



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

THIRD SECTION

**CASE OF MCGONNELL v. THE UNITED KINGDOM**

*(Application no. 28488/95)*

JUDGMENT

STRASBOURG

8 February 2000

**In the case of McGonnell v. the United Kingdom,**

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

Mr J.-P. COSTA, *President*,

Mr P. KŪRIS,

Mrs F. TULKENS,

Mr W. FUHRMANN,

Mr K. JUNGWIERT,

Mrs H.S. GREVE, *judges*,

Sir John LAWS, *ad hoc judge*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 28 September 1999, 25 January and 1 February 2000,

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 4 December 1998, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”).

2. The case originated in an application (no. 28488/95) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission under former Article 25 by a British national, Mr Richard James Joseph McGonnell (“the applicant”), on 29 June 1995.

3. The Commission’s request referred to former Articles 44 and 48 and to the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (former Article 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 of the Convention.

4. Following the entry into force of Protocol No. 11 to the Convention on 1 November 1998 and in accordance with the provisions of Article 5 § 4 thereof read in conjunction with Rule 100 § 1 and Rule 24 § 6 of the Rules of Court, a panel of the Grand Chamber decided on 14 January 1999 that the case would be examined by a Chamber constituted within one of the Sections of the Court.

5. In accordance with Rule 52 § 1, the President of the Court, Mr L. Wildhaber, assigned the case to the Third Section. The Chamber constituted within that Section included *ex officio* Sir Nicolas Bratza, the judge elected in respect of the United Kingdom (Articles 27 § 2 of the

Convention and Rule 26 § 1 (a)), and Mr J.-P. Costa, Acting President of the Section and President of the Chamber (Rules 12 and 26 § 1 (a)). The other members designated to complete the Chamber were Mr P. Kūris, Mrs F. Tulkens, Mr W. Fuhrmann, Mr K. Jungwiert and Mrs H.S. Greve (Article 26 § 1 (b)).

Subsequently Sir Nicolas Bratza, who had taken part in the Commission's examination of the case, withdrew from sitting in the Chamber (Rule 28). The United Kingdom Government ("the Government") accordingly appointed Sir John Laws to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

6. In accordance with Rule 59 § 2, the Chamber decided, on 8 June 1999, to hold a hearing which took place in public in the Human Rights Building, Strasbourg, on 28 September 1999.

There appeared before the Court:

(a) *for the Government*

Mrs S. LANGRISH, Foreign and Commonwealth Office	<i>Agent,</i>
Sir Sidney KENTRIDGE QC,	
Mr D. ANDERSON QC,	<i>Counsel,</i>
Mr G. ROWLAND QC, Attorney-General for Guernsey,	
Mr R. CLAYTON, Home Office,	
Mr P. JENKINS, Lord Chancellor's Department,	
Mrs C. DAVIDSON, Lord Chancellor's Department,	
Mr M. BIRT QC, Attorney-General for Jersey,	
Ms M. GRAY,	<i>Advisers;</i>

(b) *for the applicant*

Mr B. EMMERSON,	
Ms J. SIMOR,	<i>Counsel,</i>
Mr R.A. PERROT,	<i>Advocate.</i>

The Court heard addresses by Mr Emmerson and Sir Sidney Kentridge.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

#### A. The planning background

7. The applicant bought the Calais Vinery, Calais Lane, St Martin's in 1982. A number of planning applications were made to permit residential use of the land in the ensuing years. The applications were all refused, an appeal being dismissed by the Royal Court in July 1984. In 1986 or 1987 the applicant moved into a converted packing shed on his land.

8. In 1988 the applicant, through an advocate, made representations to a planning inquiry which was considering the draft Detailed Development Plan no. 6 (DDP6). In his report to the President of the Island Development Committee (IDC), the inspector set out the arguments led by the applicant's advocate and by the advocate for the IDC, and concluded that a dwelling on the applicant's site would be an intrusion into the agricultural/horticultural hinterland. He supported the IDC's proposed zoning of the land as an area reserved for agricultural purposes and in which development was generally prohibited.

9. The President of the IDC submitted DDP6, in draft, to the President of the States of Deliberation on 22 May 1990.

10. The States of Deliberation, presided over by Mr Graham Dorey, the Deputy Bailiff, debated and adopted DDP6 on 27 and 28 June 1990. The zoning of the applicant's land was not changed.

