The Case-Law of the European Court of Human Rights in 1994

1. THE WORK OF THE COURT

As far as criminal cases are concerned 1994 has been a rather uneventful year for the European Court of Human Right. The number of cases decided dropped from twenty-six in the previous year to twenty. In seven of them the Court held that one or more violations of the Convention had occured. The most important decision deals with the relevance of Article 6 to the imposition of repressive sanctions by administrative bodies. Other interesting cases concern the right of the accused to be defended by counsel in his absence and freedom of expression in political and cultural matters. That organised crime will be on the agenda of the Court in the coming years is made likely by cases that deal with measures such as the surveillance of persons and the confiscation of goods.

The following judgments in criminal matters were rendered by the Court:

22 February 1994 Series A 281-A Raimondo v. Italy
22 February 1994 Series A 281-B Tripodi v. Italy
23 February 1994 Series A 282-A Stanford v. the United Kingdom
24 February 1994 Series A 284 Bendenon v. France
23 March 1994 Series A 283-B Ravnsoberg v. Sweden
25 March 1994 Series A 287 Scherer v. Switzerland
22 April 1994 Series A 286-B Saraiva de Carvalho v. Portugal
26 April 1994 Series A 285-B Diaz Ruano v. Spain
18 July 1994 Series A 293-A Vendittelli v. Italy
18 July 1994 Series A 294-A Wynne v. the United Kingdom
20 September 1994 Series A 295-A Otto-Preminger-Instituut v. Austria
22 September 1994 Series A 296-A Henrich v. France
22 September 1994 Series A 297-A Lala v. the Netherlands
22 September 1994 Series A 297-B Pelladoah v. the Netherlands
23 September 1994 Series A 298 Jersild v. Denmark
28 October 1994 Series A 300-A Murray v. the United Kingdom
28 October 1994 Series A 300-B Boner v. the United Kingdom

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2. DETERMINATION OF A CRIMINAL CHARGE

The case of Bendenoun v. France, the most important case decided by the European Court in 1994, is concerned with the question of to what procedures Article 6 of the European Convention applies.

Mr. Bendenoun, a French citizen and a dealer in coins, objets d'art and precious stones, came under investigation by the French custom authorities, acting on information received from an anonymous informer. On the basis of the evidence gathered by these authorities the applicant was prosecuted for various customs and exchange-control offences. However, a composition was reached, whereby Bendenoun admitted the offences and paid a fine of 300,000 French francs. During the proceedings the applicant had access to all the documents in the customs file, which contained 24 reports and 353 other documents.

At some time the customs sent the file to the Inland Revenue. Investigation of the case by the tax authorities led to two more proceedings. On the one hand, Bendenoun was charged with tax evasion before the Strasbourg Criminal Court in 1977. During preliminary investigations in the case the customs file was sent to the court. The applicant had access to it. It appears, however, that this was no longer the case during the trial stage, due to the composition that was reached in the meantime between the applicant and the custom authorities. The applicant was nevertheless convicted and his appeals to the Court of Appeal and the Court of Cassation met with no success. Meanwhile, the tax authorities imposed on Bendenoun a fiscal fine for having evaded income taxes. Bendenoun lodged an appeal against that decision to the Strasbourg Administrative Court. Before this Court the tax authorities produced four of the 24 reports of the customs file only; five more were already in the applicant's possession. On two occasions the Administrative Court asked the public prosecutor in charge of the criminal case to forward the customs file to the applicant. These requests, however, were not met. Later, the Administrative Court rejected Bendenoun's appeal. In vain the applicant lodged an appeal with the Conseil d'Etat.

In his complaints the applicant stated that his right to a fair trial had been infringed during the criminal proceedings since, having not had unlimited access to the customs file, he had not been able to defend himself adequately. His complaints with respect to the criminal proceedings were declared inadmissible by the European Commission for being too late. As far as his other complaints are concerned, in its report of 10 December 1992 the Commission concluded that there had indeed been a violation of Article 6.

The main question before the European Court was whether Article 6 of the European Convention is applicable to proceedings in which surcharges are imposed by tax authorities and their decisions reviewed by administrative courts. In the light of its earlier case-law it comes as no surprise that the Court answers the question in the affirmative. According to the Court the relevant provision in the General Tax Code enabling the imposition of a fiscal fine covers all citizens in their capacity as taxpayers, and not a given group with a particular status. Secondly, the tax surcharges are intended not as pecuniary compensation for damage but essentially as a punishment to deter reoffending. Thirdly, they are imposed under a general rule, whose purpose is both deterrent and punitive. Lastly, in the case in question the surcharges