

MOCK TRIAL
BASED ON THE JUDGMENT
OF THE EUROPEAN COURT
OF HUMAN RIGHTS IN THE
CASE OF *ALLENET DE*
RIBEMONT v. FRANCE

ISSUED ON 23 JANUARY 1995

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Legal Guide

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Introduction

This mock trial has been developed using the judgment of the European Court of Human Rights (hereinafter referred to as the “European Court”) dated 23 January 1995 in the case of *Alenet de Ribemont v. France*. The case concerns defamatory comments made to the applicant at a press conference given by a Government Minister and high-ranking police officers during a murder investigation, and the length of subsequent proceedings brought by the applicant aimed at obtaining compensation for the alleged harm to his reputation. The applicant submitted to the European Court that the remarks made during the press conference had infringed his right to the presumption of innocence guaranteed by Article 6(2) of the European Convention on Human Rights (hereinafter referred to as “ECHR”). The applicant also claimed about the length of the compensation proceedings by referring to Article 6 (1) of ECHR; however the present mock trial exercise will be focused on the issues of presumption of innocence guaranteed by Article 6 (2) of the European Convention only.

This mock trial aims to provide young legal professionals an opportunity to study the procedure and the approaches of presenting pleadings before the European Court by arguing the case of *Alenet de Ribemont v. France*. It will also provide an opportunity for participants to conduct a thorough examination of the applicant’s complaints, the French Government’s arguments and the relevant approach of the European Court.

This mock trial is educational in character and is primarily designed to enable legal professionals, including young lawyers, advocates, legal service providers and others involved in the protection of human rights - including law students - to identify and apply the criteria and the standards that the European Court follows when interpreting the rights and freedoms guaranteed by the ECHR.

MOCK TRIAL
BASED ON THE JUDGMENT OF THE EUROPEAN COURT OF HUMAN RIGHTS
IN THE CASE OF ALLENET DE RIBEMONT V. FRANCE

I. INSTRUCTIONS FOR THE ORGANIZERS OF THE MOCK TRIAL

A. Purpose of the Mock Trial

This mock trial is for law students, legal professionals, particularly young lawyers passing training on the European Convention, and advocates as well as journalists that are specialising in the field of investigative journalism.

The mock trial should be organized after the participants have received training on the main principles and standards of Article 6 (2) (fair trial) of ECHR. It aims to provide an opportunity for the participants to use theoretical knowledge, including the norms and standards on Article 6 (2) of ECHR in practice.

After the mock trial the participants:

- a) Will improve their knowledge on the approaches and principles developed by the European Court on certain questions related to the exercise of the right to fair trial, particularly the right to the presumption of innocence;
- b) Will learn how to interpret the facts of the case by directly applying the norms defined by Article 6 (2) of the European Convention and the case laws of the European Court;
- c) Will improve their skills on making legal conclusions, applying the facts of the case and the relevant judgments of the European Court;
- d) Will improve their oral advocacy skills.

B. Instructions on Preparation and Implementation of the Mock Trial for the Organizers

The organizer(s)/trainer(s) of the mock trial should be well aware of the norms of Article 6 (2) of the European Convention as well as the relevant judgments of the European Court.

Given the specifics and aims of this mock trial, it should be organized for small groups i.e. a group of minimum 10 and maximum 13 participants.

The mock trial shall be organized in the following format:

- a) Preparatory stage;
- b) Actual implementation of the mock trial;
- c) Comments from the trainer(s) on the performance of the mock trial;
- d) Conclusion of the mock trial.

1) Preparatory Stage of the Mock Trial: The trainer(s) of the mock trial shall present the materials on Article 6(2) of the European Convention no less than one and not more than three days before the actual implementation of the mock trial, and at the end of the presentation, introduce the aim of the mock trial. The roles shall then be divided amongst the participants in accordance with the procedure set out below:

1. Group A, which may consist of between three and four participants, should be provided with the below indicated *Attachment A*, which includes the rules for Group A, and *Attachment D*, which includes the non official brief of the facts of the case of *Alenet de*

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- Ribemont v. France*. Group A should protect the rights and freedoms of the Applicant before the European Court.
2. Group B, which may consist of between three and four participants should be provided with the below indicated *Attachment B*, which includes the rules for Group B, and *Attachment D* which includes the non-official brief of the facts of *Allenet de Ribemont v. France*. Group B should represent the interest of the respondent state i.e. France.
 3. The bench, which may consist of between four and five participants, should be provided with the *Attachments A, B, C and D*.
 4. Attachment D, which includes the judgment of the European on the case of *Allenet de Ribemont v. France*, should be provided to the participants only after the presentation of the trainer(s) on the performance of the mock trial.
 5. The participants should also be provided with the relevant materials necessary for the preparation of the mock trial, including the text of Article 6(2), which is included in Attachment F. They should also be provided with a list of relevant judgments of the European Court on Article 6 (2), if possible also the texts of those judgments.
 6. *Attachment E*, which includes the judgment of the European Court on the case of *Allenet de Ribemont v. France*, should be provided to the participants only at the end during the conclusion of the mock trial.

The participants of the mock trial will need at least one day for preparation and, where possible, time and facilities for team discussion should be arranged.

The preparatory stage of the mock trial also includes activities on designing the court room in accordance with the relevant structure¹ as well as establishing measures for notification to the participant about the time limits during the performance of the mock trial. This might be done either by the trainer(s) or a participant who is not performing the mock trial.