11. A retrospective application for planning permission to convert the packing shed into a dwelling was rejected by the IDC on 11 July 1991 as the IDC was bound to take into account DDP6, according to which the site was zoned as a Developed Glasshouse Area where residential development was not allowed.

12. On 27 March 1992 the applicant was convicted by the Magistrates' Court on his guilty plea of changing the use of the shed without permission, contrary to section 14(1)(a) of the Island Development (Guernsey) Law 1966 ("the 1966 Law"). He was fined 100 pounds sterling, with ten days' imprisonment in default.

13. On 15 February 1993 the IDC applied for permission under Section 37(1)(h) of the 1966 Law itself to carry out the necessary works to remedy the breach of the planning legislation. The application was adjourned in Ordinary Court by the Deputy Bailiff on 25 February 1993 for a date to be fixed. The Deputy Bailiff was also unwilling to hear the matter on the ground of having dealt with the applicant when he was Her Majesty's Procureur.

14. A further application on the applicant's behalf for permission to continue living in the shed was dismissed by the IDC on 18 May 1993, and a request for the section 37(1)(h) proceedings to be adjourned was dismissed by the Bailiff on 20 May 1993. On 25 June 1993 the Royal Court comprising the Bailiff and three Jurats granted the IDC's application under Section 37(1)(h).

### **B. The particular facts of the case**

15. On 10 August 1993 the applicant's current representative made a formal application for change of use on behalf of the applicant, together with a request that continued occupation be permitted pending determination of the expected appeal against an expected refusal. The application was rejected by the IDC on 26 October 1994 in the following terms:

"I have to inform you that ... the Committee decided to reject your proposal for the following reason which is based on the considerations which the Committee is bound to take into account under the provisions of section 17 of the Island Development (Guernsey) Laws 1966-1990:—

- (a) Detailed Development Plan no. 6, as approved by the States.

The site is located within a Developed Glasshouse Area and the Committee's written statement of policy makes no provision for the form of development proposed. I enclose for your information a copy of the written statement of policy. ..."

16. On 6 June 1995 the Royal Court, comprising the Bailiff, by then Sir Graham Dorey, and seven Jurats, heard the applicant's appeal. The applicant's representative accepted that the written statement provided for no development other than "Developed Glasshouse" in the area, but submitted that there were nevertheless reasons in the case to permit the change of use: the external appearance of the building would not change and there would be no future prejudice to the horticultural use of the land, such that it was unreasonable for the IDC to take an unduly narrow view of what it allowed under the DDP. The Bailiff then summed up the applicant's complaints to the Jurats, instructing them that the ultimate burden of proof was on the IDC to satisfy the Jurats that the IDC's decision was reasonable. The appeal was dismissed unanimously. The decision recites the grounds of appeal, but gives no reasons.

## **II. RELEVANT DOMESTIC LAW AND PRACTICE**

17. The Court has been referred to one recent official document relating to the Constitution of Guernsey generally. It is the States of Guernsey Administrative and Accounting Guidelines, issued in 1991 as a manual of

reference and best practice for the information and guidance of civil servants. It has forewords by the then Bailiff and President of the States, Sir Charles Frossard, and by the States Supervisor, Mr F.N. Le Cheminant. The section dealing with the Constitution and law of Guernsey is taken from a pamphlet by a former Bailiff, and the part dealing specifically with the position of the Bailiff reads as follows:

“The Bailiff is the Island’s chief citizen and representative.

The Bailiff is appointed by the Sovereign by Letters Patent under the Great Seal of the Realm and holds office during Her Majesty’s Pleasure subject to a retiring age of seventy years. He is President of the States of Election, President of the States of Deliberation, President of the Royal Court, President of the Court of Appeal and head of the Administration.

The Bailiff, as President of the States of Deliberation, is entitled to speak on any matter and has no original vote but he has a casting vote if the Members are equally divided. In general, the Bailiff uses his voice to ensure a further investigation of questions on which the States are in doubt. He places measures before the States at the request of the States Committees but he can also on his own initiative place any matter before the assembly.

