Mrs E. PALM,
Mr R. PEKKANEN,
Mr J.M. MORENILLA,
Mr A.B. BAKA,
Mr M.A. LOPES ROCHA,
Mr L. WILDHABER,

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

Having deliberated in private on 28 October 1992 and 24 March 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 13 December 1991 and by the Government of the Swiss Confederation ("the Government") on 13 February 1992, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 13942/88) against Switzerland lodged with the Commission under Article 25 (art. 25) by a Swiss national, Mr Martin Kraska, on 2 April 1988.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Switzerland recognised the compulsory jurisdiction of the Court (Article 46) (art. 46); the Government's application referred to Articles 45, 47 and 48 (art. 45, art. 47, art. 48). The object of the request and of the application was to obtain a decision as to whether the

[*] The case is numbered 90/1991/342/415. 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.

facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 1 (art. 6-1) of the Convention.

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

3. The Chamber to be constituted included ex officio Mr L. Wildhaber, the elected judge of Swiss nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 24 January 1992, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Matscher, Mr J. De Meyer, Mrs E. Palm, Mr R. Pekkanen, Mr J.M. Morenilla, Mr A.B. Baka and Mr M.A. Lopes Rocha (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Government, the Delegate of the Commission and the applicant's lawyer on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the orders made in consequence, the Registrar received the memorials of the Government and the applicant on 10 and 11 August 1992 respectively. On 17 September the Secretary to the Commission informed the Registrar that the Delegate would submit oral observations; he had previously produced various documents requested by the Registrar on the President's instructions.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 26 October 1992. The Court had held a preparatory meeting beforehand, in the course of which it rejected a request made in the applicant's memorial for it to hear witnesses.

There appeared before the Court:

- for the Government

Mr P. BOILLAT, Head
of the European Law and International Affairs Section, Federal Office of Justice, *Agent*,

Mr C.H. BRUNSCHWILER, judge
at the Federal Court,

Mr F. SCHÜRMANN, Deputy Head
of the European Law and International Affairs Section, Federal Office of Justice, *Counsel*;

- for the Commission

Mr L. LOUCAIDES, *Delegate*;

- for the applicant

Mr J. LOB, avocat, *Counsel*.

The Court heard addresses by Mr Boillat for the Government, Mr Loucaides for the Commission and Mr Lob for the applicant, as well as their replies to its questions. Mr Lob lodged various documents.

AS TO THE FACTS

6. Mr Martin Kraska is a Swiss national and lives in Zurich. He obtained his diploma in medicine in 1981 and has since practised mostly as an assistant doctor (Assistenzarzt), for which activity he does not require an authorisation in the Canton of Zurich.

A. Proceedings before the Zurich authorities and courts

7. On 19 October 1982 he received the authorisation to practise independently in the canton. The authorisation was, however, withdrawn by the Health Authority (Gesundheitsdirektion) on 26 April 1983 on the ground that, having moved to another canton, he had not used it.

8. The applicant lodged an administrative appeal (Rekurs) which the Cantonal Government (Regierungsrat) of Zurich rejected on 17 August 1983 for the following reasons: the possibility that a new authorisation would be granted as soon as he returned to Zurich was not sufficient to confer on the applicant a legally protected interest; in any event the authorisation in question was not of general validity, but related to a specific activity; as it was, Mr Kraska no longer lived in the canton.

9. From 6 August to 17 September 1984 the applicant worked as an assistant doctor in the emergency service of the District of Zurich Medical Association (Ärztlicher Notfalldienst des Ärzteverbandes des Bezirks Zurich).

10. On 28 August 1984 he fetched a partially paralysed patient from a private old peoples' home and took her back to her flat, where he treated her. Shortly afterwards he drew up a bill on an emergency service form for 7,447.80 Swiss francs and sent it to the guardian (gesetzlicher Vertreter) of the patient, who had been placed in guardianship on a temporary basis on 13 September 1984. The sum in question was to be paid directly into the applicant's post office account and not that of the medical association.

A prosecution was subsequently brought against Mr Kraska for fraud and various infringements of the Zurich Public Health Act 1962; in particular it was alleged that he had treated the patient without being in possession of an authorisation to practise medicine independently as was required under section 7 para. 1 (a) of that Act.