2. The Performance of the Mock Trial

The mock trial should be conducted according to the following procedure and timelines:

| <i>Description of the activities</i> | <i>Implementers</i> | <i>Time limits</i> |
|---|--|-------------------------|
| Opening remarks | Trainer (s) | 5 minutes |
| | | |
| Presentation of the facts of the case | Applicant's first representative | 5 minutes |
| Presentation of oral pleadings on the alleged violations of the rights of the Applicant to the presumption of innocence. The pleadings should be justified by directly applying the norms of the European Convention and relevant judgments of the European Court | Applicant's second and third representatives | 30 minutes ² |
| | | |
| Presentation of the facts of the case if the Applicant distorted the facts of the case | Respondent's first representative | 5 minutes |

¹ There should be tables for judges allocated in the centre of the room/classroom, and two tables and chairs equal to the number of the representatives of the Applicant and the Respondent State, which should be placed so that the representatives of the parties can see the bench. The trainer should sit so that his /her actions do not disturb the participants. The support trainer in charge of notifying parties about the time limitations should sit where he/she will be visible both to the bench and the participants.

² Division of the time amongst the representatives of the Applicant should be decided by the representatives at their own discretion.. The only requirement is that all the representatives should have a chance to present oral pleadings.

| | | |
|--|---|-------------------------|
| Rejection of the alleged violation of the right to fair trial, particularly the presumption of innocence of the Applicant and provision of relevant justification by the means of direct application of ECHR norms and the judgments of the European Court | Respondent's second and third representatives | 30 minutes ³ |
| Delivering rebuttal | Applicant's fourth representative, or one of the three | 5 minutes |
| Delivering response | Respondent's fourth representative, or one of the three | 5 minutes |
| Drafting the judgment to be delivered by the bench on the case of <i>Alenet de Ribemont v. France</i> | Participants involved in the bench | 20 minutes |
| Publication of the judgment | Participants involved in the bench | 5 minutes |

Notification: The indicated time includes the questions asked by the bench and the answers of the participants.

3. Comments by the Trainer (s) on the Performance of the Mock Trial

During the performance of the mock trial, the trainer(s) should make relevant notes on the oral pleadings presented by the representatives of the Applicant and the agents of the Respondent State. At the end of the mock trial, right after the publication of the judgment by the bench, the trainer(s) should present their comments and feedback on the skills of the representatives of the Applicant, Respondent State and the bench, in particular:

- Presentation of oral pleadings by the representatives of the Applicant without changing and distorting the facts of the case, taking into account only the information provided during the mock trial,
- On the legal interpretation of the facts of the case by directly applying ECHR norms and European Court judgments as well as on the legal conclusions made as a result of comparing the relevant judgments with the facts of the case of *Alenet de Ribemont v. France*.
- On the presentation of legal arguments, according to the scope of the legal issues, primary oral pleadings and the response raised by the Applicant during the mock trial.
- On the logical continuation, justification and structure of the oral pleadings presented by the representatives of the Applicant and the Respondent State.
- On the proficiency of the oral advocacy skills, on legal literacy and the preciseness of the oral speech demonstrated by the representatives of the Applicant and the Respondent State.
- On the exactness, clarity and straightforwardness of the questions asked by the participants involved in the bench, by taking the relevant norms and principles adopted by the European Court on the examination of the alleged violations of Article 6(2) of the European Convention as a basis.

³ Division of the time amongst the representatives of the Respondent State should be done by the representatives on their own desecration. The only requirement should be that all the representatives have a chance to present oral pleadings.

- On the compliance of the judgment given by the bench with the European Convention Norms and the accepted structure and the logic of the judgments of the European Court.
- Other relevant suggestions and comments.

4. Conclusion of the Mock Trial

At the end of the mock trial, the trainer(s) shall present the judgment passed by the European Court on the case of *Alenet de Ribemont v. France*, including separate opinions. The trainer (s) shall also initiate a discussion on the differences between the approaches of the European Court and the bench of this mock trial as well as the specifics of the judgments passed by the European Court and this mock trial.

PART II. ATTACHMENT A –ALLEN DE RIBEMONT V. FRANCE --GROUP A

Your Group is representing the Applicant in this case to be considered by the European Court. The case concerns alleged violation of the rights of the Applicant to fair trial, particularly the presumption of innocence guaranteed by Article 6 (2) of the European Convention.

The details of your client's are indicated in Attachment D. Your client submits that his right to the presumption of innocence has been violated.

For presenting the oral arguments/pleadings before the European Court, you should do the following:

1. Familiarise yourselves with the facts of the case;
2. Familiarise yourselves with the content of Article 6 (2) of the European Convention;
3. Develop pleadings presenting the interests of your client before the Court and protecting the rights and freedoms of your client in accordance with the norms of the European Convention;
4. Consider and examine all those arguments that are likely to be presented by the representatives of the Respondent State.

You should present complaints to the Court stating that your client's rights to fair trial and presumption of innocence have been violated and submit relevant supporting facts and arguments.

It is recommended that you consider the following questions:

1. Whether the requirements of Article 6 (2) are applicable to the case of *Alenet de Ribemont v. France* in terms of the scope of possible infringement of the presumption of innocence and the scope of the authorities who might violate this principle?
2. Whether the reference to the case made by the highest-ranking officers in the French police at the press conference were done with necessary discretion if the presumption of innocence is to be respected?
3. Whether the content of the statements complained of infringed the presumption of innocence and whether those statements could somehow have encouraged the public to believe him to be guilty?
4. Whether the statements complained of could effect an impartial assessment of the facts of the case by the competent judicial authority?
5. Whether the remarks made by the Minister of the Interior and, in his presence and under his authority, by the police superintendent in charge of the inquiry and the Director of the Criminal Investigation Department, were compatible with the internationally accepted norms on presumption of innocence as guaranteed by Article 6 (2) of the European Convention.

You need to use the following while presenting your oral arguments:

1. Follow the internationally accepted principles on oral advocacy;
2. Ensure that your oral pleadings/arguments are justified, well structured, logically linked and clearly divided amongst the members of your team;
3. Apply and directly use the relevant judgments of the European Court as support for your legal arguments;
4. Ensure that the scope of the response on Article 6 (2) submitted by you is limited to the facts of the case and to the Respondent state's primary oral pleadings.

