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

CASE OF MALIGE v. FRANCE

(68/1997/852/1059)

JUDGMENT

STRASBOURG

23 September 1998

In the case of Malige v. France[1],

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A[2], as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,
Mr L.-E. PETTITI,
Mr R. MACDONALD,
Mr R. PEKKANEN,
Mr A.N. LOIZOU,
Mr K. JUNGWIERT,
Mr P. KŪRIS,
Mr E. LEVITS,
Mr M. VOICU,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 25 May and 26 August 1998,

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 9 July 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 27812/95) against the French Republic lodged with the Commission under Article 25 by a French national, Mr Jérôme Malige, on 28 November 1994.

The Commission's request referred to Articles 44 and 48 and to the declaration whereby France recognised the compulsory jurisdiction of the Court (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 § 1 of the Convention.

Notes by the Registrar

1. The case is numbered 68/1997/852/1059. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

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

3. The Chamber to be constituted included *ex officio* Mr L.-E. Pettiti, the elected judge of French nationality (Article 43 of the Convention), and Mr R. Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 27 August 1997, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr R. Macdonald, Mr R. Pekkanen, Mr A.N. Loizou, Mr K. Jungwiert, Mr P. Kūris, Mr E. Levits and Mr M. Voicu (Article 43 *in fine* of the Convention and Rule 21 § 5). Subsequently Mr R. Bernhardt, the Vice-President of the Court, replaced, as President of the Chamber, Mr Ryssdal, who died on 18 February 1998 (Rule 21 § 6, second sub-paragraph).

4. As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, had consulted the Agent of the French Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's and the Government's memorials on 25 and 27 February 1998 respectively. On 27 March 1998 the Delegate of the Commission informed the Registrar that he would submit his observations orally at the hearing.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 19 May 1998. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*

Mr J.-F. DOBELLE, Deputy Director of Legal Affairs,
Ministry of Foreign Affairs, *Agent*,
Mr J. LAPOUZADE, Administrative Court Judge,
on secondment to the Legal Affairs Department,
Ministry of Foreign Affairs,
Mr T. CANTERI, Legal Affairs Department,
Ministry of Foreign Affairs,
Mr A. BUCHET, *magistrat*, Head of the Human Rights Office,
European and International Affairs Service,
Ministry of Justice,
Mr B. DALLES, *magistrat*, Criminal Justice and Individual
Freedoms Office, Department of Criminal Cases
and Pardons, Ministry of Justice,

Mrs F. DOUBLET, Head of the International and Comparative
Law Office, Department of Public Freedoms
and Legal Affairs, Ministry of the Interior, *Counsel*;

(b) *for the Commission*
Mr F. MARTÍNEZ, *Delegate*;

(c) *for the applicant*
Mr Y. RIO, of the Paris Bar, *Counsel*.

The Court heard addresses by Mr Martínez, Mr Rio and Mr Dobelle.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. Mr Jérôme Malige is a French national who was born in 1974 and lives in Morangis (*département* of Essonne).

A. Background to the case

7. On 28 June 1993 at 4.25 p.m. he was travelling by motor bicycle along a trunk road near Millemont when the police recorded his speed as 172 kph on a stretch of road where a 110 kph limit was in force.

8. Such conduct contravenes Article R. 10 2-2 of the Road Traffic Code, which sets a speed limit of 110 kph for dual carriageways with a central reservation, Article R. 232 1-2, which provides that exceeding the limit by over 30 kph is punishable by the fines prescribed for class 4 offences, and Article R. 266-4, which provides that where the speed limit has been exceeded by more than 30 kph the offender may be temporarily disqualified from driving (see paragraph 21 below).

B. Proceedings in the Versailles Police Court

9. The applicant refused to pay the fine imposed and on 22 September 1993 elected to stand trial. On 15 October 1993 he was summoned to appear in the Versailles Police Court.