He is, with the Lieutenant-Governor, a channel of communication between the Privy Council and the Secretary of State for the Home Department on the one hand and on the other, the Island authorities; and in a number of questions, as the head of the Administration of the Island, he would be expected to guide the Island authorities.

He has been relieved of some of his administrative responsibilities by the appointment of the States Advisory and Finance Committee which is in the nature of a co-ordinating committee with advisory powers but the Bailiff may, in his own discretion, lay before the States any matter which he has previously referred to the Committee providing that he gives the Committee an opportunity to acquaint the States with its views.

While the Bailiff is responsible for arranging the business to come before the States, he is not in a position to refuse to place before the States any question of business if so requested by Members or Committees of the States. The assembly looks to the Bailiff for advice on matters affecting the Constitution of the Island.

In the course of insular legislation or in discussions arising from communications from the Privy Council or the Home Department, it is the duty of the Bailiff to represent the views of the Island in constitutional matters.

In the event of differences between the Crown and the States it is the historical duty of the Bailiff to represent the views of the people of the Island.”

18. The Bailiff is the senior judge of the Royal Court. In the modern era, he has usually occupied the offices of Her Majesty’s Comptroller, Her Majesty’s Procureur (Solicitor-General and Attorney-General respectively) and, since 1970, Deputy Bailiff, before finally becoming Bailiff. In his judicial capacity, the Bailiff is the professional judge (with the lay Jurats) in

the Royal Court, and is *ex officio* President of the Guernsey Court of Appeal. In his non-judicial capacity, the Bailiff is President of the States of Election, of the States of Deliberation, of four States committees (the Appointments Board, the Emergency Council, the Legislation Committee and the Rules of Procedure Committee), and he plays a role in communications between the island authorities and the government of the United Kingdom and the Privy Council. Where the Bailiff presides in his non-judicial capacity, he has a casting, but not an original, vote.

19. The States of Election elects people to fill the vacancies which occur amongst the twelve Jurats. Jurats sit as lay members of the Royal Court. It is their function to determine the issues of fact referred to them, and to decide whether or not to allow an appeal. They also sit on certain of the States committees, either because a committee mandate requires the election of a Jurat or by reason of abilities or interests personal to them. Jurats are not, however, eligible to sit on the States Committee for Home Affairs, the Gambling Control Committee or any States committee which administers legislation the provisions of which include a right of appeal to the Royal Court against a decision of that committee.

20. The States of Deliberation exercises its legislative power in Guernsey in the form of Laws and Ordinances. In practice, a “Billet d’Etat” is laid before the States, generally by one or other of the States committees. Having passed through the States of Deliberation, Projets de Loi (draft laws) are scrutinised by the Home Office and other relevant departments of the United Kingdom government before being submitted to the Privy Council in London for royal assent. Ordinances do not need royal assent and are made under the States of Deliberation’s limited common-law powers, or under powers delegated to the States by Guernsey laws or Acts of the United Kingdom parliament applicable to Guernsey.

21. The States of Deliberation is not divided on party political lines; members of the States are elected as individuals, and vote in all matters according to their consciences. All members are of equal importance, and there are no time-limits on the length of speeches or debates generally. The States is scheduled to meet twelve times each calendar year. Sittings usually last one or two days.

22. The States committees conduct the government of Guernsey. There are some fifty States committees, to which specific administrative tasks are given by statute or delegated by the States of Deliberation. Each committee is directly accountable to the States of Deliberation.

23. None of the States committees has legal supremacy over the others, although the Advisory and Finance Committee is the most important. It oversees Treasury matters and examines all proposals and reports which are to be placed before the States of Deliberation. The committees, each of which has a Chief Officer or Chief Executive, are supported by a professional civil service of some 1,800 staff.

24. The Appointments Board, one of the States committees, appoints officials to fill certain offices in the States' service when those offices become vacant. With limited exceptions, it appoints at the level of Senior Officer Grade 8 or above. The offices include the States Supervisor and other senior civil servants such as senior medical personnel, the Prison Governor and the Chief Officer of Police. It has never appointed a Chief Executive of the IDC. The Appointments Board met twenty-four times in the ten years prior to 31 December 1998.

25. The Emergency Council has the power to declare a state of emergency, to make emergency regulations where the population or a substantial portion of it risks being deprived of the essentials of life, and to make other essential arrangements in the case of hostile attack by a foreign power. It has met three times in the last ten years. On none of those occasions was a state of emergency declared.