The Zurich District Court (Bezirksgericht) acquitted him on 13 January 1986, finding inter alia that the indictment had not indicated in sufficiently specific terms the medical treatment involved.

11. In the meantime, on 31 January 1985, the applicant had attempted to obtain a new authorisation. On 11 September 1985 the Zurich Health Authority had refused his request on the ground that he was not "trustworthy" within the meaning of section 8 para. 1 of the Public Health Act.

On 1 October 1986 the Zurich Cantonal Government dismissed the applicant's appeal. It took the view that he had infringed section 7 para. 1 (a) of the Act by submitting a bill for the treatment in question and that his acquittal by the District Court made no difference in this respect. The Cantonal Government noted in particular that in his bill the applicant had himself classified the treatment as medical acts.

12. In an appeal (Beschwerde) to the Zurich Administrative Court (Verwaltungsgericht) the applicant again sought the authorisation to practise his profession independently. The court dismissed his appeal on 11 March 1987. It also directed that he should wait until the beginning of 1988 before re-applying.

B. Proceedings in the Federal Court

1. The public-law appeal

13. By a memorial of seventy-three pages Mr Kraska's lawyer lodged with the Federal Court (Bundesgericht) a public-law appeal (staatsrechtliche Beschwerde), on which five judges deliberated at a public hearing on 22 October 1987 (section 17 para. 1 of the Federal Courts Act). The applicant's lawyer was present in the courtroom, but was not allowed to address the court. Judge X submitted his report; Judge Y, who did not in fact have the status of co-rapporteur attributed to him at paragraph 68 of the Commission's opinion, stated that he was unable to accept the conclusions of the report and proposed a solution contrary thereto. During the discussion which followed, a third judge put forward a counter proposal, which was adopted by the majority.

In a letter to his client, the lawyer described the course of the deliberations. According to him, Judge X had proposed that the applicant's public-law appeal should be allowed in full and that he should be granted the authorisation to practise. Judge Y had stated that he had been irritated by the length of the memorial, of which he had been able to read only thirty or so pages, and had complained that it had not been possible for him to study the file because, owing to an error on the part of the registry, he had not received it until a day before the hearing; he had then called for the dismissal of the appeal, basing his view exclusively on the above-mentioned decisions of 11 September 1985, 1 October 1986 and 11 March 1987 (see paragraphs 11-12 above).

14. The Federal Court gave judgment on the same day. By four votes to one, that of Judge X, it quashed the decision in so far as it imposed a waiting period on the applicant but dismissed the remainder of the appeal.

It first declared a number of the applicant's complaints inadmissible. It stated, nevertheless, that in cases of this kind, in the event of the appeal's succeeding, it could by way of exception not only quash the contested

decision, but also grant the authorisation sought, if all the other conditions were satisfied.

The Federal Court then noted that, according to its case-law, the right to freedom of commerce and industry, guaranteed by Article 31 of the Federal Constitution, embraced the right to practise medicine on a professional basis.

Having examined the criticisms levelled by the health authorities, it formed the opinion that at least two of them appeared material to assessing the applicant's honesty: he had carried out a medical act without the necessary authorisation; in addition, the bill relating thereto dealt with both medical and non-medical acts and he had drawn it up on an emergency service form, thereby giving the impression that it concerned only the former.

15. On 8 December 1987 the Health Authority of the Canton of Zurich granted Mr Kraska's third application for a new authorisation.

2. The applications to reopen the proceedings

16. On 6 November 1987 Mr Kraska requested the Federal Court to re-examine its judgment of 22 October 1987, complaining that it had given its decision without sufficient knowledge of the file.

His application was dismissed on 14 March 1988 on the ground, inter alia, that there was no legal basis for reopening the proceedings. The Federal Court summarised the contested deliberations as follows:

> "On the occasion of the public deliberations one judge expressed his dissatisfaction that the documents had not been available for a sufficiently long time (they had been sent first to a substitute judge); he had therefore been able to read thoroughly only the first thirty-five pages of the - much too long - appeal memorial which comprised seventy-three pages."

17. Mr Kraska subsequently filed three other applications for the reopening of the proceedings in the Federal Court; they were dismissed on 5 May and 23 August 1988 and on 6 June 1989.