10. In the Police Court the applicant argued firstly that in law the evidence adduced by the police or gendarmerie was not capable of establishing the offence, given the inaccuracy of the readings taken from the speed-recording device they had used for that purpose. In addition, he contested the lawfulness of Decrees nos. 92-1228 of 23 November 1992 and 92-559 of 25 June 1992 implementing a points system for driving licences and the applicability of Law no. 89-469 of 10 July 1989 introducing a points system for driving licences (see paragraph 18 below).

11. In a judgment of 26 November 1993 the Police Court found Mr Malige guilty of the offence of exceeding the speed limit by at least 30 kph. It fined him 1,500 francs and disqualified him from driving for fifteen days pursuant to Articles R. 10 2-2, R. 232 1-2 and R. 266 of the Road Traffic Code (see paragraph 21 below).

On the question of the decrees implementing the points system for driving licences, the Police Court held that criminal courts had jurisdiction to determine the lawfulness of administrative regulatory measures only in so far as such measures were the basis of a prosecution or carried a criminal sanction. Moreover, it followed from Article L. 11-4 of the Road Traffic Code, according to which Articles 55-1 of the Criminal Code and 799 of the Code of Criminal Procedure did not apply to the deduction of driving licence points, that the deduction of such points was not a secondary criminal sanction triggered by a conviction, with the result that its legal basis fell outside the jurisdiction of the criminal courts.

C. Proceedings in the Versailles Court of Appeal

12. Mr Malige appealed to the Versailles Court of Appeal contending that the Law of 10 July 1989 was incompatible with Article 6 § 1 of the Convention in so far as sections 11 and 14 of that Law excluded any possibility of judicial review of a measure which was recorded on the national register of driving licences and which restricted rights and deprived the person concerned of the freedom of movement. He also alleged that the above-mentioned decrees on the points system for driving licences and Decree no. 92-1227 of 23 November 1992 concerning the penalties for exceeding the speed limits were unlawful, and asked the Court of Appeal to acquit him.

13. In a judgment of 24 June 1994 the Versailles Court of Appeal upheld the impugned judgment. It found in the first place that the deduction of driving licence points did not interfere with the freedom of movement as imprisonment, residence restrictions or exclusion from French territory would have done. In addition the court held:

> "… the loss of points is not a criminal sanction as it does not have the requisite features, nor is it a secondary criminal sanction triggered by a criminal conviction.
>
> As it has the character of a sanction on account of one of its features (the punitive element) the loss of points must be regarded in terms of current positive law as an administrative sanction.
>
> …
>
> There is no doubt that disputes may arise as to the number of points lost or their restitution before or after a further loss for instance.
>
> It must be possible to submit the administrative sanction for review to an impartial and independent tribunal which gives its decision in public.
>
> However, as the law stands, that tribunal cannot be the criminal court; the question of the conformity of Law no. 89-469 with a superior law falls outside the jurisdiction of the criminal courts."

The Court of Appeal also dismissed the arguments based on the unlawfulness of Decrees nos. 92-1227 and 92-1228 of 23 November 1992.

D. Proceedings in the Court of Cassation

14. The applicant lodged an appeal on points of law, arguing in particular that the Law of 10 July 1989 and the Decrees of 25 June and 23 November 1992 implementing the deduction of points by administrative measure were contrary to Article 6 § 1 of the Convention. He also pleaded the unlawfulness of the Decree of 23 November 1992 penalising speeding and the unreliability of the speed-recording device.

15. In a judgment of 11 January 1995 the Criminal Division of the Court of Cassation dismissed the appeal. It held as follows:

> "The Court of Appeal was entitled to dismiss the objections properly raised in the proceedings before it and based on the alleged incompatibility of the Law of 10 July 1989 introducing the system of points for driving licences with Article 6 § 1 of the European Convention and the unlawfulness of the decrees of 25 June and 23 November 1992 implementing the deduction of points by administrative measure.

