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

COURT (PLENARY)

CASE "RELATING TO CERTAIN ASPECTS OF THE LAWS ON THE USE OF LANGUAGES IN EDUCATION IN BELGIUM" v. BELGIUM

(Application nº 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64)

JUDGMENT

STRASBOURG

9 February 1967

In the case "relating to certain aspects of the laws on the use of languages in education in Belgium",

The European Court of Human Rights, taking its decision in plenary session in accordance with Rule 48 of the Rules of Court, and comprising:

Mr. R. CASSIN, *President*,
Mr. A. HOLMBÄCK,
Mr. A. VERDROSS,
Mr. G. MARIDAKIS,
Mr. E. RODENBOURG,
Mr. A. ROSS,
Mr. T. WOLD,
Mr. G. BALLADORE PALLIERI,
Mr. H. MOSLER,
Mr. M. ZEKIA,
Mr. A. FAVRE,
Sir Humphrey WALDOCK,
Mr. S. BILGE,
Mr. G. WIARDA,
Mr. A. MAST, *Ad hoc judge*,
Mr. H. GOLSONG, *Registrar*,

Decides as follows on the preliminary objection raised by the Belgian Government, Party:

PROCEDURE

1. By a request dated 25th June 1965, the European Commission of Human Rights (hereinafter called "the Commission") referred to the Court a case concerning certain aspects of the laws on the use of languages in education in Belgium (Rule 31 (2) of the Rules of Court).

The origin of the case lies in six Applications against the Kingdom of Belgium lodged with the Commission under Article 25 (art. 25) of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter called "the Convention"). These Applications, the earliest of which is dated 16th June 1962 and the most recent 28th January 1964, were made by inhabitants of Alsemberg and Beersel, Kraainem, Antwerp and environs, Ghent and environs, Louvain and environs and Vilvorde.

The Commission's request, to which was attached the report provided for in Article 31 (art. 31) of the Convention, was lodged with the Registry of the Court within the period of three months laid down in Articles 32 (1) and 47 (art. 32-1, art. 47). In it the Commission referred firstly to the powers conferred on it by Articles 44 and 48 (a) (art. 44, art. 48-a) and secondly to

the Belgian Government's declaration of 8th June 1960 recognising the compulsory jurisdiction of the Court (Article 46) (art. 46).

2. On 22nd July 1965 the Belgian Government, to which the Registrar had transmitted the Commission's request on 25th June 1965, informed him that it wished to appear in the case (former Rule 21 (2)).

3. Mr. H. Rolin, Vice-President, the elected judge of Belgian nationality, was due to sit as an ex officio member of the Chamber to be set up to consider the case (Article 43) (art. 43). However, by letter dated 5th July 1965, he withdrew for the reason that he had personally taken part, as a Senator, in the drafting of the Acts of Parliament in dispute (Rule 24 (2)). On 1st September 1965 the Belgian Government appointed, as an ad hoc judge, Mr. A. Mast, Conseiller of the Conseil d'État of Belgium and Professor Extraordinary at the University of Ghent (Article 43 (art. 43); Rule 23 (1)).

On 14th September 1965 the President of the Court drew by lot the names of the other six members of the Chamber and the names of three substitutes (Article 43 (art. 43); Rule 21 (5)).

4. On 29th September 1965 the President of the Chamber ascertained the views of the Agent of the Belgian Government and the Delegates of the Commission on the procedure to be followed. By an Order of the same day he decided that the Commission should present its first memorial not later than 31st December 1965 and that the Belgian Government should have a period of six weeks or three months for its memorial in reply, depending on whether or not it wished to invoke any preliminary objections (Rule 35 (1)).

5. The Commission's first memorial, in which certain observations by the Applicants were taken into account (Rule 76 of the Commission's Rules of Procedure), was received by the Registry on 17th December 1965. In transmitting it to the Agent of the Belgian Government the Registrar stated, on the instructions of the President of the Chamber, that the period allowed to the Government would not begin to run until 3rd January 1966.