PART III. ATTACHMENT B-- *ALLENE DE RIBEMONT V. FRANCE* --GROUP B

Your Group will be acting as a Respondent State, i.e. France, in this case to be examined before the European Court. The case concerns alleged violation of the Applicant's right to the fair trial particularly the presumption of innocence guaranteed by Article 6 (2) of the European Convention.

The details of the case of your client are indicated in Attachment D. The Applicant submits that his right to the presumption of innocence has been violated.

For presenting arguments/pleadings before the European Court you shall do the following:

1. Familiarise yourselves with the facts of the case,
2. Familiarise yourselves with the content of Article 6 (2) of the European Convention,
3. Develop arguments/pleadings for presenting the interests of the Respondent State before the Court,
4. Consider and examine all those arguments that are likely to be presented by the Applicant.

You should present complaints to the European Court stating that the Applicant's rights to the presumption of innocence has not been violated and that the announcements made by the Minister of the Interior and other relevant state authorities provided in the facts of the case were compatible with the presumption of innocence.

It is recommended that you address the following questions:

1. Whether the requirements of Article 6 (2) are applicable to the case of *Alenet de Ribemont v. France* in terms of the scope of possible infringement of the presumption of innocence and the scope of the authorities who might violate this principle?
2. Whether the reference to the case made by the highest-ranking officers in the French police at the press conference were done with necessary discretion and circumspection necessary if the presumption of innocence is to be respected?
3. Whether the content of the statements complained of were such to infringe the presumption of innocence and whether those statements could somehow encouraged the public to believe him guilty?
4. Whether the statements complained of could effect on impartial assessment of the facts of the case by the competent judicial authority?
5. Whether the remarks made by the Minister of the Interior and, in his presence and under his authority, by the police superintendent in charge of the inquiry and the Director of the Criminal Investigation Department, were compatible with the internationally accepted norms on presumption of innocence as guaranteed by Article 6 (2) of the European Convention.

You need to use the following while presenting your oral arguments:

1. Follow the internationally accepted principles on oral advocacy;
2. Ensure that your oral pleadings/arguments are justified, well structured, logically linked and clearly divided amongst the members of your team;
3. Apply and directly use the relevant judgments of the European Court as support for your legal arguments;
4. Ensure that the scope of the response on Article 6 (2) submitted by you is limited to the arguments and response of the Applicant.

PART IV. ATTACHMENT C – ALLENET DE RIBEMONT V. FRANCE -- GROUP C

Your Group will be acting as the bench in this case to be examined before the European Court. The case concerns alleged violations of the Applicant's right to fair trial in particular the presumption of innocence guaranteed by Article 6 (2) of the European Convention.

The details of the case are indicated in Attachment D. The Applicant submits that his right to the presumption of innocence were violated.

For handling the trial at the European Court you shall do the following:

1. Familiarise yourselves with the facts of the case,
2. Familiarise yourselves with the content of Article 6 of the European Convention,
3. Familiarise yourselves with Attachments B and D,
4. Consider and examine all those arguments that are likely to be presented by the Applicant and the government of the Respondent State.
5. Familiarise yourselves with the instructions to the Applicant and Respondent State set out in Attachments A and B, in order to prevent those instructions not being followed by the representatives of the Applicant and the Respondent State during the mock trial.

It is recommended that you find out the matters set out below by asking questions about:

1. Whether the requirements of Article 6 (2) are applicable to the case of *Alenet de Ribemont v. France* in terms of the scope of possible infringement of the presumption of innocence and the scope of the authorities who might violate this principle?
2. Whether the reference to the case made by the highest-ranking officers in the French police at the press conference were done with necessary discretion and circumspection necessary if the presumption of innocence is to be respected?
3. Whether the content of the statements complained of were such to infringe the presumption of innocence and whether those statements could somehow encouraged the public to believe him guilty?
4. Whether the statements complained of could effect on impartial assessment of the facts of the case by the competent judicial authority?
5. Whether the remarks made by the Minister of the Interior and, in his presence and under his authority, by the police superintendent in charge of the inquiry and the Director of the Criminal Investigation Department, were compatible with the internationally accepted norms on presumption of innocence as guaranteed by Article 6 (2) of the European Convention.

You have the right to do the following:

1. To run the trial before the European Court in accordance with the Regulations and accepted practice of the Court,
2. To actively ask questions to the representatives of the Applicant and the Respondent State;
3. If necessary, Judges may, at their discretion, extend the total oral argument time beyond the allocated time, up to an additional 5 (five) minutes per representative of the Applicant or Respondent state;
4. Deliver a judgment, which should have similar structure as the judgments handed down by the European Court in reality. You, as a member of the bench, should deliver a judgment as a result of the impartial assessment of the arguments presented by both parties during the mock trial exercise. The bench does not have a right to consider and address any questions which were not pleaded by the parties.

PART V. ATTACHMENT D - NON OFFICIAL SUMMARY OF THE FACTS OF THE CASE ALLENET DE RIBEMONT v. FRANCE (JUDGMENT OF 23 JANUARY 1995)

NON OFFICIAL SUMMARY OF THE FACTS OF THE CASE

A. Background to the case

The applicant - Mr. Patrick Allenet de Ribemont is a company secretary. He currently lives in Lamontjoie (Lot-et-Garonne).

On 24 December 1976 Mr. Jean de Broglie, a Member of Parliament (département of Eure) and former minister, was murdered in front of the applicant's home. He had just been visiting his financial adviser, Mr. Pierre De Varga, who lived in the same building and with whom Mr. Allenet de Ribemont was planning to become the joint owner of a Paris restaurant, "La Rôtisserie de la Reine Pédauque". The scheme was financed by means of a loan taken out by the victim. He had passed on the borrowed sum to the applicant, who was responsible for repaying the loan.