It follows from Article L. 11-4 of the Road Traffic Code, according to which Articles 55-1 of the Criminal Code and 799 of the Code of Criminal Procedure, as then in force, do not apply to the docking of driving licence points, that the latter measure does not have the character of a secondary criminal sanction triggered by a criminal conviction and that accordingly neither its alleged incompatibility with the Convention provision relied on nor its legal basis fall within the jurisdiction of the criminal courts.

In addition, the outcome of a prosecution for a speeding offence, as in the present case, does not depend, within the meaning of Article 111-5 of the Criminal Code which entered into force on 1 March 1994, on examination of the provisions implementing the deduction of points…"

16. To date, Mr Malige has not been notified of the docking of any points.

II.. RELEVANT DOMESTIC LAW

A. The system of points for driving licences

17. The system of points for driving licences was introduced by Law no. 89-469 of 10 July 1989, which came into force on 1 July 1992. This system was supplemented by Law no. 90-1131 of 19 December 1990, which made provision for automatic processing of points deductions. Responsibility for management of the data was assigned to the Ministry of the Interior. The implementing decrees were promulgated on 25 June and 23 November 1992. Ruling on applications to have these decrees declared void as *ultra vires*, the *Conseil d'Etat* found them to be lawful.

18. Under these provisions taken as a whole, each driving licence has an initial allocation of twelve points. Points are then automatically docked if the licence-holder commits one of the offences listed in Article L. 11-1 of the Road Traffic Code, this being established by the payment of a standard fine or by a conviction which has become final.

19. The facts constituting the offence are assessed within the unfettered discretion of the criminal court, which establishes them and classifies them before imposing the appropriate criminal penalty. On the basis of the facts established by the criminal court, the administrative authority, here the Minister of the Interior, takes the decision to dock points from the offender's driving licence, a decision which is given formal effect by a letter sent to the offender pursuant to Article R. 258 of the Road Traffic Code.

20. According to the established case-law of the Court of Cassation (judgments of 6 July 1993, and 4 and 12 May 1994) and of the *Conseil d'Etat* (judgment of 8 December 1995: Motorists' Defence Movement), the docking of points does not have the character of a secondary criminal sanction triggered by a conviction, but of a purely administrative measure.

B. The Road Traffic Code

21. The relevant provisions are as follows:

Article R. 232

"The prison sentences and fines applicable to class 4 offences shall be imposed on any driver contravening the provisions of Book 1 concerning:

...

2. the speed of motor vehicles, whether or not pulling a trailer:

…

– where the recorded speed exceeds the speed limit by 30 kph or more."

Article R. 232-1

"Any driver of a motor vehicle, whether or not pulling a trailer, shall be punishable by the fine applicable to class 4 offences, where the speed of the vehicle is found to exceed the speed limit by more than 30 kph."

Article R. 266

"Any breach of the Articles of this Code listed below may result in the person concerned being temporarily disqualified from driving where the nature of such breach corresponds to the short description given at the beginning of each Article:

…

4. Articles R. 10 to R. 10-4: exceeding the speed limit by 30 kph or more..."

Article L. 11

"A number of points shall be allocated to every licence to drive a motor vehicle. One or more of these points shall be automatically docked if the licence-holder commits one of the offences defined in Article L. 11-1. When the number of points reaches nil, the licence shall become invalid."

Article L. 11-1

"One or more points shall be automatically docked from a driving licence if one of the following offences is established:

(a) offences defined in Articles L. 1 to L. 4, L. 7, L. 9 and L. 19 of the Road Traffic Code;

(b) offences of unintentional homicide or causing injury while driving a vehicle; and

(c) minor road traffic offences, exhaustively listed, likely to endanger the safety of others.

These offences shall be established by means of either the payment of a fixed fine or a final conviction.

The offender shall be duly informed that the payment of the fine constitutes an admission of the offence, and thus entails a number of points being docked from his licence."

Article L. 11-2

"Where one of the major offences (*délits*) referred to in Article L. 11-1 has been established, half the original number of points shall be docked.