6. In a letter of 20th January 1966 the Belgian Government asked the Chamber to relinquish jurisdiction in favour of the Plenary Court. It pointed out that the judgment to be rendered by the Court could "provoke extremely violent political feelings in Belgium, which in turn could exert a substantial influence on the structure of the Belgian State". It added that the Court would have to pronounce on the point "whether the Applicants (had) not attempted to submit to the jurisdiction of the European Court of Human Rights questions which (belonged) to the sphere reserved" to the Contracting States. In conclusion it stressed "that, in its report, the majority of the Commission (had given) to Article 14 (art. 14) of the Convention a very precise interpretation which, however, according to certain dissenting opinions in this report, conflicted with that given in several previous decisions of the Commission". The Government inferred from this that the case raised "serious questions affecting the interpretation of the

Convention", which justified the application of Rule 48. In view of "the complications of the case" it also requested an extension of the period of time allowed to it in order "to lodge one or more preliminary objections", stating that it needed "at least four months" and that a time-limit expiring on 31st May "would be agreeable" to it.

Consulted on the point by the President of the Chamber, the Delegates of the Commission by a letter dated 2nd February 1966 replied in substance that:

-"considering the particular nature of the case" they had "no objection to raise" to the "suggestion" that the Chamber should relinquish jurisdiction, a suggestion on which it was for the Chamber, and the Chamber alone, to decide;

-they left the matter of the additional period of time requested by the Belgian Government to the decision of the President of the Chamber;

-they were not able to pronounce on the preliminary objection contemplated by the Government "as long as (its) propositions ..., (had) not been brought to their knowledge in a more developed form", especially since the objection in question seemed "entirely new", the Belgian Government never having "contested the competence of the Commission, but only the admissibility of the Applications".

7. By an Order of 3rd February 1966 the President extended the time-limit mentioned above to 25th April, on which date the Belgian Government's first memorial was received by the Registry. The memorial contained a preliminary objection, the purpose of which was "that the Court should be precluded from examining the merits of the dispute" (Rule 46).

8. The Chamber deliberated at Strasbourg on 2nd and 3rd May 1966. On 3rd May it decided, by virtue of Rule 48, "to relinquish jurisdiction forthwith in favour of the Plenary Court" for the reason that "the case before it (raised) a number of serious questions affecting the interpretation of the Convention, especially its Articles 45, 8 and 14 (art. 45, art. 8, art. 14) and Article 2 of the Protocol (P1-2)".

Immediately afterwards the plenary Court sat briefly to discuss the subsequent procedure. It was agreed at this sitting that Mr. C. Maguire, elected judge on 27th September 1965, would not be able to take part in the consideration of the case, since he had already dealt with it as a member of the Commission (Rule 24 (2)).

9. Having ascertained the views of the Agent of the Belgian Government and the Delegates of the Commission, the President of the Court decided on 4th May that the Commission should have until 15th July 1966 to present a second memorial and that the Government should be entitled to reply to it in writing within two months (Rules 35 and 48 (3) in combination).

10. The Commission's second memorial, in which certain observations by the Applicants were taken into account, was received by the Registry on 15th July 1966 and that of the Belgian Government on 12th September.

On 20th September the Delegates of the Commission informed the Registrar that they would not request permission to file a further memorial, though they reserved the right to make observations in the oral proceedings.

11. Considering that the case was ready for hearing with respect to the preliminary objection raised by the Belgian Government, the President of the Court fixed, by an order of 23rd September 1966, the opening date for the oral proceedings in regard to the objection for Monday, 21st November, having previously consulted the Agent of the Belgian Government and the Delegates of the Commission (Rules 18, 36 and 48 (3)).

12. The public hearing of the preliminary objection was held at the Human Rights Building, Strasbourg, on 21st-23rd November 1966. There appeared before the Court:

- for the Commission (Rule 29 (1)):
  Mrs. G. JANSSEN-PEVTSCHIN, Mr. M. SØRENSEN and Mr. F. WELTER, *Delegates*;
- for the Belgian Government, Party (Rule 28):
  Mr. A. GOMRÉE, Magistrate
  attached to the Belgian Ministry of Justice, *Agent*, assisted by
  Me. A. BAYART, Barrister
  at the Belgian Court of Cassation, *Counsel*, and
  Mr. P. GUGGENHEIM, Professor
  at the University of Geneva, *Counsel*.

The Court heard statements and submissions:

- for the Commission: by MM. F. WELTER and M. SØRENSEN;
- for the Belgian Government: by Me. A. BAYART and Prof. P. GUGGENHEIM.

On 23rd November the President declared the hearings on the preliminary objection closed.

13. The Court deliberated in private on 23rd and 24th November 1966 and on 31st January and 1st February 1967, after which it delivered the present judgment.