A judicial investigation was begun on the offence of intentional homicide. On 27 and 28 December 1976 the crime squad at Paris police headquarters arrested a number of people, including the victim's financial adviser. On the 29th of December it arrested Mr. Allenet de Ribemont.

B. The press conference of 29 December 1976

On 29 December 1976, at a press conference on the subject of the French police budget for the coming years, the Minister of the Interior, Mr. Michel Poniatowski, the Director of the Paris Criminal Investigation Department, Mr. Jean Ducret, and the Head of the Crime Squad, Superintendent Pierre Ottavioli, referred to the inquiry that was under way.

Two French television channels reported this press conference in their news programs:

"TF1 NEWS:

Mr. Roger Giquel, newsreader: ... here is how all the aspects of the de Broglie case were explained to the public at a press conference given by Mr. Michel Poniatowski yesterday evening.

Mr. Poniatowski: ... All the people involved are now under arrest after the arrest of Mr. De Varga-Hirsch. It is a very simple story. A bank loan guaranteed by Mr. de Broglie was to be repaid by Mr. Varga-Hirsch and Mr. de Ribemont.

A journalist: Superintendent, who was the key figure in this case? De Varga?

Mr. Ottavioli: I think it must have been Mr. De Varga.

Mr. Ducret:... Mr. De Varga, and his acolyte, Mr. de Ribemont, were the instigators of the murder. The organizer was Detective Sergeant Simoné and the murderer was Mr Frèche.

Mr. Giquel: As you can see, those statements include a number of assertions. That is why the police are now being criticised by Ministry of Justice officials. Although Superintendent Ottavioli and Mr. Ducret were careful to (end of recording).

ANTENNE 2 NEWS

Mr. Daniel Bilalian, newsreader: ... This evening, therefore, the case has been cleared up. The motives and the murderer's name are known.

Mr. Ducret: The organizer was Detective Sergeant Simoné and the murderer was Mr. Frèche.

Mr. Ottavioli: That is correct....

Mr. Poniatowski: It is a very simple story. A bank loan guaranteed by Mr. de Broglie was to be repaid by Mr. Varga-Hirsch and Mr. de Ribemont.

A journalist: Superintendent, who was the key figure in this case? De Varga?

Mr. Ottavioli: I think it must have been Mr De Varga.

Mr. Jean-François Luciani, journalist: The loan was guaranteed by a life insurance policy for four hundred million old francs taken out by Jean de Broglie. In the event of his death, the sum insured was to be paid to Pierre De Varga-Hirsch and Allenet de Ribemont. The turning-point came last night when Guy Simoné, a police officer, was the first to crack. He admitted that he had organised the murder and had lent a gun to have the MP killed. He also hired the contract killer, Gérard Frèche, who was promised three million old francs and who in turn found two people to accompany him. The reasons for their downfall were, first, that Simoné's name appeared in Jean de Broglie's diary and, second, that they killed him in front of no. 2 rue des Dardanelles....”

On 14 January 1977 Mr. Allenet de Ribemont was charged with aiding and abetting intentional homicide and taken into custody. He was released on 1 March 1977 and a discharge order was issued on 21 March 1980.

C. The compensation claims

On 23 March 1977 Mr. Allenet de Ribemont submitted a claim to the Prime Minister based on Article 6 para.2 (art. 6-2) of the Convention, inter alia. He sought compensation of ten million French francs (FRF) for the non-pecuniary and pecuniary damage he maintained he had sustained on account of the above-mentioned statements by the Minister of the Interior and senior police officials.

The proceedings in the administrative courts

(a) In the Paris Administrative Court

On 20 September 1977 the applicant applied to the Paris Administrative Court for review of the Prime Minister's implicit refusal of his claim and renewed his claim for compensation. He filed pleadings on 12 October 1977.

On 21 February 1978 the Minister of Justice did likewise. After notice had been served on them by the Administrative Court on 14 March 1978, the Minister of the Interior and the Prime

Minister filed pleadings on 21 and 27 April 1978 respectively. Mr. Allenet de Ribemont filed more pleadings on 29 March and 24 May 1978.

Further pleadings still were filed on 29 March 1979 by the Minister of Culture, to whom the case file had been sent on 23 January 1979; on 6 June 1979 and 12 August 1980 by the Minister of the Interior; and on 14 May 1980 by the applicant.

After a hearing on 29 September 1980, the Paris Administrative Court delivered a judgment on 13 October 1980 in which the following reasons were given:

"Mr. Allenet, known as Allenet de Ribemont, has applied for an order that the State should pay compensation for the damage that the Minister of the Interior of the time allegedly caused him by naming him in statements made on 29 December 1976 during a press conference on the murder of Mr. Jean de Broglie.

Although the State may be liable in damages for the administrative acts of a member of the Government, statements that he makes in the course of his governmental duties are not susceptible to review by the administrative courts. It follows that the application is inadmissible. ..."

(b) In the Conseil d'Etat

On 15 December 1980 the Conseil d'Etat registered a summary notice of appeal by Mr Allenet de Ribemont. After a warning on 19 May 1981, he filed his full pleadings on 1 July 1981. On 7 July these pleadings were sent to the Minister of the Interior, who submitted his observations on 13 April 1982. The applicant replied on 7 July 1982.

After a hearing on 11 May 1983 the Conseil d'Etat dismissed the appeal on 27 May 1983, on the following grounds:

"... Statements made by the Minister of the Interior at the time of a police operation cannot be dissociated from that operation. Accordingly, it is not for the administrative courts to rule on any prejudicial consequences of such statements.