In the case of the minor offences (*contraventions*), no more than one-third of the original number of points shall be docked.

..."

Article L. 11-4

"Persons committing one of the offences referred to in Article L. 11-1 may not be exempted from the docking of points from their driving licence by the application of Article 55-1 of the Criminal Code... Furthermore, the provisions of Article 799 of the Code of Criminal Procedure ... shall not apply to the docking of points from a driving licence."

Article R. 256

"Any breach of the Articles listed below, where the nature of such breach corresponds to the short description given at the beginning of each Article, shall give rise to the automatic docking of points as follows:

1. Four points docked for minor offences under the following Articles:

…

Articles R. 10 to R. 10-4 of the Road Traffic Code: exceeding the speed limit by 40 kph or more...

2. Three points docked for minor offences under the following Articles:

…

Articles R. 10 to R. 10-4 of the Road Traffic Code: exceeding the speed limit by more than 30 kph but less than 40 kph...

3. Two points docked for minor offences under the following Articles:

…

Articles R. 10 to R. 10-4 of the Road Traffic Code: exceeding the speed limit by more than 20 kph but less than 30 kph, except in the case of drivers covered by the last paragraph of Article R. 10 of the Road Traffic Code...

4. One point docked for minor offences under the following Articles:

…

Articles R. 10 to R. 10-4 of the Road Traffic Code: exceeding the speed limit by less than 20 kph ..., except in the case of drivers covered by the last paragraph of Article R. 10 of the Road Traffic Code...”

Article R. 258

“At the time when the details of an offence are recorded, the driver shall be informed that the offence may result in a number of points being docked if the offence is established by means of either the payment of a fixed fine or a final conviction.

The driver shall also be informed that there is an automatic system for the deduction and restoration of points, and that he can have access to the information concerning him… When the Minister of the Interior notes that an offence entailing the docking of points has been established …, he shall dock the relevant number of points from the offender’s licence, and inform the offender accordingly in a letter sent by ordinary post. The Minister of the Interior shall take note and inform the person concerned, in the same manner, of any points restored...”

Article L. 11-6

“If the licence-holder does not commit a further offence punishable by the docking of points in the three years following the date on which his last conviction became final …, the original number of points shall be restored to the licence... The licence-holder may have a number of points restored if he agrees to take a special training course, which must include an element designed to increase awareness of the causes and consequences of road accidents.”

Article R. 262-2

"Once the certificate of course attendance is issued, the driver shall be entitled to have four points restored to his licence. However, the total number of points on the licence, after these points have been restored, may not exceed eleven."

C. The Criminal Code

22. Under the current Criminal Code, which came into force on 1 March 1994, temporary or permanent disqualification from driving may be imposed for minor offences (under Article 131-14 (1) and 131-16 (1)); major offences (under Article 1313-6 (1) and (3)); and certain serious crimes (*crimes*) such as torture, grievous bodily harm, rape and drug trafficking (under Article 224-4).

PROCEEDINGS BEFORE THE COMMISSION

23. Mr Malige applied to the Commission on 28 November 1994. He relied on Article 7 of the Convention, submitting that the system of penalties for speeding offences violated the criminal-law principle of no punishment without law. He further maintained that the systematic and automatic deduction of driving licence points without any possibility of an appeal to a judicial or administrative authority constituted a breach of Article 6 § 1 of the Convention.

24. On 15 January 1996 the Commission declared the application (no. 27812/95) inadmissible as regards the first complaint. On 25 November 1996 it declared the second complaint admissible. In its report of 29 May 1997 (Article 31), it expressed the opinion that there had been no violation of the applicant's right of access to a court under Article 6 § 1 (eighteen votes to ten). The full text of the Commission's opinion and of the concurring and dissenting opinions contained in the report is reproduced as an annex to this judgment[3].