PROCEEDINGS BEFORE THE COMMISSION

18. Mr Kraska lodged his application with the Commission on 2 April 1988. He complained of a violation of Article 6 paras. 1 and 2 (art. 6-1, art. 6-2) of the Convention, and of Article 3 (art. 3). A member of the Federal Court had allegedly expressed his view on the applicant's public-law appeal without having examined the file; the Federal Court had, he maintained, found a violation of the Zurich Public Health Act despite the judgment of 13 January 1986 acquitting him; finally he claimed that the proceedings

conducted before the competent authorities and courts had constituted inhuman and degrading treatment.

19. On 4 October 1990 the Commission declared the complaint based on Article 6 para. 1 (art. 6-1) admissible, but found the remainder of the application (no. 13942/88) inadmissible. In its report of 15 October 1991 (made under Article 31) (art. 31), the Commission expressed the opinion by fourteen votes to five that there had been a violation of that provision. 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 TO THE COURT BY THE GOVERNMENT

20. In their memorial the Government requested the Court to "find that Switzerland did not violate the ... Convention ... in respect of the facts that gave rise to Mr Martin Kraska's application".

AS TO THE LAW

21. Mr Kraska claimed that he had not had a fair trial in the Federal Court on 22 October 1987 inasmuch as one of the judges had not been able to read the whole file. He relied on Article 6 para. 1 (art. 6-1) of the Convention, according to which:

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

The Government contested this allegation, whereas the Commission accepted it in substance.

22. In his oral pleadings the applicant's lawyer questioned whether the Court had jurisdiction to rule on various points raised by the Government concerning the facts of the case, the establishment of which, he argued, fell to the Commission and to the Commission alone.

The Court cannot accept this argument, which is not consistent either with Article 45 (art. 45) of the Convention, or with Rule 41 et seq. of the Rules of Court, or with its case-law and practice. The Court is vested with full jurisdiction within the limits of the case as referred to it and is competent, inter alia, to take cognisance of any question of fact which may

[*] Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 254-B of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

arise in the course of consideration of the case. Admittedly it has recourse to this power fairly exceptionally, in view of the primary role in this sphere which Articles 28 para. 1 and 31 (art. 28-1, art. 31) of the Convention entrust to the Commission, but it is not bound by the findings in the Commission's report; it remains free to make its own assessment of these findings and, where appropriate, to depart from them, in the light of all the material which is before it or which, if necessary, it obtains (see, among other authorities, the De Wilde, Ooms and Versyp v. Belgium judgment of 18 June 1971, Series A no. 12, p. 29, para. 49, and the Cruz Varas and Others v. Sweden judgment of 20 March 1991, Series A no. 201, p. 29, para. 74).

A. Applicability of Article 6 para. 1 (art. 6-1)

23. In the Government's contention, Article 6 para. 1 (art. 6-1) does not apply to the examination of an application for an authorisation to practise medicine. The grant of such an authorisation was, they maintained, an administrative act which was subject to certain conditions and conferred no individual right; it was accordingly impossible to speak in the instant case of a dispute (contestation) concerning a "right". In the alternative, if there were such a right, it was not a "civil right", on account of the public-law features inherent in the exercise of the profession in question.

In addition, the Government requested the Court to rule on the applicability of Article 6 para. 1 (art. 6-1) where the Federal Court gives judgment, on a public-law appeal, as a constitutional court.

24. The Court notes in the first place that Article 31 of the Swiss Constitution guarantees the freedom of professional activity, construed by the Federal Court as embracing the medical profession (see paragraph 14 above). The dispute therefore concerned the very existence of a right which could be said, on arguable grounds, to be recognised under domestic law (see, inter alia, the H. v. Belgium judgment of 30 November 1987, Series A no. 127-B, p. 31, para. 40). In addition, the dispute was genuine and of a serious nature (see, among other authorities, the Benthem v. the Netherlands judgment of 23 October 1985, Series A no. 97, p. 15, para. 32). As Mr Kraska had obtained a medical diploma in 1981, he was entitled to apply for an authorisation to practise independently in Zurich once he satisfied the conditions laid down by law; he had held one in 1982 and 1983, but had subsequently lost it because he no longer lived in the canton (see paragraphs 6-7 above).