It follows from the foregoing that, although the Paris Administrative Court was wrong to rule in the impugned judgment that the applicant's claim related to an act performed 'in the course of governmental duties' and thus not susceptible to review by the administrative courts, Mr Allenet's appeal against the dismissal of his claim in that judgment is unfounded."

The proceedings in the ordinary courts

(a) In the Paris tribunal de grande instance

Mr. Allenet de Ribemont brought proceedings in the Paris tribunal de grande instance against the Prime Minister on 29 February 1984 and the Government Law Officer (agent judiciaire du Trésor) on 5 March 1984.

On 25 September 1984 the Prime Minister submitted that the tribunal de grande instance had no jurisdiction as such an action could only, in his view, be brought in the administrative courts.

After requesting the applicant to produce the full text of the statements attributed to the Minister and raising an objection that an action for defamation was time-barred, the Government Law Officer replied on 21 September 1984 and on 28 May 1985.

The applicant filed his submissions on 14 November 1984 and 5 April 1985. He requested the court to order two French television companies to hand over video recordings of the press conference of 29 December 1976 and produced press cuttings relating to it.

The court gave judgment on 8 January 1986 as follows:

"Admissibility of the action brought against the Prime Minister.

.... According to the provisions of section 38 of the Act of 3 April 1955, Patrick Allenet de Ribemont's claim for reparation from the State for damage sustained on account of the statements attributed to the Minister of the Interior should have been lodged only against the Government Law Officer, who is the State's sole representative before the courts, and not against the Prime Minister, who accordingly must not remain a party to the proceedings.

Jurisdiction

The Paris tribunal de grande instance must be held to have jurisdiction in so far as the statements attributed to the Minister of the Interior can be linked with a police operation and are not dissociable from that operation.

The press conference of 29 December 1976, held by the Minister of the Interior, the Director of the Criminal Investigation Department and the Head of the Crime Squad to inform the press of the results of the police inquiries following the murder of Jean de Broglie, may be considered in dissociable from the police operation that was then under way. ...

The statements complained of...

Anyone who complains of any statements, whether defamatory or merely negligent within the meaning of Article 1382 of the Civil Code, must prove that the impugned statements were actually made. It is not for the court to make good any omissions by the parties or to supplement evidence they have adduced, so long as they have been afforded the opportunity of presenting all their documents and arguments freely and in accordance with the adversarial principle.

In this respect, since the plaintiff has been unable to obtain the video recording of the press conference in question and the Government Law Officer considers that he is not under any obligation to request the judge in charge of preparing the case for trial or the court to order the compulsory production of such evidence, judgment must be given on the basis of the evidence in the case file.

Patrick Allenet de Ribemont has produced press cuttings describing the press conference of 29 December 1976, some of which are dated the day after the conference or the days following ... The newspapers did not, however, report the statements allegedly made by the Minister of the Interior, as set out in the writ.

However, in publications several years after the event, journalists attributed to the Minister of the Interior remarks about Patrick Allenet de Ribemont's alleged role, and in *Le Point* of 6 August 1979, for instance, it is possible to read Michel Poniatowski's statements, reported as follows:

'Mr. De Varga and Mr. de Ribemont were the instigators of the murder. The organizer was Detective Sergeant Simoné and the murderer was Mr Frèche'.

... It may further be observed, as a subsidiary point, that the publications at the time of the press conference in issue merely reported the remarks about Patrick Allenet de Ribemont's involvement in Jean de Broglie's murder allegedly made by Superintendent Ottavioli after the Minister of the Interior had spoken.

Accordingly, since the plaintiff has brought proceedings against the State solely on account of the remarks attributed to the Minister of the Interior, the action must be dismissed without there being any need to examine the submission that an action either for defamation - although the plaintiff has disputed that his action was for defamation - or for a breach of the secrecy of judicial investigations provided for in Article 11 of the Code of Criminal Procedure, is time-barred. ..."

(b) In the Paris Court of Appeal

Mr. Allenet de Ribemont appealed to the Paris Court of Appeal on 19 February 1986, and the Government Law Officer cross-appealed on 19 March.

The applicant again requested that the videotapes should be handed over for showing.

On 7 May 1986 the judge in charge of preparing the case for hearing served notice on Mr. Allenet de Ribemont to file his submissions, but without success. On 14 October 1986 he requested him to produce his documents by 30 October and to file any submissions by 14 November. On 19 November he sent a final notice before terminating the preparation of the case for trial. The Government Law Officer filed submissions on 28 November and the applicant on 9 December. On 21 December the parties were informed that the order certifying that the case was ready for hearing would be issued on 28 April 1987.

At the hearing of 17 June 1987 Mr. Allenet de Ribemont requested an adjournment and, having duly been given leave by the court, filed further submissions on 8 July.

The Court of Appeal held another hearing on 16 September 1987 and gave judgment on 21 October 1987. It found against the applicant for the following reasons:

"The preliminary objection of inadmissibility ...

It is apparent from the arguments set out below addressing the analysis of the damage that this is an action to establish the State's liability on the ground that the judicial system has malfunctioned, rather than a civil action for defamation and/or breach of the secrecy of judicial investigations.

The merits

According to the appellant, Mr. Poniatowski had made the following statement: 'Mr. De Varga and Mr. de Ribemont were the instigators of the murder. The organizer was Detective Sergeant Simoné and the murderer was Mr. Frèche'. It was allegedly apparent from the series of statements made by Mr. Poniatowski, or by Mr. Ducret and Mr. Ottavioli under his authority, that all those guilty had been arrested, the haul was complete and the case was solved. These three had allegedly maintained that the motive for the crime was a bank loan obtained by Mr de Broglie to enable Mr. de Ribemont to acquire a controlling interest in the Rôtisserie de la Reine Pédauque company.