FINAL SUBMISSIONS TO THE COURT

25. In his memorial the applicant asked the Court

3. *Note by the Registrar*. For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is obtainable from the registry.

"to confirm its case-law, to which the dissenting opinion [of Mr Soyer] pertinently refers, and to find a violation [as the] effect of any other ruling would be to render the Convention's guarantees nugatory, since it would be open to any member State to circumvent the spirit and the letter of the Convention by providing for a semblance of a trial before a court deprived of all discretion."

26. The Government submitted:

"There has been no violation of the provisions of Article 6 § 1 of the Convention,

– primarily, because the application is incompatible *ratione materiae* with the provisions of the Convention;

– in the alternative, because the application is inadmissible on the ground that the applicant failed to exhaust domestic remedies;

– in the further alternative, because the application is unfounded."

AS TO THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

27. Mr Malige submitted that the systematic and automatic docking of points from driving licences without any possibility of an appeal to an effective judicial body had deprived him of the right to a "tribunal" within the meaning of Article 6 § 1 of the Convention, which provides:

"In the determination of … any criminal charge against him, everyone is entitled to a fair and public hearing … by an independent and impartial tribunal established by law."

28. The Court notes that in the present case the Versailles Court of Appeal, upholding the Police Court's judgment, found the applicant guilty of exceeding the speed limit, sentenced him to pay a fine of 1,500 French francs and disqualified him from driving for fifteen days (Articles R. 232, paragraphs 1 and 2, and R. 266 of the Road Traffic Code – see paragraph 21 above).

In addition, the offence of exceeding the speed limit by 40 kph or more entails the automatic deduction of four of the twelve points allocated to each driving licence (under Article R. 256 of the Road Traffic Code, applied pursuant to Article 11-1 of the same Code – see paragraph 21 above).

29. In view of the automatic nature of the deduction of points from his driving licence as a consequence of his conviction by the Versailles Court of Appeal, the applicant can claim to have been, in the proceedings in question, the victim of a violation of the Convention.

30. Like the Commission, the Court considers that it is not its task to rule on the French system of deductible-point driving licences as such, but to determine whether, in the circumstances of the case, Mr Malige's right of access to a tribunal, within the meaning of Article 6 § 1 of the Convention, was respected.

A. Applicability of Article 6 § 1

31. In the first place, the Court must determine whether the sanction of deducting points from driving licences is a punishment, and accordingly whether it is "criminal" within the meaning of Article 6 § 1.

32. The applicant asserted that there was no doubt that the offences which entailed the docking of points, and the possibility of disqualification as a result, were criminal in nature. In domestic proceedings the Minister of the Interior, who kept the central records on deductible-point driving licences, systematically referred to the deduction of points as a secondary penalty. Moreover, the sanction in question was a punitive measure which was capable of affecting freedom of movement in so far as it could, eventually, lead to disqualification. It could not be described as an administrative sanction because it was not ordered by an administrative authority but was mandatory according to the relevant statute.

33. The Government objected that Article 6 § 1 was inapplicable. The sanction concerned was considered by the courts to be not a criminal measure but an administrative one. Similarly, the Law of 10 July 1989 provided that, where a person had committed an offence which entailed, in due course, a deduction of points, the ordinary courts were not empowered to exempt him, under Article 55-1 of the Criminal Code, or rehabilitate him, under Article 799 of the Code of Criminal Procedure. There was therefore no doubt that for the purposes of domestic law the deduction of points was not a criminal measure. Moreover, the aim of the measure was purely preventive, and it did not deprive the person concerned of the fundamental freedom of movement, as a prison sentence would, for instance.