26. The Legislation Committee, which meets about once a month, reviews and revises the Projets de Loi, reviews and drafts Ordinances and, in certain cases, orders that an Ordinance shall come into force pending consideration by the States of Deliberation. The latter function has been used on sixteen occasions in the last ten years.

27. The Rules of Procedure Committee considers the Rules of Procedure in relation to assemblies of the States of Deliberation, receives representations from the States and makes representations to the States for amendments to the Rules. It has met twenty-five times in the last fifteen years.

28. The Bailiff's role in communications between the island authorities and the government of the United Kingdom and Privy Council arises from his historical function of representing the views of the islanders to the Crown. The Bailiff represents a States committee's views outside the island when specifically requested to do so, and in accordance with a clear mandate. Representations are generally on behalf of the smaller committees. Examples of this function are the Bailiff's involvement in negotiating the level of fees payable in respect of Guernsey students attending higher education institutions in the United Kingdom, and in requesting the government to ensure that Heathrow Airport should have slots for aircraft from regional airports such as Guernsey.

29. The States Supervisor, the Chief Officer of the Advisory and Finance Committee, is the committee's senior adviser on policy, and is also head of the Guernsey civil service. He liaises with other senior civil servants in relation to all proposals for legislation and other major administrative items submitted by the various committees to the States of Deliberation and comments on them for the benefit of the Advisory and Finance Committee's deliberations on them. He also gives guidance to the Chief Officers of other committees and attends meetings of those committees where appropriate.

30. Section 14(1)(a) of the Island Development (Guernsey) Law 1966 provides:

“A person shall not, without the permission in writing in that behalf of the Committee, carry out development of any land.”

Section 17(a) provides:

“In exercising its powers under the provisions of the last preceding section the Committee shall take into account the Strategic and Corporate Plan when approved by the States and any relevant Detailed Development Plans when so approved.”

31. In the case of *Bordeaux Vineries Ltd v. States Board of Administration* (4 August 1993), a challenge was made to the participation of the Bailiff as a judge in the Royal Court in an action against the States Board of Administration, one of the major States committees. The Court of Appeal noted that the then Bailiff, at first instance, had held:

“Insofar as the constitutional position is concerned ... my first duty is to the Crown in all matters, and I do not espouse causes of the States. ... The point has been raised as to my casting vote ... the vote is to be cast constitutionally. The way I defined that was to vote against any proposition before the States and only if that vote impinged on my conscience would I contemplate any other course.”

In connection with the existence of an appeal to it, the Court of Appeal noted:

“... the decision upon a submission that the Bailiff ... is disqualified by interest from hearing any matter should in the first place be made by the Bailiff ... From that decision an appeal lies to this Court.”

As to the participation of the Bailiff, the Court of Appeal found that:

“... the Bailiff is invested by law with duties in the Royal Court and in the States. The consequence of this dual function is that he has on occasion to take part in the exercise by the court of jurisdiction over the States. I do not think that on these occasions his responsibility in the States disqualifies him from discharging his responsibility in this Court. He can properly discharge both responsibilities because although he is a member of the States his special position there means he is not responsible for the decisions of the States or the acts of its agencies ...”

## PROCEEDINGS BEFORE THE COMMISSION

32. Mr McGonnell applied to the Commission on 29 June 1995.

33. The Commission declared the application (no. 28488/95) partly admissible on 22 January 1998. In its report of 20 October 1998 (former Article 31 of the Convention)<sup>1</sup>, it expressed, by twenty-five votes to five, the opinion that there had been a violation of Article 6 § 1 of the Convention.

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1. *Note by the Registry*. The report is obtainable from the Registry.

## FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

34. The Government's principal written submission was that the application should be declared inadmissible pursuant to Article 35 of the Convention. In the alternative, they submitted that there was no violation of Article 6 § 1 of the Convention.

35. In their oral submissions, the Government contended that the complaint under Article 6 did not give rise to a violation of the Convention. In their final observations, they maintained that an appeal was available in respect of the constitutional position of the Bailiff, and was not taken.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

36. The applicant claimed that he did not have the benefit of the guarantees of Article 6 § 1 of the Convention at the hearing of his case before the Royal Court of Guernsey on 6 June 1995. The relevant part of Article 6 provides:

“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. ...”

37. The Government contested the claim. The Commission upheld it.

#### A. The Government's preliminary objection

##### *Alleged non-exhaustion of domestic remedies*

38. The Government contended that the complaint concerning the alleged lack of independence and impartiality of the Royal Court in the applicant's case should be declared inadmissible for failure to exhaust domestic remedies, pursuant to Article 35 of the Convention, which states:

“1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.”

In the Government's submission, it would have been open to the applicant to appeal to the Guernsey Court of Appeal in respect of any alleged lack of independence and impartiality on the part of the Royal Court. They pointed to the case of *Bordeaux Vineries Ltd v. States Board of*

*Administration* (see paragraph 31 above) in which the Court of Appeal found that an appeal lay to it against a decision by the Bailiff on whether he was disqualified by interest from hearing any matter. They noted that the jurisdiction of the European Court to declare an application inadmissible for failure to exhaust domestic remedies, even when such arguments were rejected by the Commission, was not in doubt. They claimed that there was no reason why the exercise of the jurisdiction should depend on the Commission having given detailed consideration to the point.

39. The applicant contended that the Government were estopped from raising an objection of non-exhaustion, among other reasons because they had stated before the Commission's admissibility decision that "the Government concedes that it was not reasonably practicable for the applicant to have addressed any of his complaints to another authority". He considered that in any event no domestic remedy had been available to him, as the *Bordeaux Vineries* case had decided that the Bailiff's functions as President of the States did not preclude him from sitting as a judge in actions against the States.

40. The Court notes that the Government's submissions were not raised before the Commission. The Government are therefore estopped from relying on them (see, among many other authorities, the *Vasilescu v. Romania* judgment of 22 May 1998, *Reports of Judgments and Decisions* 1998-III, p. 1074, § 34).

## **B. Applicability of Article 6**

41. The parties agreed that Article 6 § 1 of the Convention was applicable to the proceedings in the present case, and the Court so finds.

## **C. Waiver**

42. The Government claimed that where a legally represented applicant had failed to raise an objection to the tribunal when it was open to him to do so, he must – even if the application was admissible – be deemed to have waived his right to object to the independence and impartiality of that tribunal.

43. The applicant submitted that the Government's submissions were a mere repetition of their submissions as to non-exhaustion of domestic remedies, and that they should be dismissed for the same reason. He considered that the Government had not, in any event, established a waiver.

44. The Court recalls that in the context of a complaint concerning the absence of a public hearing in civil proceedings, it has held that "a waiver must be made in an unequivocal manner and must not run counter to any important public interest" (see the *Håkansson and Sturesson v. Sweden* judgment of 21 February 1990, Series A no. 171-A, p. 20, § 66). No express

waiver was made in the present case. The question, as in the Håkansson and Sturesson case, is whether there was a tacit one. The answer to the question whether the applicant ought to have taken up his complaint with either the Bailiff at the hearing on 6 June 1995, or on appeal with the Court of Appeal, depends on what was reasonable in the circumstances of the case. In assessing that reasonableness, the Court notes first that in the *Bordeaux Vineries* case referred to by the Government, the Court of Appeal found that there was no structural conflict between the Bailiff's duties in the Royal Court and in the States of Deliberation.

Secondly, the Court notes that the argument of waiver was made for the first time before the Court: it was not raised before the Commission either prior or subsequent to the Commission's decision on admissibility.

45. Given the clear statement of the Court of Appeal in the *Bordeaux Vineries* case that the Bailiff's constitutional functions in connection with the States do not impinge on his judicial independence, and the fact that a domestic challenge was not only not pursued by the applicant in the domestic proceedings, but was not raised by the Government until a late stage of the Convention proceedings, the Court finds that the applicant's failure to challenge the Bailiff in Guernsey cannot be said to have been unreasonable, and cannot amount to a tacit waiver of his right to an independent and impartial tribunal.

#### **D. Compliance with Article 6 § 1**

46. The applicant pointed to the non-judicial functions of the Bailiff, contending that they gave rise to such close connections between the Bailiff as a judicial officer and the legislative and executive functions of government that the Bailiff no longer had the independence and impartiality required by Article 6. As specific examples, the applicant pointed to three matters which were not referred to before the Commission. They are the facts that the Bailiff is invariably appointed from the office of the Attorney-General, that he acts as Lieutenant-Governor of the island when that office is vacant, and that the Bailiff who sat in the present case had also presided over the States of Deliberation when DDP6, the very act which was at issue in the applicant's later case, was adopted. He also claimed that the Royal Court gave inadequate reasons for its judgment.

47. The Government recalled that the Convention does not require compliance with any particular doctrine of separation of powers. They maintained that whilst the Bailiff has a number of positions on the island, they cannot give rise to any legitimate fear in a reasonably well-informed inhabitant of Guernsey of a lack of independence or impartiality because the positions do not involve any real participation in legislative or executive functions. In particular, they underlined that when the Bailiff presides over the States of Deliberation or one of the four States committees in which he

is involved, his participation is not that of an active member, but rather he is an independent umpire, who ensures that the proceedings run smoothly without taking part in or expressing approval or disapproval of the matters under discussion. In connection with the reasons for the Royal Court's judgment, the Government considered that the Bailiff's summing-up, taken together with the decision of the Jurats, gave sufficient reasons to comply with Article 6 of the Convention.

48. The Court recalls that in its *Findlay v. the United Kingdom* judgment (25 February 1997, *Reports* 1997-I, p. 281, § 73) it found that:

“in order to establish whether a tribunal can be considered as ‘independent’, regard must be had, *inter alia*, to the manner of appointment of its members and their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence ...

As to the question of ‘impartiality’, there are two aspects to this requirement. First, the tribunal must be subjectively free of personal prejudice or bias. Secondly, it must also be impartial from an objective viewpoint, that is, it must offer sufficient guarantees to exclude any legitimate doubt in this respect ...

The concepts of independence and objective impartiality are closely linked ...”

49. In the present case, too, the concepts of independence and objective impartiality are closely linked, and the Court will consider them together.

50. The Court first observes that there is no suggestion in the present case that the Bailiff was subjectively prejudiced or biased when he heard the applicant's planning appeal in June 1995. It has not been alleged that the Bailiff's participation as Deputy Bailiff in the adoption of DDP6 in 1990 gives rise to actual bias on his part: the applicant stated that it was not possible to ascertain whether there was actual bias because of the Bailiff's various functions, but he did not contend that the Bailiff was subjectively biased or prejudiced.

51. The Court can agree with the Government that neither Article 6 nor any other provision of the Convention requires States to comply with any theoretical constitutional concepts as such. The question is always whether, in a given case, the requirements of the Convention are met. The present case does not, therefore, require the application of any particular doctrine of constitutional law to the position in Guernsey: the Court is faced solely with the question whether the Bailiff had the required “appearance” of independence, or the required “objective” impartiality.

52. In this connection, the Court notes that the Bailiff's functions are not limited to judicial matters, but that he is also actively involved in non-judicial functions on the island. The Court does not accept the Government's analysis that when the Bailiff acts in a non-judicial capacity he merely occupies positions rather than exercising functions: even a purely ceremonial constitutional role must be classified as a “function”. The Court must determine whether the Bailiff's functions in his non-judicial capacity

were, or were not, compatible with the requirements of Article 6 as to independence and impartiality.

53. The Court observes that the Bailiff in the present case had personal involvement with the planning matters at the heart of the applicant's case on two occasions. The first occasion was in 1990, when, as Deputy Bailiff, he presided over the States of Deliberation at the adoption of DDP6. The second occasion was on 6 June 1995, when he presided over the Royal Court in the determination of the applicant's planning appeal.

54. The Court recalls that in the case of *Procola v. Luxembourg*, four of the five members of the *Conseil d'Etat* had carried out both advisory and judicial functions in the same case (judgment of 28 September 1995, Series A no. 326, p. 16, § 45).

55. The participation of the Bailiff in the present case shows certain similarities with the position of the members of the *Conseil d'Etat* in the *Procola* case. First, in neither case was any doubt expressed in the domestic proceedings as to the role of the impugned organ. Secondly, and more particularly, in both cases a member, or members, of the deciding tribunal had been actively and formally involved in the preparatory stages of the regulation at issue. As the Court has noted above, the Bailiff's non-judicial constitutional functions cannot be accepted as being merely ceremonial. With particular respect to his presiding, as Deputy Bailiff, over the States of Deliberation in 1990, the Court considers that any direct involvement in the passage of legislation, or of executive rules, is likely to be sufficient to cast doubt on the judicial impartiality of a person subsequently called on to determine a dispute over whether reasons exist to permit a variation from the wording of the legislation or rules at issue. In the present case, in addition to the chairing role as such, the Deputy Bailiff could exercise a casting vote in the event of even voting and, as the Bailiff stated in the *Bordeaux Vineries* case, there was no obligation on him to exercise his casting vote against a proposition before the States where that vote impinged on his conscience (see paragraph 31 above). Moreover, the States of Deliberation in Guernsey was the body which passed the regulations at issue. It can thus be seen to have had a more direct involvement with them than had the advisory panel of the *Conseil d'Etat* with the regulations at issue in the *Procola* case (judgment cited above, p. 12, § 25).

56. The Court also notes that in the *De Haan* case, the judge who presided over the Appeals Tribunal was called upon to decide on an objection for which he himself was responsible. In that case, notwithstanding an absence of prejudice or bias on the part of the judge, the Court found that the applicant's fears as to the judge's participation were objectively justified (see the *De Haan v. the Netherlands* judgment of 26 August 1997, *Reports* 1997-IV, pp. 1392-93, §§ 50-51).

57. The Court thus considers that the mere fact that the Deputy Bailiff presided over the States of Deliberation when DDP6 was adopted in 1990 is

capable of casting doubt on his impartiality when he subsequently determined, as the sole judge of the law in the case, the applicant's planning appeal. The applicant therefore had legitimate grounds for fearing that the Bailiff may have been influenced by his prior participation in the adoption of DDP6. That doubt in itself, however slight its justification, is sufficient to vitiate the impartiality of the Royal Court, and it is therefore unnecessary for the Court to look into the other aspects of the complaint.

58. It follows that there has been a breach of Article 6 § 1.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

### A. Damage

60. The applicant requested the Court to award a “just and appropriate sum in compensation”. In early correspondence he referred to the sum of 50,000 pounds sterling (GBP). The Government considered that there was no reason to award any sum in respect of pecuniary or non-pecuniary damage.

61. The Court finds that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage which the applicant may have suffered. No specific claim for pecuniary damage has been made, and the Court finds none.

### B. Costs and expenses

62. The applicant has submitted bills totalling GBP 20,913.90 (exclusive of value-added tax – “VAT”). The Government have not commented on them.

63. The Court awards the applicant the sum of GBP 20,913.90, together with any VAT which may be payable.

### C. Default interest

64. According to the information available to the Court, the statutory rate of interest applicable in England and Wales at the date of adoption of the present judgment is 7.5% per annum.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months, GBP 20,913.90 (twenty thousand nine hundred and thirteen pounds sterling ninety pence), together with any value-added tax that may be chargeable;
  - (b) that simple interest at an annual rate of 7.5% shall be payable from the expiry of the above-mentioned three months until settlement;
4. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 8 February 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ  
Registrar

J.-P. COSTA  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Sir John Laws is annexed to this judgment.

J.-P.C.  
S.D.

## CONCURRING OPINION OF JUDGE Sir John LAWS

I add a few words of my own merely to emphasise that the only objective basis upon which, on the facts of this case, a violation of Article 6 § 1 may properly be found depends in my view entirely upon the fact that the Bailiff who presided over the Royal Court in the legal proceedings giving rise to this case presided also (as Deputy Bailiff) over the States of Deliberation in 1990 when DDP6 was adopted. That is the thrust of the reasoning in paragraph 57 of the judgment, with whose terms I entirely agree.

If it were thought arguable (perhaps by reference to the reasoning in paragraph 52) that a violation might be shown on any wider basis, having regard to the Bailiff's multiple roles, I would express my firm dissent from any such view. Where there is no question of actual bias, our task under Article 6 § 1 must be to determine whether the reasonable bystander – a fully informed layman who has no axe to grind – would on objective grounds fear that the Royal Court lacks independence and impartiality. I am clear that but for the coincidence of the Bailiff's presidency over the States in 1990, and over the Royal Court in 1995, there are no such objective grounds whatever.