25. On the question of whether the right in issue was a "civil right", the Court refers to its case-law concerning the medical profession (the König v. Germany judgment of 28 June 1978, Series A no. 27, p. 31, paras. 91-92; the Le Compte, Van Leuven and De Meyere v. Belgium judgment of 23 June 1981, Series A no. 43, p. 20, paras. 44-45; and the Albert and Le

Compte v. Belgium judgment of 10 February 1983, Series A no. 58, p. 14, para. 27). It is true that in Switzerland this profession has features which are undeniably of a public-law nature: it is subject to administrative rules, enacted in the public interest, and its exercise depends on the issue of an authorisation by the Cantonal Health Authority. Nevertheless, the applicant wished to work in the private sector, on the basis of contracts concluded between him and his patients (see, mutatis mutandis, the H. v. Belgium judgment, cited above, Series A no. 127-B, p. 33, para. 47 (a)). The dispute between him and the Zurich Government therefore concerned a "civil right".

26. As to whether Article 6 para. 1 (art. 6-1) also applied to the examination of Mr Kraska's public-law appeal, the Court reiterates that proceedings come within the scope of this provision, even if they are conducted before a constitutional court, where their outcome is decisive for civil rights and obligations (see, inter alia, the Ringeisen v. Austria judgment of 16 July 1971, Series A no. 13, p. 39, para. 94, and the Le Compte, Van Leuven and De Meyere judgment, cited above, p. 20, para. 44); in order to determine whether this is so in a given case, it is necessary to have regard to all the circumstances (see, among other authorities, mutatis mutandis, the Bock v. Germany judgment of 29 March 1989, Series A no. 150, p. 18, para. 37).

The applicant complained that the Zurich Administrative Court had denied him the right to practise medicine independently. Moreover, it was open to the Federal Court not only to quash the contested judgment, but also - albeit exceptionally - to grant the authorisation which the applicant was seeking (see paragraph 14 above). Indeed he was able to obtain the authorisation on 8 December 1987 as a result of the Federal Court's decision to annul the waiting period imposed on 11 March 1987 (see paragraphs 12, 14 and 15 above). The direct effect of its judgment of 22 October 1987 on the recognition of the right claimed is consequently beyond question.

27. In short, Article 6 para. 1 (art. 6-1) is applicable in the instant case.

B. Compliance with Article 6 para. 1 (art. 6-1)

28. Mr Kraska inferred from certain remarks made by Judge Y during the public deliberations in the Federal Court that the judge must have given his opinion without thorough knowledge of the file (see paragraphs 13 and 16 above). In his submission, there would only have been a fair trial if each of the members of the court had been able to examine the available documents at length.

29. The Commission stressed the particular importance of the document which the judge had been unable to finish reading, namely the appeal memorial or the document instituting the proceedings in the Federal Court.

30. It falls to the Court to decide whether the contested proceedings considered as a whole were fair within the meaning of the Convention. The effect of Article 6 para. 1 (art. 6-1) is, inter alia, to place the "tribunal" under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice to its assessment of whether they are relevant to its decision (see, among other authorities, mutatis mutandis, the Barberà, Messegué and Jabardo v. Spain judgment of 6 December 1988, Series A no. 146, p. 31, para. 68). It has to be determined whether this condition was satisfied in the instant case.

31. As the Government pointed out, the Health Authority, the Cantonal Government and the Administrative Court of Zurich had carefully studied Mr Kraska's application for an authorisation. Once the matter was brought before the Federal Court, the judges assigned to sit in the case all had access to the file of the cantonal proceedings and the rapporteur communicated to them his opinion a few days before the deliberations. They were also able, in principle, to consult their own court's file and in particular the appeal memorial. However, one of them, Judge Y, complained, at the public deliberations on 22 October 1987, that he had received it only the previous day and that he had been able to read thoroughly only half of the memorial, which was moreover much too long in his view (see paragraphs 13 and 16 above). Mr Kraska's lawyer was left with the impression that the judge did not have sufficient knowledge of the case.

32. The Court has already stressed on numerous occasions the importance of appearances in the administration of justice, but it has at the same time made clear that the standpoint of the persons concerned is not in itself decisive. The misgivings of the individuals before the courts, for instance with regard to the fairness of the proceedings, must in addition be capable of being held to be objectively justified (see, among other authorities, mutatis mutandis, the Hauschildt v. Denmark judgment of 24 May 1989, Series A no. 154, p. 21, para. 48).

In the present case Judge Y took an active part in the deliberations; he went so far as to propose a solution contrary to that recommended by the rapporteur and showed that he was familiar with the case. Ultimately the Federal Court adopted neither of these two opinions; it chose a third possibility, put forward by one of the other three judges (see paragraphs 13-14 above). All things considered, there is no evidence to suggest that its members failed to examine the appeal with due care before taking their decision. One fact, to which the Government rightly drew attention, appears significant in this respect: neither Judge Y, nor any of his four colleagues, requested the adjournment of the deliberations, although they could have done so, in accordance with the practice of the Federal Court, if they had felt the need to acquaint themselves further with the file.

33. In the light of all of these circumstances, Mr Kraska's complaint does not prove to be well-founded. Even though Judge Y's comment is open to

criticism, the manner in which the Federal Court dealt with the case does not give rise to any reasonable misgivings.

34. There has therefore been no violation of Article 6 para. 1 (art. 6-1).

FOR THESE REASONS, THE COURT

1. Holds unanimously that Article 6 para. 1 (art. 6-1) applies in this case;

2. Holds by six votes to three that there has been no violation of that provision.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 19 April 1993.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) joint dissenting opinion of Mr Ryssdal, Mrs Palm and Mr Pekkanen;

(b) concurring opinion of Mr Matscher,

(c) concurring opinion of Mr De Meyer.

R. R.
M.-A. E.

JOINT DISSENTING OPINION OF JUDGES RYSSDAL, PALM AND PEKKANEN

1. According to Article 6 para. 1 (art. 6-1) of the Convention everyone is entitled to a fair trial by an impartial tribunal. The right to a fair hearing includes, inter alia, the right for the parties to the proceedings to submit to the court observations which they regard as relevant to their case. This right is, however, effective only if the submissions made to the court are also duly considered by the court.

2. The Court has on many occasions stressed the importance of appearances in the administration of justice. The courts in a democratic society must inspire confidence in the public and, above all, in the parties to the proceedings. The perceptions of the persons involved in the proceedings are important, but not decisive; any doubts as to the unfairness of the hearing must also be objectively justified (see, among others, mutatis mutandis, the Hauschildt v. Denmark judgment of 24 May 1989, Series A no. 154, p. 21, para. 48).

3. According to a summary made by the Federal Court on 14 March 1988, one of the judges of that court expressed dissatisfaction during the public deliberations of the case on 22 October 1987 that the documents had not been available for a long enough period of time; he had therefore been able to read thoroughly only the first thirty-five pages of the over-lengthy public-law appeal statement which comprised seventy-three pages (see paragraph 16 of the Court's judgment). After this statement the judge proceeded to take part in the deliberations and decision on the appeal.

In a letter to his client describing the deliberations of the Federal Court, Mr Kraska's lawyer indicated that he had misgivings as to the fairness of the hearing since the judge in question had called for the dismissal of the appeal without having had the possibility to study the file which he had received only a day before (see paragraph 13 of the Court's judgment).

4. From these facts we can only draw the same conclusion as the Commission that the judge in question gave the impression by his remarks that he wanted to read the entire public-law appeal statement, but had not been able to do so, although he regarded the document as being pertinent to the case. Mr Kraska had been able to make his submissions to the court, but there was a doubt as to whether his observations had been given proper consideration by one member of the court. Since these misgivings were based on the admission of the judge himself no other objective justification is in our opinion necessary.

In our view the decisive fact in this case is the above-mentioned statement of the judge in question and the impression which it made on the parties as to the fairness of the hearing.

5. For these reasons we are of the opinion that there has been a violation of Article 6 para. 1 (art. 6-1) of the Convention with regard to Mr Kraska's right to a fair hearing.

CONCURRING OPINION OF JUDGE MATSCHER

(Translation)

While I agree with the conclusions of the majority concerning the finding of no violation of Article 6 para. 1 (art. 6-1), I wish to reaffirm my view (which I expressed in my dissenting opinions in the cases of König v. Germany, Series A no. 27, p. 45; Le Compte, Van Leuven and De Meyere v. Belgium, Series A no. 43, p. 34; and Albert and Le Compte v. Belgium, Series A no. 58, p. 26), that proceedings relating to the practice of medicine - or indeed the practice of any other profession governed by public law - are not proceedings concerning a civil right, as their outcome has only an indirect bearing on such a right, in this case the right to conclude (private law) contracts for medical treatment.

I recognise that it is also important for an individual to enjoy certain procedural guarantees in his relations with the administrative authorities, but this should be the subject of specific rules in the Convention, as Article 6 (art. 6), which was intended to apply to civil (and criminal) cases, constitutes a somewhat inappropriate basis for such protection.

If I did not vote against finding Article 6 para. 1 (art. 6-1) applicable, it was purely out of respect for the well-established case-law of the Court.

CONCURRING OPINION OF JUDGE DE MEYER

(Translation)

I. The right to engage in a professional activity must undoubtedly be regarded as a "civil right" within the meaning of Article 6 para. 1 (art. 6-1) of the Convention.

In this connection it matters little that the status of the profession in question in this case "has features [in Switzerland] which are undeniably of a public-law nature" or that "the applicant wished to work in the private sector, on the basis of contracts concluded between him and his patients"[1].

The nature of the right in question would not have been any different if the applicant had wished to practise medicine on another "basis" or in the "public sector". Nor would it have been if the status of the medical profession did not embrace "public-law features"[2].

II. Similarly, the Court did not have to ask itself, yet again, whether it was "a right which could be said, on arguable grounds, to be recognised under domestic law" and whether the dispute "was genuine and of a serious nature"[3].

In the first place, it is not for us, but for the national courts to resolve questions of this type[4]. Secondly, the fact that a right does not seem to be recognised under the domestic legislation of a State cannot remove the latter's obligation, in respect of this right, to ensure that the principles laid down in Article 6 para. 1 (art. 6-1) are applied[5].

III. The right to a fair trial is so important that "there can be no justification for interpreting Article 6 para. 1 (art. 6-1) of the Convention restrictively"[6].

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[1] Paragragh 25 of the judgment.

[2] It is interesting to note that, in a recent case, the Court would seem to have begun to accept that, at least in the pensions field, the legal position of "public sector" employees is the same as that of "private sector" employees: judgment of 26 November 1992, Giancarlo Lombardo v. Italy, Series A no. 249-C, p. 42, para. 16.

[3] Paragraph 24 of the judgment.

[4] See in this connection my separate opinion annexed to the Allan Jacobsson v. Sweden judgment of 25 October 1989, Series A no. 163, p. 24.

[5] See on this point the concurring opinion of Mr Lagergren, annexed to the Ashingdane v. the United Kingdom judgment of 28 May 1985, Series A no. 93, p. 27, and his separate opinion, approved by Mr Macdonald, annexed to the Lithgow and Others v. the United Kingdom judgment of 8 July 1986, Series A no. 102, p. 80, together with the joint separate opinion of Mr Lagergren, Mr Pinheiro Farinha, Mr Pettiti, Mr Macdonald, Mr Valticos and myself, annexed to the W. v. the United Kingdom judgment of 8 July 1987, Series A no. 121, p. 39.

[6] Judgment of 13 October 1990, Moreira de Azevedo v. Portugal, Series A no. 189, p. 16, para. 66.

The effective enjoyment of this right must be secured each time that the determination of a right is in issue. That was the case in this instance; it was sufficient to note that this was so.

As regards the rest, I should like to be permitted to refer, mutatis mutandis, to what I said in this connection in my separate opinion in the cases of Pudas v. Sweden[7], H v. Belgium[8] and Allan Jacobsson v. Sweden[9].

I would simply add that what I was "inclined to think" in November 1987[10] as regards the "civil" character, within the meaning of the above-mentioned Article (art. 6-1), of rights and obligations has since become a profound conviction. All the rights and obligations which are not related more specifically to the determination of a "criminal charge" should be regarded as "civil rights".

[7] Judgment of 27 October 1987, Series A no. 125, p. 21.
[8] Judgment of 30 November 1987, Series A no. 127-B, pp. 48-49.
[9] Judgment of 25 October 1989, cited above, loc. cit.
[10] Judgment of 30 November 1987, cited above, p. 49, para. 4.