34. The Court reiterates that the concept of a "penalty" in Article 7 of the Convention, like the notion of "criminal charge" in Article 6 § 1 of the Convention, is an autonomous concept. In its analysis it is not bound by the classifications in domestic law, which have only relative value (see the Engel and Others v. the Netherlands judgment of 8 June 1976, Series A no. 22, p. 34, § 81; the Öztürk v. Germany judgment of 21 February 1984, Series A no. 73, pp. 17–18, §§ 49–50; the Welch v. the United Kingdom judgment of 9 February 1995, Series A no. 307-A, p. 13, § 27; the Schmautzer v. Austria judgment of 23 October 1995, Series A no. 328-A, p. 13, § 27; and the Putz v. Austria judgment of 22 February 1996, *Reports of Judgments and Decisions* 1996-I, p. 324, §§ 31 et seq.).

35. In order to determine whether there is a "criminal charge", the Court has regard to three criteria: the legal classification of the offence in question in national law, the very nature of the offence and the nature and degree of severity of the penalty (see, among other authorities, the Pierre-Bloch v. France judgment of 21 October 1997, *Reports* 1997-VI, p. 2224, § 53).

With regard to the existence of a "penalty", the Court held in the Welch judgment: "The wording of Article 7 § 1, second sentence, indicates that the starting-point in any assessment of the existence of a penalty is whether the measure in question is imposed following conviction for a 'criminal offence'. Other factors that may be taken into account as relevant in this connection are the nature and purpose of the measure in question; its characterisation under national law; the procedures involved in the making and implementation of the measure; and its severity" (judgment cited above, p. 13, § 28).

36. In the present case, it was not contested that the offence which led to the deduction of points, namely exceeding the speed limit, was criminal in nature.

37. With regard to the classification in French law of the deduction of points, the Court notes, like the Commission, that an examination of the relevant legislation and the case-law of the Court of Cassation and the *Conseil d'Etat* (see paragraph 20 above) clearly shows that the measure in question, considered in isolation, is regarded as an administrative sanction not connected with the criminal law. The mere fact that, according to the applicant, the Minister of the Interior, who keeps the central records on deductible-point driving licences, systematically refers to the deduction of points as a secondary penalty cannot negate that finding.

38. With regard to the nature of the sanction, the Court notes that points are deducted in the context of, and after the outcome of, a criminal prosecution. The criminal court first assesses and classifies the facts constituting the offence which may give rise to the docking of points, before

imposing whatever principal or secondary criminal penalty it deems appropriate. Then, on the basis of the conviction pronounced by the criminal court, the Minister of the Interior deducts the number of points corresponding to the type of offence concerned, in accordance with the scale laid down by Parliament, in Article R. 256 of the Road Traffic Code (see paragraph 21 above).

The sanction of deducting points is therefore an automatic consequence of the conviction pronounced by the criminal court.

39. With regard to the severity of the measure, the Court notes that the deduction of points may in time entail invalidation of the licence. It is indisputable that the right to drive a motor vehicle is very useful in everyday life and for carrying on an occupation. The Court, like the Commission, accordingly infers that, although the deduction of points has a preventive character, it also has a punitive and deterrent character and is accordingly similar to a secondary penalty. The fact that Parliament intended to dissociate the sanction of deducting points from the other penalties imposed by the criminal courts cannot change the nature of the measure.

40. The Court, like the Commission, accordingly concludes that Article 6 § 1 is applicable.

B. Compliance with Article 6 § 1

1. The Government's preliminary objection

41. In the alternative, the Government pleaded non-exhaustion of domestic remedies, on the ground that the applicant had not applied to the administrative court challenging the measure taken by the Minister of the Interior as *ultra vires*.

42. Like the Commission, the Court considers that the question whether the applicant had a remedy to challenge the lawfulness of the deduction of points is the same in substance as the complaint he submitted to it.

2. Merits of the complaint

43. The applicant submitted that a law which prescribes a specific mandatory sanction by reference to a fixed scale and precludes any possibility of an appeal to a court could not satisfy the requirements of Article 6 § 1. Moreover, even in domestic law, everyone on whom a secondary penalty had been imposed could ask the ordinary courts to rescind the disqualification or disability concerned. But Article L. 11-4 of

the Road Traffic Code excluded precisely that possibility and laid down special rules. Furthermore, applying to the administrative courts was not effective because their jurisdiction was restricted in such a way that they had no discretion. The supervision they carried out was purely formal, being limited to recording the deduction of points resulting automatically from a court finding that the offence had been committed. But the ordinary courts were the guardians of individual freedoms and it was their task to determine whether the law on driving licences was compatible with the Convention.