THE FACTS

1. The object of the Commission's request is to submit the case to the Court, so that the Court may decide whether or not certain provisions of the Belgian linguistic legislation relating to education are in conformity with the requirements of Articles 8 and 14 (art. 8, art. 14) of the Convention and Article 2 of the First Protocol (P1-2).

The Commission's provisional submissions on the merits of the case are set out in paragraph 33 of its first memorial.

2. The Applicants, who are parents of families of Belgian nationality, applied to the Commission both on their own behalf and on behalf of their children under age, of whom there are more than 800. Pointing out that they are French-speaking or that they express themselves most frequently in French, they want their children to be educated in that language.

Alsemberg, Beersel, Antwerp, Ghent, Louvain and Vilvorde, where the signatories of five of the six Applications (Nos. 1474/62, 1691/62, 1769/63, 1994/63, and 2126/64) live, belong to the region considered by law as Dutch-speaking, whereas Kraainem (Application No. 1677/62) has since 1963 formed part of a separate administrative district with a "special status". In all of these districts ("communes") part of the population - in some cases a large part - is French-speaking.

3. Though the six Applications differ on a number of points, they are similar in many respects. For the purposes of this judgment it is sufficient to note that in substance they complain that the Belgian State:

- does not provide any French-language education in the municipalities where the Applicants live or, in the case of Kraainem, that the provision made for such education is, in their opinion, inadequate;
- withholds grants from any institutions in the said municipalities which may fail to comply with the linguistic provisions of the legislation for schools;
- refuses to homologate leaving certificates issued by such institutions;
- does not allow the Applicants' children to attend the French classes which exist in certain places;
- thereby obliges the Applicants either to enrol their children in local schools, a solution which they consider contrary to their aspirations, or to send them to school in the "Greater Brussels district", where the language of instruction is Dutch or French according to the child's mother-tongue or usual language or in the "French-speaking region" (Walloon area). Such "scholastic emigration" is said to entail serious risks and hardships.

In the main the Applicants complain that they and their children have suffered violation of certain Articles of the Convention and the Protocol as a result of being subjected to various provisions of the Act of 14th July 1932 "on language regulations in primary and intermediate education", the Act of 15th July 1932 "on the conferring of academic degrees", the Acts of 27th July 1955 and 29th May 1959, the Act of 30th July 1963 "on language regulations in education" and the Act of 2nd August 1963 "on the use of languages in administrative matters". The Acts of 14th and 15th July 1932 were repealed by the Act of 30th July 1963, but were still in force when the Alsemberg, Beersel, Kraainem, Antwerp and Ghent Applicants brought their cases before the Commission, and those Applicants still challenge these acts while at the same time attacking the present legislation.

4. Before the Commission, the Applicants complained of violations of Articles 8, 9, 10 and 14 (art. 8, art. 9, art. 10, art. 14) of the Convention and Article 2 of the Protocol (P1-2).

The Belgian Government, for its part, pleaded that the legislation in dispute fully respects or respected those Articles, and it therefore asked the Commission to declare the Applications inadmissible as being manifestly ill-founded (Article 27 (2) of the Convention) (art. 27-2).

The Commission did in fact, for that reason, reject the complaints which the Applicants (with the exception of those of Vilvorde) based on Articles 9 and 10 (art. 9, art. 10); on the other hand, it considered the six Applications admissible in so far as they alleged violations of Articles 8 and 14 (art. 8, art. 14) of the Convention and Article 2 of the Protocol (P1-2). The decisions on this point were given on various dates between 26th July 1963 and 29th June 1964.

5. The Commission having decided to join the six Applications, a single Sub-Commission ascertained the facts by examining the Applications together with the parties and tried to arrange a friendly settlement between the parties (Articles 28 and 29) (art. 28, art. 29).

This attempt failed, and the plenary Commission therefore drew up a report as required under Article 31 (art. 31). The report was adopted on 24th June 1965 and transmitted to the Committee of Ministers of the Council of Europe on 25th June. That same day the Commission brought the case before the Court under Article 48 (a) (art. 48-a) of the Convention.

6. Summarising the opinion expressed in its report, the Commission recalled in paragraph 7 of its first memorial that it took the view:

> "- by 9 votes to 3, that the legislation complained of was not incompatible with the first sentence of Article 2 of the Protocol (P1-2), considered in isolation;
>
> - unanimously, that the legislation was not incompatible with the second sentence of the said article (P1-2), considered in isolation or in conjunction with Article 14 (art. 14+P1-2) of the Convention;
>
> - by 10 votes to 2, that the legislation was not incompatible, in the case of the Applicants, with Article 8 (art. 8) of the Convention, considered in isolation or in conjunction with Article 14 (art. 14+8);
>
> - by 9 votes to 3, that the general system of education in the areas which are unilingual by law was not incompatible with the first sentence of Article 2 of the Protocol, considered in conjunction with Article 14 (art. 14+P1-2) of the Convention;
>
> - by 11 votes to 1, that the same was true of the "special status" conferred by Section 7 of the Act of 2nd August 1963 on six bilingual communes, of which Kraainem, on the periphery of Brussels, is one;
>
> - by 7 votes to 5, that the Acts of 1963 were incompatible with the first sentence of Article 2 of the Protocol, read in conjunction with Article 14 (art. 14+P1-2) of the Convention, in so far as they result in the total withdrawal of subsidies from

provincial, commune and private schools providing, in the form of non-subsidised classes and in addition to instruction given in the language prescribed by the language legislation, complete or partial education in another language;

- unanimously, that the conditions on which children whose parents live outside the Greater Brussels district may be enrolled in schools in that district (Section 17 of the Act of 30th July 1963) were not, in the case of the Applicants, incompatible with the first sentence of Article 2 of the Protocol, read in conjunction with Article 14 (art. 14+P1-2) of the Convention;

- that the Acts of 1963 were incompatible with the first sentence of Article 2 of the Protocol, read in conjunction with Article 14 (art. 14+P1-2) of the Convention, in so far as they prevent certain children, solely on the basis of their parents' place of residence, from attending French-language schools at Louvain (8 votes to 4) and in the above-mentioned six communes on the periphery of Brussels (7 votes to 5);

- by 8 votes to 4, that the legislation complained of was also incompatible with the first sentence of Article 2 of the Protocol, read in conjunction with Article 14 (art. 14+P1-2) of the Convention, in so far as it has resulted, since 1932, in a refusal to homologate certificates relating to secondary schooling not in accordance with the language requirements."

Altogether, of the 12 members of the Commission concerned in the adoption of the report, three found no breach by the Belgian State of its obligations, while the majority considered that there had been a breach on three counts, but none on the others. The size and composition of the majorities on the various questions varied appreciably; moreover, the majorities on some questions embodied more than one point of view. Therefore the Commission's report also sets out a number of individual opinions - some concurring, some dissenting.

7. In its first memorial the Commission pointed out that its decision to refer the matter to the Court had been unanimous. Among its reasons for taking this step it particularly stressed the legal importance and complexity of the case and its human and social aspects.

8. During the written proceedings the following submissions were made with regard to the preliminary objection raised by the Belgian Government:

- by the Government in its first memorial:

"1. The European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocol secure the enjoyment of the rights and freedoms expressly mentioned in Articles 2-13 (art. 2, art. 3, art. 4, art. 5, art. 6, art. 7, art. 8, art. 9, art. 10, art. 11, art. 12, art. 13) of the Convention and Articles 1-3 of the Protocol (P1-1, P1-2, P1-3).

2. The idea of "national minority" within the meaning of Article 14 (art. 14) of the Convention may benefit the members of a specified social group where there is a violation of a right of freedom guaranteed in the Convention or the Protocol.

3. However, in these cases, the Convention affords no such protection, since

(a) the right to education in one's own language is not included among the rights and freedoms enshrined in the Convention and the Protocol; a fortiori there is no guarantee of the right to subsidies for education in one's own language or to admission to all occupations on the strength of such education;

(b) as a subsidiary argument, the "Applicants" do not belong to a "national minority" within the meaning of Article 14 (art. 14) of the Convention;

(c) it follows that the Court is ratione materiae not competent to examine the merits of the dispute submitted to it.

May it please the Court

(a) to admit the Belgian Government's preliminary objection and dismiss the legal action brought against the Government;

(b) alternatively, to join the preliminary objection to the merits."

- by the Commission in its second memorial

"The Commission invites the Court to reject the objection raised by the Belgian Government";

- by the Government in its second memorial

"The Belgian Government confirms the submissions stated by it at the end of its first memorial and reserves the right to supplement and amend them in subsequent proceedings".

9. At the hearing on 21st November 1966, the following submissions were made:

- by the Commission:

"The Commission ... requests the Court to reject the preliminary objection".

- by the Belgian Government:

"The Government's preliminary objection should be accepted and the Applicants' complaints rejected. Purely subsidiary, the Government requests that its preliminary objection be joined to the merits. It reserves the right to supplement and amend its submissions in the course of these proceedings".

At the hearing on 22nd November 1966 the Commission made the following submissions:

'The Commission upholds its request that the Court now reject the preliminary objection raised by the Belgian Government.

"With regard to the Government's alternative submission that the objection be joined to the merits we do not wish to express an opinion. We leave this point to the wisdom of the Court".

At the hearing on 23rd November 1966, the Belgian Government asked the Court by way of final submissions:

- to accept the preliminary objection

and

- alternatively, to join it to the merits.

The Commission for its part stated, before the hearing closed, that it upheld its submission "in full".

AS TO THE LAW

Arguments of the Belgian Government and of the Commission

1. Whereas in its first memorial, the Belgian Government lodged a preliminary objection with the purpose "that the Court should be precluded from examining the merits of the dispute"; whereas the Government did not consider it necessary "to embark on an abstract definition" of the objection; whereas, nevertheless, its two memorials and the oral proceedings show that this "amounts to an objection to the Court's competence ratione materiae"; whereas, in its submissions at the hearing on 23rd November 1966, the Government asked the Court, in the first place, to uphold the objection and, strictly alternatively, to join the objection to the merits;

Whereas the Belgian Government contended that the Court's lack of jurisdiction is due essentially to the complete absence of any connection between the Applicants' complaints and the terms of the Convention and the Protocol; whereas the Government considers it necessary to distinguish carefully between the problem of the applicability of these two instruments, which, while it may lead the Court to touch on the merits, is of a preliminary nature, and the problem of the application of the instruments, the thorough examination of which forms part of that stage of the proceedings devoted to the merits of the case;

Whereas, with regard to the alleged inapplicability of the Convention and the Protocol, the Government observes that the Applicants complain that the State does not accord them certain services and, in particular, declines to give any grants for education in the French language in the Flemish area or to homologate certificates covering such education; that, such complaints are entirely foreign to the Convention and the Protocol; that, in fact, the individual freedoms place purely negative duties on the governmental authorities (pouvoirs publics) (the negative status, status libertatis); that, more specifically, the only obligations which the Convention and the Protocol place on the Contracting States with regard to persons within their jurisdiction are, in general, obligations not to interfere and to refrain from action; that, in particular, Article 2 of the Protocol (first and second sentences) (P1-2) and Article 8 (art. 8) of the Convention, which the Applicants invoke, create mere obligations not to do anything; and that this interpretation, the only one compatible, in the view of the Government, with

the wording of the two provisions in question, is corroborated by the travaux préparatoires;

Whereas the Belgian Government adds that rights in matters of education cannot be deduced from Article 8 (art. 8) of the Convention, the object of which is to protect family life, those rights being governed by Article 2 of the Protocol (P1-2); and that the second sentence of the latter protects only the "religious and philosophical convictions" of parents, not their cultural or linguistic preferences or opinions;

Whereas the Belgian Government further maintains that the effect of Article 14 (art. 14) of the Convention, which the Applicants also invoke, is not that stated by the Commission in its opinion; that this Article (art. 14) does not in fact form part of the enumeration of rights and freedoms contained in Section I of the Convention (Articles 2-13) (art. 2, art. 3, art. 4, art. 5, art. 6, art. 7, art. 8, art. 9, art. 10, art. 11, art. 12, art. 13) and in the first three Articles of the Protocol (P1-1, P1-2, P1-3) but does no more than prohibit any discrimination in the enjoyment of those rights and freedoms; that it therefore is not, either separately or in conjunction with other Articles of the Convention or the Protocol, the source of any rights not laid down in those two instruments; that equally it does not transform, which would come to the same thing, the negative obligations resulting from those instruments into duties to provide something; that its function is to determine the exact sphere of application ratione personae of the rights and freedoms safeguarded; that a breach of Article 14 (art. 14) is therefore inconceivable without a simultaneous violation of an Article protecting a right or freedom, at least if that Article places no more than negative obligations on the Contracting States, as in this case;

Whereas it appears therefrom, in the view of the Belgian Government, that the complaints referred to the Court are not covered by the Convention and the Protocol but form part of the reserved domain of the Belgian legal order; that the linguistic and educational legislation is to a large extent an integral part of the State's political and social structure, which belongs pre-eminently to the reserved domain; that the Convention, as a declaration of rights, is not concerned with the organisation of governmental authorities; that the Belgian Conseil d'État and Parliament understood it in this way when the question of ratification arose; that the example of other European countries, for instance Switzerland, shows that language regulations are within the exclusive jurisdiction of States; that, therefore, there is in this case an inherent limit to the exercise of the Court's jurisdiction, this limit being so evident that it depends neither on an explicit clause of the Convention nor on a reservation under Article 64 (art. 64);

Whereas, for all these reasons, and having regard to the decisions of the Permanent Court of International Justice and the International Court of Justice, the Belgian Government contends that the European Court has no jurisdiction to pronounce on the merits of this case; that, before the Court

can investigate whether the Belgian State has fulfilled its obligations, it is logically necessary for the Court to give a decision on the applicability of the Convention and Protocol; that, moreover, this question would still be of a preliminary nature even if the Court was unable to establish with certainty that it had no jurisdiction; that, in examining this question, the Court may have occasion to touch on the merits; that the Court cannot accept the system of the provisional conclusion adopted by the Permanent Court of International Justice in the very special context of Opinion No. 4 on the nationality decrees (Series B, No. 4, p. 26); that it should rather, if need be, adopt the method followed by that Court in its judgment of 30th August 1924, when, before ruling on the merits of the case, it verified that the dispute fell to be decided by application of the treaty clauses invoked (Mavrommatis case, Series A, No. 2, p. 16); that the use of this method is justified by the principle of economy of proceedings, by the logical sequence in which the various questions arise and by the fact that the European Court, like the World Court, has only an attributed jurisdiction derived purely from the consent of States;

Whereas the Belgian Government considers that it maintained a similar position before the Commission; that it recalls in fact having invited the Commission to reject the Applications as manifestly ill-founded (Article 27 (2)) (art. 27-2); that in support of this submission as to the inadmissibility of the Applications it put forward arguments akin to those on which the objection of incompetence subsequently lodged with the Court is based; that, moreover, it was not possible for it to contest the competence of the Commission, that organ not having any judicial character;

2. Whereas the Commission asks the Court to reject the preliminary objection; whereas it points out that, together with the Court, it was set up to ensure the observance of the engagements undertaken by the Contracting States in the Convention (Article 19) (art. 19); whereas it maintains that, under the system of the Convention, an objection of incompetence ratione materiae should normally be raised before the Commission when the admissibility of the Application is under consideration; whereas it points out that in this case the Belgian Government raised no such objection before the Commission; whereas while not arguing that in law this has a preclusive effect or establishes the Court's jurisdiction on the basis of the forum prorogatum, the Commission considers that once it has referred a case to the Court, the Court needs no more than a summary examination to enable it to verify that the complaints declared admissible by the Commission concern the interpretation or application of the Convention within the meaning of Article 45 (art. 45); that the Court, in order to satisfy itself that it has jurisdiction, does not have to form a view regarding the opinion expressed by the Commission on the merits of the complaints; that the views of the Commission and the Belgian Government diverge in the present case on the interpretation and application of the Convention, in particular of its Article

14 (art. 14); that this results clearly both from the Commission's report and from the arguments put forward before the Court by both sides in the course of the written and oral proceedings; that the Court therefore has jurisdiction under Article 45 (art. 45);

Whereas it is the view of the Commission that, when a case, as in the present instance, relates to the interpretation or application of the Convention, the idea of the reserved domain has in principle no place in the system of supervision set up by the Convention; and that an exception to this principle is only conceivable if and to the extent that a Contracting State has validly exercised the option open to it under Article 64 (art. 64), an option of which Belgium has not availed herself;

Whereas, furthermore, in the opinion of the Commission, the legal provisions and practice relating to the jurisdiction of other international courts cannot in their entirety govern proceedings instituted before the European Court by virtue of specific clauses of the Convention;

NOW THE COURT

Whereas Article 49 (art. 49) of the Convention provides that "in the event of dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court"; whereas the Court, in this case called upon, under the conditions prescribed in Rule 46 of the Rules of Court, to determine its jurisdiction ratione materiae has to refer to the text of the Convention, and in the first place to Articles 19 and 45 (art. 19, art. 45); whereas the Court, together with the Commission, is responsible under Article 19 (art. 19) for ensuring the observance of the engagements undertaken by the Contracting Parties in the Convention; whereas Article 45 (art. 45), for its part, provides that "the jurisdiction of the Court shall extend to all cases concerning the interpretation and application of the present Convention which the High Contracting Parties or the Commission shall refer to it in accordance with Article 48 (art. 48)";

Whereas it follows from the very terms of Article 45 (art. 45) that the basis of the jurisdiction ratione materiae of the Court is established once the case raises a question of the interpretation or application of the Convention; and whereas therefore the Court may decline jurisdiction only if the complaint of the Applicants are clearly outside the provisions of the Convention and the Protocol;

Whereas in this case the Belgian Government in its final submissions presented to the Court a single objection asking it to reject forthwith the Commission's request as a whole without distinguishing between the various Applications on which the request is based or between the various complaints of the Applicants; whereas the Court cannot fail to conclude that

all those complaints raise questions concerning the interpretation and application of the Convention; whereas, in order to decide on these questions, it would have to examine whether the Applicants are entitled to the rights they claim to derive from Articles 8 and 14 (art. 8, art. 14) of the Convention and Article 2 of the Protocol (P1-2), and whether those provisions place on the Belgian State the obligations which the Applicants allege to have been violated; whereas that would amount, not only to encroaching on the merits, but to coming to a decision in regard to one of the fundamental factors of the case, that is to say in regard to questions of interpretation and application which are inseparable from the merits (cf. Permanent Court of International Justice, Electricity Company of Sofia and Bulgaria, judgment of 4th April 1939, Series A/B, No. 77, p. 83);

Whereas, moreover, the Commission, having in the exercise of its jurisdiction under Article 27 (art. 27) of the Convention declared admissible the complaints now before the Court, held hearings and presented a report from which there clearly appears the need for an interpretation of the Convention; whereas, in addition, the Commission, and even more, the Belgian Government have put forward before the Court arguments based primarily on the interpretation placed by them on the three Articles invoked by the Applicants; whereas this applies especially to the views of the Government as to the inapplicability of these Articles; whereas the Government has itself pointed out, with regard to Article 14 (art. 14) of the Convention, that the purpose of its preliminary objection was "to obtain a decision by the Court on (the) difference with regard to ... interpretation ..." between the Government and the Commission (second memorial, I, para. 4); whereas the problems that arise at the present stage of the proceedings therefore are part of the merits and thus cannot be solved by a preliminary examination; whereas it follows that the jurisdiction ratione materiae of the Court is so evidently established in this case that it should be affirmed here and now;

Whereas, furthermore, resort to the notion of the reserved domain, which the Belgian Government has put forward as another aspect of the same preliminary objection of incompetence (second memorial, paras. I, 5 and II, 2), equally concerns the merits and therefore cannot lead to any different result; whereas the Government seeks, in fact, by invoking this notion, to demonstrate the absence in this case of any factor relating to the Convention; whereas the Court is unable to agree with this reasoning; whereas the Convention and the Protocol, which relate to matters normally falling within the domestic legal order of the Contracting States, are international instruments whose main purpose is to lay down certain international standards to be observed by the Contracting States in their relations with persons under their jurisdiction (Article 1 of the Convention) (art. 1); whereas the jurisdiction of the Court extends to all cases concerning the interpretation and application of those instruments (Article 45 of the

Convention) (art. 45); whereas, as explained above, the present case concerns the interpretation and application of those instruments; whereas, therefore, the Court cannot in the circumstances regard the plea based upon the notion of reserved domain as possessing the character of a preliminary objection of incompetence;

Whereas in reaching this decision, which is of a procedural nature and which also disposes of the alternative submission of the Belgian Government that the objection should be joined to the merits, the Court in no way prejudges the merits of the dispute; whereas the Government remains free to take up again and to develop on the merits its arguments on the scope of the rights and freedoms laid down in the Convention and the Protocol;

FOR THESE REASONS,

Rejects unanimously the submissions, both principal and alternative, of the Belgian Government;

Decides unanimously to proceed to the examination of the merits of the case.

Judgment drawn up in French and English, the French text being authentic, and delivered in French in public hearing on the ninth day of February nineteen hundred and sixty-seven, at the Human Rights Building, Strasbourg.

R. CASSIN
President

H. GOLSONG
Registrar