However, as the court below rightly held, the press cuttings produced by Mr. Allenet de Ribemont do not suffice to prove his allegations.

Even supposing, however, that they had been proved, it would be necessary to establish whether the damage alleged by the appellant could be linked to the impugned statements. ...

It has not been shown that the statements complained of, which were made during the judicial investigation, in themselves caused the alleged damage. In so far as this damage appears to be connected with the existence of criminal proceedings, it still cannot be held that the statements in issue affected the course of the case.

In the absence of any causal link between the impugned statements ... and the damage claimed, it is unnecessary to consider the subsidiary application to have the recording produced. ..."

(c) In the Court of Cassation

Mr. Allenet de Ribemont lodged an appeal on points of law, which the Court of Cassation (Second Civil Division) heard on 4 November 1988 and dismissed on 30 November 1988 on the following grounds:

".... It is argued, however, firstly, that the Court of Appeal distorted the meaning of those press cuttings, which proved conclusively that statements had been made by the Minister of the Interior and indicated their exact terms; secondly, that it infringed Article 1382 of the Civil Code by refusing to take into consideration the non-pecuniary damage sustained by Mr Patrick Tancrede Allenet de Ribemont; and, lastly, that it breached Article 13 (art. 13) of the European Convention on Human Rights by denying fair reparation to a man whose reputation had been injured in statements heard by millions of television viewers.

However, the Court of Appeal held in that judgment... that the cuttings from the newspapers published ... did not report the statements allegedly made by the Minister of the Interior, as set out in the writ, but merely gave an account of remarks said to have been made by a police superintendent after the Minister had spoken, and that the remarks attributed to Mr Poniatowski, relating to Mr Patrick Tancrede Allenet de Ribemont's alleged role as instigator, had been reported in a publication that appeared only several years after the event.

It was in the exercise of its unfettered discretion to assess the evidence before it that the Court of Appeal ruled....

In giving this reason alone - leaving aside the reasons criticised in the ground of appeal on points of law, which were subsidiary considerations - the Court of Appeal justified its decision in law...."

PART VI. ATTACHMENT E--JUDGMENT OF THE EUROPEAN COURT OF HUMAN RIGHTS ON THE CASE OF *ALLENET DE RIBEMONT V. FRANCE*

This is an extract from the judgment – The parts related to the alleged violation of Articles 13 and 6(1) are removed from the text for the purposes of the mock trial exercise. Paragraph numbers have been included for your reference

PROCEEDINGS BEFORE THE COMMISSION

27. Mr. Allenet de Ribemont lodged his application with the Commission on 24 May 1989. He alleged that the statements made by the Minister of the Interior at the press conference of 29 December 1976 amounted to an infringement of his right to benefit from the presumption of innocence secured in Article 6 para.2 (art. 6-2) ... of the Convention.

28. On 8 February 1993 the Commission declared the application (no. 15175/89) admissible as to the complaints based on disregard of the presumption of innocence and the length of the proceedings and the remainder of it inadmissible. In its report of 12 October 1993 (Article 31) (art. 31), the Commission expressed the unanimous opinion that there had been a violation of Article 6 para. 2....

FINAL SUBMISSIONS TO THE COURT

29. In their memorial the Government asked the Court to "rule that there [had] been no violation of Article 6 para 2 of the Convention".

30. The applicant requested the Court to "endorse the Commission's opinion of 12 October 1993" and "hold that there [had] been a violation of Article 6 para.2 of the Convention".

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 PARA. 2 (art. 6-2) OF THE CONVENTION

31. Mr. Allenet de Ribemont complained of the remarks made by the Minister of the Interior and the senior police officers accompanying him at the press conference of 29 December 1976. He relied on Article 6 para. 2 (art. 6-2) of the Convention, which provides: "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

A. Applicability of Article 6 para. 2 (art. 6-2)

32. The Government contested, in substance, the applicability of Article 6 para.2 (art. 6-2), relying on the *Minelli v. Switzerland* judgment of 25 March 1983 (Series-A no. 62). They maintained that the presumption of innocence could be infringed only by a judicial authority, and could be shown to have been infringed only where, at the conclusion of proceedings ending in a conviction, the court's reasoning suggested that it regarded the defendant as guilty in advance.

33. The Commission acknowledged that the principle of presumption of innocence was above all a procedural safeguard in criminal proceedings, but took the view that its scope was more

extensive, in that it imposed obligations not only on criminal courts determining criminal charges but also on other authorities.

34. The Court's task is to determine whether the situation found in this case affected the applicant's right under Article 6 para.2 (art. 6-2) (see, *mutatis mutandis*, the *Sekanina v. Austria* judgment of 25 August 1993, Series A no. 266-A, p. 13, para.22).

35. The presumption of innocence enshrined in paragraph 2 of Article 6 (art. 6-2) is one of the elements of the fair criminal trial that is required by paragraph 1 (art. 6-1) (see, among other authorities, the *Deweere v. Belgium* judgment of 27 February 1980, Series A no. 35, p. 30, para.56, and the *Minelli* judgment previously cited, p. 15, para.27). It will be violated if a judicial decision concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court regards the accused as guilty (see the *Minelli* judgment previously cited, p. 18, para.37).

However, the scope of Article 6 para.2 (art. 6-2) is not limited to the eventuality mentioned by the Government. The Court held that there had been violations of this provision in the *Minelli* and *Sekanina* cases previously cited, although the national courts concerned had closed the proceedings in the first of those cases because the limitation period had expired and had acquitted the applicant in the second. It has similarly held it to be applicable in other cases where the domestic courts did not have to determine the question of guilt (see the *Adolf v. Austria* judgment of 26 March 1982, Series A no. 49, and the *Lutz, Englert and Nölkenbockhoff v. Germany* judgments of 25 August 1987, Series A nos. 123-A, 123-B and 123-C).

Moreover, the Court reiterates that the Convention must be interpreted in such a way as to guarantee rights which are practical and effective as opposed to theoretical and illusory (see, among other authorities, the *Artico v. Italy* judgment of 13 May 1980, Series A no. 37, p. 16, para.33; the *Soering v. the United Kingdom* judgment of 7 July 1989, Series A no. 161, p. 34, para.87; and the *Cruz Varas and Others v. Sweden* judgment of 20 March 1991, Series A no. 201, p. 36, para. 99). That also applies to the right enshrined in Article 6 para.2 (art. 6-2).

36. The Court considers that the presumption of innocence may be infringed not only by a judge or court but also by other public authorities.

37. At the time of the press conference of 29 December 1976 Mr *Alenet de Ribemont* had just been arrested by the police (see paragraph 9 above). Although he had not yet been charged with aiding and abetting intentional homicide (see paragraph 12 above), his arrest and detention in police custody formed part of the judicial investigation begun a few days earlier by a Paris investigating judge and made him a person "charged with a criminal offence" within the meaning of Article 6 para.2 (art. 6-2). The two senior police officers present were conducting the inquiries in the case. Their remarks, made in parallel with the judicial investigation and supported by the Minister of the Interior, were explained by the existence of that investigation and had a direct link with it. Article 6 para.2 (art. 6-2) therefore applies in this case.

B. Compliance with Article 6 para. 2 (art. 6-2)

1. Reference to the case at the press conference

38. Freedom of expression, guaranteed by Article 10 (art. 10) of the Convention, includes the freedom to receive and impart information. Article 6 para.2 (art. 6-2) cannot therefore prevent the authorities from informing the public about criminal investigations in progress, but it requires that they do so with all the discretion and circumspection necessary if the presumption of innocence is to be respected.

2. Content of the statements complained of

39. Like the applicant, the Commission considered that the remarks made by the Minister of the Interior and, in his presence and under his authority, by the police superintendent in charge of the inquiry and the Director of the Criminal Investigation Department, were incompatible with the presumption of innocence. It noted that in them Mr. Allenet de Ribemont was held up as one of the instigators of Mr. de Broglie's murder.

40. The Government maintained that such remarks came under the head of information about criminal proceedings in progress and were not such as to infringe the presumption of innocence, since they did not bind the courts and could be proved false by subsequent investigations. The facts of the case bore this out, as the applicant had not been formally charged until two weeks after the press conference and the investigating judge had eventually decided that there was no case to answer.

41. The Court notes that in the instant case some of the highest-ranking officers in the French police referred to Mr. Allenet de Ribemont, without any qualification or reservation, as one of the instigators of a murder and thus an accomplice in that murder (see paragraph 11 above). This was clearly a declaration of the applicant's guilt which, firstly, encouraged the public to believe him guilty and, secondly, prejudged the assessment of the facts by the competent judicial authority. There has therefore been a breach of Article 6 para.2 (art. 6-2)....

III. APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

58. 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

59. Mr. Allenet de Ribemont first sought compensation for pecuniary damage. He claimed that the statements in issue had caused his insolvency and ruin and had made it impossible for him to

find work again. His bank had withdrawn the overdraft facility it had previously granted him and had refused to pay the cheques he signed. On 14 March 1979, when setting aside the contract between the applicant and Mr. de Broglie, the Paris tribunal de grande instance had ordered immediate payment of part of the sums owed by the applicant and had made the statutory interest payable from the day of Mr. de Broglie's death, so that a substantial sum was still due to his heirs. Lastly, at the time when the compulsory winding-up of the "Rôtisserie de la Reine Pédauque" restaurant was ordered by the court, on 7 February 1977, the applicant was in prison charged with aiding and abetting murder.

The applicant also complained of injury to his reputation and that of his family; this had caused him non-pecuniary damage that was both considerable - because of the circumstances in which the statements had been made, the status of those who had made them and the fact that Mr. de Broglie was an internationally known figure - and lasting, in spite of the discharge order made on 21 March 1980.

Mr. Allenet de Ribemont assessed the damage he had sustained at FRF 10,000,000 in total.

60. In the Government's submission, the applicant had not established any direct causal link between the alleged breach of Article 6 para.2 (art. 6-2) and the deterioration in his financial situation. As for non-pecuniary damage, the finding of a breach of the Convention would constitute sufficient just satisfaction.

61. The Delegate of the Commission considered that there was very little justification for the sums claimed by the applicant in respect of pecuniary damage, in the absence of any connection with the statements made by the Minister of the Interior and the senior police officers. On the other hand, he was of the view that the seriousness of the accusations and the national authorities' persistent refusal to produce the videotape of the press conference had caused non-pecuniary damage calling for far more than token compensation. He left it to the Court to assess the damage sustained on account of the excessive length of the proceedings.

62. The Court does not accept Mr. Allenet de Ribemont's reasoning with regard to pecuniary damage. It considers, nevertheless, that the serious accusations made against him at the press conference of 29 December 1976 certainly diminished the trust placed in him by the people he did business with and thus made it difficult for him to pursue his occupation. It therefore finds the claim for compensation in respect of pecuniary damage to be justified in part.

Moreover, it agrees with the Delegate of the Commission that the applicant indisputably sustained non-pecuniary damage on account of the breach of Article 6 para.1 (art. 6-1) and especially Article 6 para.2 (art. 6-2). Although the fact that Mr. de Broglie was well known, the circumstances of his death and the stir it caused certainly gave the authorities good reason to inform the public speedily, they also made it predictable that the media would give extensive coverage to the statements about the inquiry under way. The lack of restraint and discretion vis-à-vis the applicant was therefore all the more reprehensible. Moreover, the statements in issue were very widely reported, both in France and abroad.

Taking into account the various relevant factors and making its assessment on an equitable basis, as required by Article 50 (art. 50), the Court awards Mr. Allenet de Ribemont a total sum of FRF 2,000,000.

B. Guarantee

63. The applicant also asked the Court to hold that the State should guarantee him against any application for enforcement of the judgment delivered by the Paris tribunal de grande instance on 14 March 1979 or, failing that, to give him leave to seek an increase in the amount of just satisfaction at a later date.

64. The Delegate of the Commission did not express an opinion on this point.

65. Like the Government, the Court points out that under Article 50 (art. 50) it does not have jurisdiction to issue such an order to a Contracting State (see, *mutatis mutandis*, the *Idrocalce S.r.l. v. Italy* judgment of 27 February 1992, Series A no. 229-F, p. 65, para.26, and the *Pelladoah v. the Netherlands* judgment of 22 September 1994, Series A no. 297-B, pp. 35-36, para.44). It further considers that the question of just satisfaction is ready for decision.

C. Costs and expenses

66. Lastly, Mr. Allenet de Ribemont sought FRF 270,384.28 for costs and expenses incurred before the Convention institutions, broken down as follows: FRF 211,500 in fees, FRF 16,480 in costs and FRF 42,404.28 in value-added tax (VAT).

67. The Government and the Delegate of the Commission left this matter to the Court's discretion.

68. Making its assessment on an equitable basis, the Court awards the applicant FRF 100,000 plus VAT.

FOR THESE REASONS, THE COURT

1. Holds by eight votes to one that there has been a breach of Article 6 para.2 (art. 6-2) of the Convention; ...

3. Holds by eight votes to one that the respondent State is to pay the applicant, within three months, 2,000,000 (two million) French francs for damage;

4. Holds unanimously that the respondent State is to pay the applicant, within three months, 100,000 (one hundred thousand) French francs, plus value-added tax, for costs and expenses;

5. Dismisses unanimously the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 10 February 1995.

Signed: Rolv RYSSDAL
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 para.2 (art. 51-2) of the Convention and Rule 53 para.2 of Rules of Court, the partly dissenting opinion of Mr. Mifsud Bonnici is annexed to this judgment.

Initialed: R. R.

Initialed: H. P.

PARTLY DISSENTING OPINION OF JUDGE MIFSUD BONNICI

1.

2. I dissent, however, from the proposition that there has been a breach of Article 6 para.2 (art. 6-2) of the Convention.

This judgment affirms for the first time that the fundamental right that "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law" - "may be infringed not only by a judge or court but also by other public authorities" (paragraph 36).

This is the main principle affirmed by this judgment.

3. In the preceding paragraph 35, it is said: "the Court reiterates that the Convention must be interpreted in such a way as to guarantee rights which are practical and effective as opposed to theoretical and illusory".

4. My dissent arises from the consideration that this extended interpretation of the presumption of innocence cannot be guaranteed in a practical and effective way. When the violation is committed by the public authorities before the trial of the person charged with a criminal offence, no practical and effective remedy for that violation is afforded if that remedy is sought as soon as the violation takes place. In the instant case, the Court is finding a violation which occurred in 1976, and therefore it can accord a financial remedy. But this is clearly not a practical and effective remedy which can be applied satisfactorily if the violation is established before the trial takes place.

5. To illustrate the difficulty, I wish to refer to a Maltese case.

On 13 April 1972 a bomb exploded on the roof of a house and Giuseppina Formosa, the housewife residing in the property, was torn to bits.

On 28 April 1972 the Commissioner of Police, the Head of the Police Corps, together with four of his officers, called a press conference. This dealt with the general problem of delinquency, the state of the police force and similar matters, and then the Commissioner proceeded to say that the line of investigation pursued in the Formosa bomb case had proved to be fruitful; that Emmanuel Formosa, the husband of the victim, had confessed; that he was going to be charged before the inquiring magistrate on the next day and that the husband had asked for the protection of the police as he was afraid of the reaction of his wife's brothers.

6. Formosa filed an application in the civil court alleging, among other things, the violation of his fundamental right guaranteed by the Maltese Constitution (Article 39 [5]): "Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty."

The application was heard expeditiously by the court and rejected on 5 May 1972. On appeal, the Constitutional Court on 16 April 1973 confirmed the first judgment (DEC. KOST. 1964-

1978 GH.ST.LIGI. p. 343). Formosa was afterwards tried and convicted of the homicide of his wife, on 13 July 1973.

7. These facts are very similar to those of the instant case. The difference lies in the fact that in the Maltese case the matter was heard and decided before the criminal trial took place while in the instant case the Court is dealing with the matter after all has been said and done.

8. The reasons for arriving at the conclusions reached by the Maltese courts in not finding a violation are not convincing. There is no consideration of the problem as to whether the guarantee covers only the operations of the judge and the court or whether it also extends to other public authorities. But from them it clearly transpires that if one admits the extension - now affirmed in this judgment - there is no effective and practical remedy for the violation which a court can apply before the actual criminal trial is heard, once the constitutional mechanism of the domestic law is such that the proceedings on the violation can be heard and concluded before the trial and not after.

9. In so far as the Court has laid down such an important principle which may have a substantial impact in the field of criminal procedural law in the various Contracting States, but has not tackled the problem of the practical and efficient remedy for the affirmed violation, I have not found it possible to follow the majority on the point.

PART VII. ATTACHMENT F-- SUPPORTING MATERIALS

Article 6⁴ – Right to a fair trial

- 1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
- 2 Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
- 3 Everyone charged with a criminal offence has the following minimum rights:
 - a to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - b to have adequate time and facilities for the preparation of his defence;
 - c to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - d to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - e to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

⁴ Heading added according to the provisions of Protocol No. 11 (ETS No. 155).