44. The Government submitted, in the further alternative, that the applicant had had access to a tribunal within the meaning of Article 6 § 1. The administrative authority informed offenders that they were liable to lose points on account of the offences they had committed and that there was an automatic system for deductions and restorations of points. They could thus elect to stand trial in the criminal courts in order to answer charges which might be used as the basis for a deduction of points. Similarly, when notice of a deduction was served on offenders after the criminal courts had given their verdict, they were informed that they could take their cases to the administrative courts and had two months in which to do so. In the present case, that is what Mr Malige could have done, because an administrative court dealing with an application challenging a decision as *ultra vires* must satisfy itself that the administrative authority has not made any error about the existence of the facts which prompted its intervention, that is the criminal conviction entailing the docking of points, or any error in law.

45. The Court reiterates that, where a penalty is criminal in nature there must be the possibility of review by a court which satisfies the requirements of Article 6 § 1, even though it is not inconsistent with the Convention for the prosecution and punishment of minor offences to be primarily a matter for the administrative authorities (see the Öztürk judgment cited above, pp. 21–22, § 56).

46. It notes that points are deducted when it has been established that one of the offences listed in Article L. 11-1 of the Road Traffic Code (see paragraph 21 above) has been committed, by means of either a final conviction or payment of a fixed fine by the offender, which implies admission of the offence and tacit acceptance of the deduction of points.

47. At the time when the details of an offence are recorded, the driver is informed by the administrative authority that he is liable to lose points on account of the offence he has committed and that there is an automatic system for the deduction and restoration of points (Article R. 258 of the Road Traffic Code – see paragraph 21 above). He is thus given the opportunity to contest the constituent elements of the offence which might be used as the basis for a deduction of points.

48. The Court observes that the applicant did not pay the fixed fine and that the partial loss of points thus depended on the criminal courts finding him guilty. As the Commission pointed out, in the Versailles Police Court and the Versailles Court of Appeal, criminal courts which satisfy the requirements of Article 6 § 1, the applicant was able to deny that he had committed the criminal offence of exceeding the speed limit and to submit all the factual and legal arguments which he considered helpful to his case, knowing that his conviction would in addition entail the docking of a number of points.

49. As to the proportionality of the sanction, the Court notes, like the Commission, that the legislation itself makes provision to a certain extent for the number of points deducted to vary in accordance with the seriousness of the offence committed by the accused.

In the present case the offence committed entailed the deduction of four of the licence's twelve points, so the measure cannot be described as disproportionate to the conduct it is intended to punish. Firstly, it does not lead immediately to disqualification. Secondly, the applicant can win back points, either by driving for three years without committing any further offence in respect of which a deduction of points is prescribed or by attending a special training course (Article L. 11-6 of the Road Traffic Code – see paragraph 21 above); he therefore preserves a certain latitude of action.

50. Like the Commission, the Court accordingly considers that a review sufficient to satisfy the requirements of Article 6 § 1 of the Convention was incorporated in the criminal decision convicting Mr Malige, and that it is not necessary to have a separate, additional review by a court having full jurisdiction concerning the deduction of points. Moreover, it is open to the applicant to seek judicial review in the administrative courts, in order to ascertain whether the administrative authority acted after following a lawful procedure.

51. The Court concludes, like the Commission, that domestic law afforded the applicant a review by the courts of the measure in issue which was sufficient for the purposes of Article 6 § 1.

52. There has accordingly been no breach of that provision.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that Article 6 § 1 of the Convention is applicable to the proceedings in issue and that it has not been breached.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 September 1998.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar