

In the case of *Piermont v. France* (1),

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 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. Ryssdal, President,  
 Mr F. Matscher,  
 Mr L.-E. Pettiti,  
 Mrs E. Palm,  
 Mr A.N. Loizou,  
 Mr J.M. Morenilla,  
 Sir John Freeland,  
 Mr J. Makarczyk,  
 Mr K. Jungwiert,

and also of Mr H. Petzold, Registrar,

Having deliberated in private on 24 November 1994 and 20 March 1995,

Delivers the following judgment, which was adopted on the last-mentioned date:

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Notes by the Registrar

1. The case is numbered 5/1994/452/531-532. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The third number indicates the case's position on the list of cases referred to the Court since its creation and the last two numbers indicate its position on the list of the corresponding originating applications to the Commission.

2. Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

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#### PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 11 March 1994, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in two applications (nos. 15773/89 and 15774/89) against the French Republic lodged with the Commission under Article 25 (art. 25) by a German national, Mrs Dorothee Piermont, on 6 and 8 November 1989.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby France recognised the compulsory jurisdiction of the Court (Article 46) (art. 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 2 of Protocol No. 4 (P4-2) and Articles 10 and 14 (art. 10, art. 14) of the Convention.

2. In response to the enquiry made in accordance with

Rule 33 para. 3 (d) of Rules of Court A, the applicant stated that she wished to take part in the proceedings and designated the lawyers who would represent her (Rule 30). The German Government, having been informed by the Registrar of their right to intervene in the proceedings (Article 48, sub-paragraph (b) (art. 48-b), of the Convention and Rule 33 para. 3 (b)), did not indicate any intention of so doing.

3. The Chamber to be constituted included ex officio Mr L.-E. Pettiti, the elected judge of French nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 24 March 1994, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Matscher, Mrs E. Palm, Mr A.N. Loizou, Mr J.M. Morenilla, Sir John Freeland, Mr J. Makarczyk and Mr K. Jungwiert (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the French Government ("the Government"), the applicant's lawyers and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 11 August 1994 and the Government's memorial on 12 August. On 1 September the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

5. On 21 September 1994 the Chamber, having consulted the Agent of the Government and the Delegate of the Commission, decided not to hear a witness from French Polynesia as the applicant had requested.

6. On 13 October 1994 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

7. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 21 November 1994. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr M. Perrin de Brichambaut, Head of the Legal Affairs Department, Ministry of Foreign Affairs, Agent,  
 Mr Y. Charpentier, Head of the Human Rights Section, Legal Affairs Department, Ministry of Foreign Affairs,  
 Mrs M. Merlin-Desmartis, administrative court judge, on secondment to the Legal Affairs Department, Ministry of Foreign Affairs,  
 Mr L. Rinuy, Head of the Legal Affairs and Civil States Office, Political Affairs Section, Ministry of Overseas Departments and Territories,  
 Mrs M. Pauti, Head of the Comparative and International Law Office, Department of Civil Liberties and Legal Affairs, Ministry of the Interior, Counsel;

(b) for the Commission

Mr A. Weitzel, Delegate;

(c) for the applicant

Mr F. Roux, avocat, Counsel,  
 Ms G. Lang-Chemol, avocate,  
 Ms M.P. Canizares, avocate, Advisers.

The Court heard addresses by Mr Weitzel, Mr Roux, Ms Lang-Chemol, Ms Canizares and Mr Perrin de Brichambaut and also replies by Mr Perrin de Brichambaut and Mr Roux to a question put by one of its members.

#### AS TO THE FACTS

##### I. Circumstances of the case

8. Mrs Dorothée Piermont, a German citizen living at Remagen, has long been an environmentalist and a pacifist. At the material time she was a member of the European Parliament (MEP).

##### A. The measure taken in French Polynesia

###### 1. The expulsion and exclusion (interdiction d'entrée) order

9. At the invitation of Mr Oscar Temaru, the President of the French Polynesian Liberation Front, the applicant stayed on Polynesian territory from 24 February to 3 March 1986, during the election campaign preceding the territorial assembly and parliamentary elections that were due to take place on 16 March.

10. As soon as she alighted from the aircraft, the airport and border police, acting on the orders of the High Commissioner of the French Republic in French Polynesia, requested her to show some discretion in any comments she made on French internal matters, failing which she risked being expelled.

11. On 28 February 1986 Mrs Piermont took part in a public meeting and on 1 March joined about 900 other people in the traditional march organised by the independence and anti-nuclear movements. This demonstration, which attracted fewer people than in the previous year, took place without incident on the streets of Faavaa, a town just outside Papeete, where it had been banned by order of the High Commissioner because of the risk of "serious public disorder".

During the demonstration the applicant denounced the continuation of nuclear testing and the French presence in the Pacific. Her words were reported as follows in the newspapers:

"Mrs Piermont spoke in French and mentioned, in particular, the circumstances in which, on her arrival at Tahiti Airport, she had been warned by the 'chief copper' in charge of the airport and border police against taking part in a public demonstration, as doing so during an election campaign would amount to interference.

Mrs Piermont had replied that she would demonstrate if invited to do so, and she told the demonstrators gathered round her on Saturday that when it came to interference, the French presence was an interference in the affairs of

the Polynesians, and this interference was, in her view, manifested in the nuclear tests at Mururoa.

Mrs Piermont announced that, being of the view that the whole of the press in French Polynesia was opposed to the trend towards independence and supported the continuation of nuclear testing, the German 'Greens' had decided to donate one million CFP francs to the Polynesian Liberation Front to set up 'a newspaper that will tell the truth'."

12. On the next day, 2 March 1986, the High Commissioner made an order expelling the applicant and prohibiting her from re-entering the territory. The following reasons were given for the order:

"All foreign nationals have a duty to maintain a degree of neutrality towards any French territory in which they are staying.

Despite an oral warning about the duty of discretion, particularly during an election campaign, given to her on her arrival on 24 February 1986, Mrs Piermont stated, during a public demonstration in favour of the territory's independence and against nuclear testing, that France was interfering in Polynesian affairs.

These statements are an attack on French policy."

13. This order was served on the applicant on 3 March 1986 when she was already on board the aircraft that was to take her to New Caledonia.

2. The application for judicial review

(a) In the Papeete Administrative Court

14. On 15 April 1986 Mrs Piermont made two applications to the Papeete Administrative Court seeking, firstly, to have execution of the decision stayed and, secondly, to have the decision quashed.

15. The court dismissed the first application on 8 July 1986, but in a judgment of 23 December 1986 it allowed the second application for the following reasons:

"Under the provisions of section 7 of the Act ... of 3 December 1849 ..., the representative of the State may 'as a public-order measure' require any alien to leave French territory immediately. While the State's representative in the territory is vested, not only under these provisions ..., with a wide discretion to enable him to maintain order effectively, he must in all circumstances exercise the power thus conferred on him in a manner that respects freedom of movement and freedom of expression, which are secured not only by European Community law but in the first place by the Constitution and the general principles of law which the Republic applies both to its own nationals and to aliens whose presence and attitude on French territory do not constitute a threat to public order. This entails an obligation to ensure that the proposed public-order measure scrupulously conforms to what is strictly needed in order to maintain or re-establish public order.

Firstly, the applicant's utterances ... were not in any way seditious and could not in themselves constitute a serious threat to public order. They were accordingly not such as to justify the impugned measure.

Secondly, it furthermore appears from the evidence that the measure was decided on just as the person concerned was about to leave the territory of her own accord. That being so, it could no longer be regarded as essential for maintaining order there.

It follows, without there being any need to rely on international or Community law, that the general principles of domestic law are sufficient to establish that the impugned decision was a misuse of authority and must therefore be quashed."

(b) In the Conseil d'Etat

16. The Minister for Overseas Departments and Territories applied to the Conseil d'Etat on 16 March 1987 to have the Administrative Court's judgment set aside.

17. On 12 May 1989 the Conseil d'Etat allowed the application on the following grounds:

"It appears from the evidence that during her visit to French Polynesia Mrs Piermont made utterances violently hostile to France's defence policy and the integrity of French territory in the course of public demonstrations held during the campaign for the elections to the French National Assembly and to the local assembly. In considering, in the circumstances of the case, that Mrs Piermont's actions constituted a threat to public order and in deciding on those grounds to require her to leave the territory, the High Commissioner did not commit a manifest error of assessment. That being so, the Minister for Overseas Departments and Territories rightly submitted that the Papeete Administrative Court, in quashing the order of 2 March 1986, wrongly based its decision on the lack of grounds warranting Mrs Piermont's expulsion.

...

In the absence of provisions making it applicable to the territory of Polynesia and Dependencies, the Act of 11 July 1979 on the giving of reasons for administrative decisions and the improvement of relations between administrative authorities and the public does not apply there, and no other provision of a statute or of regulations requires reasons to be given for a public-order measure.

Although Mrs Piermont relies on the provisions of the Treaty of Rome concerning freedom of movement within the territory of the member States, Articles 135 and 227 of the Treaty make implementation of such freedom of movement in the associated countries, which include France's overseas territories, subject to agreements to be concluded subsequently, which require the member States' unanimous approval. In the absence of such agreements, this ground of appeal must in any event fail.

The privileges and immunities conferred on members of the European Parliament by Articles 6 to 11 of the Protocol of 8 April 1965 guarantee them free movement for the purpose of travelling to the Parliament and protect them from any prosecution or detention during its sessions but cannot prevent a public-order measure being taken such as the one against Mrs Piermont.

Lastly, the impugned measure did not infringe freedom of expression as laid down in Articles 10 and 14 (art. 10, art. 14) of the European Convention for the Protection of Human Rights and Fundamental Freedoms and came within the ambit of Article 2, paragraph 3, of Protocol No. 4 (P4-2-3) to the Convention, which allows restrictions on freedom of movement that are based on the requirements of national security, public safety or the maintenance of ordre public."

B. The measure taken in New Caledonia

1. The exclusion (interdiction d'entrée) order

18. After leaving Polynesia on 3 March 1986 (see paragraph 13 above), Mrs Piermont travelled to New Caledonia at the invitation of local elected representatives, including the President of the Socialist Kanak National Liberation Front. On 4 March, at 1.55 p.m., she arrived at Nouméa Airport. After she had gone with the other passengers through immigration control, where the airport and border police stamped her passport, a police officer stopped her and took her into an airport office, where she was held until her departure.

19. Some forty activists known as loyalists had been warned that the applicant was coming and were waiting for her in order to express their hostility to her presence in the territory. They made it known that so long as the MEP was on Caledonian soil they would not leave unless removed by force.

20. Given the risk of confrontation and after unsuccessful attempts at conciliation, the High Commissioner issued an order excluding Mrs Piermont from the territory of New Caledonia. It contained the following reasons:

"Having regard to the expulsion and exclusion order of 2 March 1986 issued by the High Commissioner in French Polynesia in respect of Mrs Piermont ...;

Being of the view that the presence of Mrs Dorothee Piermont, of German nationality (FRG), on the territory of New Caledonia and Dependencies, in particular during an election campaign, is causing and is likely to cause public disorder ..."

A police superintendent served this order on her whilst she was still within the airport perimeter, at about 6.30 p.m.

At about midnight the applicant was put on an aircraft bound for Tokyo, her passport having again been duly stamped.

2. The application for judicial review

(a) In the Nouméa Administrative Court

21. On 23 April 1986 Mrs Piermont applied to the Nouméa Administrative Court to have the order excluding her from New Caledonia quashed.

22. In a judgment of 24 December 1986 which upheld the submissions of the Government Commissioner (commissaire du gouvernement), the court quashed the impugned decision on the ground that no reasons had been given for it. It held:

"Under section 1 of the Act of 11 July 1979 on the giving of reasons for administrative decisions, '... reasons must be given for decisions which ... restrict the exercise of public freedoms or generally constitute public-order measures'.

Under section 3 of the same Act, 'the statement of reasons required by this Act must be in writing and set out the considerations of law and fact on which the decision is based'.

Although the impugned order referred to the order of 2 March 1986 issued by the High Commissioner in French Polynesia expelling Mrs Piermont and excluding her from that territory, the High Commissioner in New Caledonia and Dependencies did not state that he was adopting the terms of that order, whose text is neither incorporated in nor appended to his decision. That recital accordingly could not take the place of the statement of reasons required by the Act.

Moreover, by merely stating 'the presence of Mrs Dorothee Piermont, of German nationality (FRG), on the territory of New Caledonia and Dependencies, in particular during an election campaign, is causing and is likely to cause public disorder' without specifying the facts on which this public-order measure was based, the High Commissioner in New Caledonia and Dependencies did not satisfy the requirements of section 3 of the aforementioned Act. That being so and without there being any need to consider the other grounds put forward in her application, Mrs Piermont is entitled to have that order quashed."

(b) In the Conseil d'Etat

23. On 16 March 1987 the Minister for Overseas Departments and Territories appealed to the Conseil d'Etat.

24. In a judgment of 12 May 1989 the Conseil d'Etat set aside the judgment of the court below. After noting that the aforementioned Act of 11 July 1979 did not apply to the territory of New Caledonia and Dependencies, it gave the following reasons for its decision:

"Under section 7 of the Act of 3 December 1849 on the naturalisation and residence of aliens in France, which is still in force in the overseas territories and applies in the territory of New Caledonia and Dependencies, 'the Minister of the Interior may, as a public-order measure, require any alien travelling or resident in France to leave French territory immediately and have him escorted to the frontier' ... Regard being had both to Mrs Piermont's actions during the preceding days and to the unrest caused by the announcement of her arrival in

the territory, the High Commissioner, in considering that Mrs Piermont's presence would constitute a threat to public order and in ordering her exclusion from the territory of New Caledonia on that account, did not commit any manifest error of assessment.

Although Mrs Piermont relies on the provisions of the Treaty of Rome concerning freedom of movement within the territory of the member States, Articles 135 and 227 of the Treaty make implementation of such freedom of movement in the associated countries, which include France's overseas territories, subject to agreements to be concluded subsequently, which require the member States' unanimous approval. In the absence of such agreements, this ground of appeal must in any event fail.

The privileges and immunities conferred on members of the European Parliament by Articles 6 to 11 of the Protocol of 8 April 1965 guarantee them freedom of movement for the purpose of travelling to the Parliament and protect them from any prosecution or detention during its sessions but cannot prevent a public-order measure being taken such as the one against Mrs Piermont.

Lastly, the impugned measure did not infringe freedom of expression as laid down in Articles 10 and 14 (art. 10, art. 14) of the European Convention for the Protection of Human Rights and Fundamental Freedoms and came within the ambit of Article 2, paragraph 3, of Protocol No. 4 (P4-2-3) to the Convention, which allows restrictions on freedom of movement that are based on the requirements of national security, public safety or the maintenance of ordre public."

### 3. The revocation of the order

25. On 23 November 1994 the High Commissioner of the Republic, of his motion, revoked the order of 4 March 1986 on the ground that there was no longer "any reason, having regard to present circumstances, to oppose Mrs Piermont's entering the territory of New Caledonia".

## II. Relevant law and practice

### A. French law

#### 1. General aspects

26. France's overseas territories ("the OTs") are an integral part of the territory of the Republic.

27. However, by virtue of the "specificity of legislation" principle (Articles 74 and 76 of the Constitution), an enactment applies in the OTs only if such application is expressly provided for or if the enactment has been promulgated there.

28. When depositing the instruments of ratification of the Convention and of Protocol No. 4 (P4) on 3 May 1974, France declared that these would apply to "the whole territory of the Republic, having due regard, where the overseas territories are concerned, to local requirements, as mentioned in Article 63 (art. 63) of the Convention".

#### 2. Entry and residence of aliens

## (a) Legislation

29. The Aliens (Conditions of Entry and Residence) Ordinance of 2 November 1945 in force in metropolitan France was not promulgated in the OTs and accordingly does not apply in them.

The applicable provisions are contained in the Aliens (Naturalisation and Residence) Act of 3 December 1849, section 7 of which provides in its first subsection:

"The Minister of the Interior may, as a public-order measure, require any alien travelling or resident in France to leave French territory immediately and have him escorted to the frontier."

This Act was made applicable to the colonies by an Act of 29 May 1874. An Act of 6 September 1984 vests the powers of the Minister of the Interior in the High Commissioner of the Republic in the OTs.

## (b) The Conseil d'Etat's case-law

30. At the material time the Conseil d'Etat's power of review in matters of expulsion or exclusion from French territory was limited to ascertaining whether there had been any manifest error of assessment (see, for example, the National Immigration Office judgment of 22 October 1975, Recueil Lebon 1975, p. 520, and, in relation to an expulsion from New Caledonia, the Julbe-Saez judgment of 6 October 1978, Recueil Lebon 1978, p. 900).

With more particular reference to the political activities of aliens, the Conseil d'Etat held in the Perregaux judgment of 13 May 1977 (Recueil Lebon 1977, p. 216) that political activity did not in itself justify in law the expulsion of an alien whose presence on French territory did not constitute a threat to public order.

## B. Community law

## 1. Scope of the treaty establishing the European Economic Community

31. At the material time Article 227 of the treaty establishing the European Economic Community ("the EEC Treaty") provided:

"1. This Treaty shall apply to the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Portuguese Republic and the United Kingdom of Great Britain and Northern Ireland.

2. With regard to Algeria and the French overseas departments, the general and particular provisions of this Treaty relating to:

- the free movement of goods;
- agriculture, save for Article 40 (4);
- the liberalization of services;
- the rules on competition;
- the protective measures provided for in

- Articles 108, 109 and 226;  
the institutions,

shall apply as soon as this Treaty enters into force.

The conditions under which the other provisions of this Treaty are to apply shall be determined, within two years of the entry into force of this Treaty, by decisions of the Council, acting unanimously on a proposal from the Commission.

The institutions of the Community will, within the framework of the procedures provided for in this Treaty, in particular Article 226, take care that the economic and social development of these areas is made possible.

3. The special arrangements for association set out in Part Four of this Treaty shall apply to the overseas countries and territories listed in Annex IV to this Treaty.

This Treaty shall not apply to those overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not included in the aforementioned list."

32. The OTs, including French Polynesia and New Caledonia, are among the territories listed in Annex IV to the EEC Treaty. Their special arrangements for association are laid down in Articles 131 to 136 bis of the treaty.

33. With reference to workers' freedom of movement, Articles 48 and 135 provide:

Article 48

"1. Freedom of movement for workers shall be secured within the Community by the end of the transitional period at the latest.

2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:

(a) to accept offers of employment actually made;

(b) to move freely within the territory of Member States for this purpose;

(c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;

(d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission.

..."

Article 135

"Subject to the provisions relating to public health, public security or public policy, freedom of movement within Member States for workers from the [OTs], and within the [OTs] for workers from Member States, shall be governed by agreements to be concluded subsequently with the unanimous approval of Member States."

34. The details of and procedure for the association of the overseas countries and territories with the EEC are set out in an implementing convention of 16 December 1980, which was renewed on 30 June 1986. The arrangements are designed to further the economic and social development of the territories concerned but do not include freedom of movement.

2. Protocol on the privileges and immunities of the European Communities

35. The Protocol on the privileges and immunities of the European Communities, signed on 8 April 1965, contains a chapter III on members of the European Parliament which provides:

Article 8

"No administrative or other restriction shall be imposed on the free movement of members of the European Parliament travelling to or from the place of meeting of the European Parliament.

Members of the European Parliament shall, in respect of customs and exchange control, be accorded:

(a) by their own Government, the same facilities as those accorded to senior officials travelling abroad on temporary official missions;

(b) by the Governments of other Member States, the same facilities as those accorded to representatives of foreign Governments on temporary official missions."

Article 9

"Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties."

Article 10

"During the sessions of the European Parliament, its members shall enjoy:

(a) in the territory of their own State, the immunities accorded to members of their Parliament;

(b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to members while they are travelling to and from the place of meeting of the European Parliament.

Immunity cannot be claimed when a member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its members."

PROCEEDINGS BEFORE THE COMMISSION

36. Mrs Piermont applied to the Commission on 6 and 8 November 1989. She alleged that the administrative measures taken against her in French Polynesia and New Caledonia had infringed several provisions of the Convention: Article 2 of Protocol No. 4 (P4-2) on account of failure to respect her right to liberty of movement on French territory; Article 10 (art. 10) of the Convention because her freedom of expression had been hindered; and Article 14 of the Convention taken together with Article 10 (art. 14+10) on account of discrimination on the ground of national origin.

37. The Commission, having ordered the joinder of the applications (nos. 15773/89 and 15774/89), declared them admissible on 3 December 1992. In its report of 20 January 1994 (Article 31) (art. 31), it expressed the opinion that

(a) the expulsion and exclusion from French Polynesia had not infringed Article 2 of Protocol No. 4 (P4-2) (unanimously) but had infringed Article 10 (art. 10) of the Convention (eight votes to six);

(b) the exclusion from New Caledonia had not contravened Article 2 of Protocol No. 4 (P4-2) (thirteen votes to one) or Article 10 (art. 10) of the Convention taken either alone (twelve votes to two) or together with Article 14 (art. 10+ 14) (unanimously).

The full text of the Commission's opinion and of the five separate opinions contained in the report is reproduced as an annex to this judgment (1).

1. Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 314 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT

38. In their memorial the Government asked the Court "to dismiss Mrs Piermont's application".

39. Counsel for the applicant requested the Court to hold

"(a) that there has been a violation in French Polynesia of Article 10 (art. 10), taken both alone and together with Article 14 (art. 10+14);

(b) that there has been a violation in French Polynesia of Article 2 of Protocol No. 4 (P4-2);

(c) that there has been a violation in New Caledonia of Article 10 (art. 10), taken both alone and together with Article 14 (art. 10+14);

(d) that there has been a violation in New Caledonia of

Article 2 of Protocol No. 4 (P4-2);

..."

AS TO THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 2 OF PROTOCOL No. 4 (P4-2)

40. The applicant complained of the measures taken against her in French Polynesia and New Caledonia. In her submission, they infringed her right to liberty of movement secured by Article 2 of Protocol No. 4 (P4-2), which provides:

"1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

...

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

..."

A. The measure taken in French Polynesia

41. Mrs Piermont maintained that, having entered French Polynesia lawfully, she had had the right to liberty of movement there. The expulsion order, which had been held to be unlawful by the Papeete Administrative Court, could not have had the least effect on the lawfulness of her position in the archipelago. Even though it had been served on her as she was leaving Polynesian territory, she had suffered an interference which did not satisfy the requirements of paragraph 3 of Article 2 of Protocol No. 4 (P4-2-3). In March 1986 an election campaign had been in progress in Polynesia as throughout metropolitan France, but there had not been any particular tensions there. Furthermore, the words spoken had not in any way been of a seditious nature such as to be a threat to public order.

42. In the Government's submission, Polynesia was a territory separate from metropolitan France for the purposes of Article 2 of Protocol No. 4 (P4-2), for two reasons. Firstly, in virtue of the "specificity of legislation" principle, the OTs had a legal system distinct from that of metropolitan France (see paragraph 27 above). Secondly and above all, Article 5 para. 4 of Protocol No. 4 (P4-5-4) provided: "The territory of any State to which this Protocol (P4) applies ..., and each territory to which this Protocol (P4) is applied by virtue of a declaration by that State under this Article (P4-5), shall be treated as separate territories for the purpose of the references in Articles 2 and 3 (P4-2, P4-3) to the territory of a State." Once the expulsion order had been served on her, the applicant was accordingly no longer lawfully in Polynesia.

In the alternative, if Article 2 (P4-2) was regarded as being applicable, the Government maintained that at all events there had been no breach of the right to liberty of movement. Mrs Piermont was travelling neither to nor from the European

Parliament's place of meeting, so that she could not rely on the immunities attaching to her status as a member of that parliament (see paragraph 35 above). As for Community law, it did not guarantee any right to liberty of movement in the OTs for workers (assuming that the applicant fell within that category) who were nationals of Community States (see paragraphs 33-34 above). Lastly, the interference was justified by the local authorities' legitimate concern to maintain public order and safety in Tahiti.

43. The Commission, having regard to the special legal status of Polynesia and the fact that the territory had to be treated as distinct from metropolitan France, took the view that the applicant, once expelled from Polynesia, was no longer there lawfully and consequently could no longer claim to enjoy the right to liberty of movement.

44. The Court notes that the expulsion order of 2 March 1986 was served on Mrs Piermont next day when she had already taken her seat in the aircraft (see paragraph 13 above). The applicant, who was not travelling on business for the European Parliament, had been able to move around Polynesia as she wished from 24 February to 3 March 1986 and during that period had suffered no interference with the exercise of her right to liberty of movement within the meaning of Article 2 of Protocol No. 4 (P4-2).

It also points out that when depositing their instrument of ratification, the French Government had declared that Protocol No. 4 (P4) would apply to "the whole territory of the Republic, having due regard, where the overseas territories [were] concerned, to local requirements, as mentioned in Article 63 (art. 63) of the Convention" (see paragraph 28 above). Article 5 para. 4 of the Protocol (P4-5-4) (see paragraph 42 above) requires that Polynesia should be regarded as a separate territory for the purposes of the references in Article 2 (P4-2) to the territory of a State. At all events, the Aliens (Conditions of Entry and Residence) Ordinance 1945 had not been promulgated there (see paragraph 29 above). As a result, once the expulsion order had been served, the applicant was no longer lawfully on Polynesian territory and in those circumstances did not suffer any interference with the exercise of her right to liberty of movement, as secured by the provision in question, at that point either.

45. In conclusion, there has been no breach of Article 2 of Protocol No. 4 (P4-2).

B. The measure taken in New Caledonia

46. Mrs Piermont submitted that, having entered New Caledonia lawfully, she should have been able to move there freely. An expulsion measure had been taken against her that had incorrectly been described as an exclusion (interdiction d'entrée) and had been quashed by the Nouméa Administrative Court. That it was in reality an expulsion was beyond doubt, since she had gone through immigration control without incident, as was duly proved by the stamping of her diplomatic passport.

The impugned measure, she argued, had not been in accordance with law since the law made no mention of the possibility of excluding an alien from the territory. Nor was it justified, as her participation in a peaceful anti-nuclear demonstration in French Polynesia had not been such as to warrant her expulsion from New Caledonia, where France was not conducting

any atomic experiments. The same was true of the pro-independence beliefs that she had expressed in Polynesia. As to the demonstrators opposed to her staying in Nouméa, it was the duty of the police to disperse them.

47. The Government maintained that Article 2 of Protocol No. 4 (P4-2) did not apply to the case. In making the order, described by the Conseil d'Etat as a decision "excluding Mrs Piermont from the territory of New Caledonia", the High Commissioner had clearly meant to prohibit her from entering the territory and not to expel her from it. The stamping of her passport by the airport and border police was merely an administrative formality recording that the applicant had arrived at the frontier and that it had been checked that her papers were in order. This check did not preclude the High Commissioner from exercising the special powers he held in virtue of the territory's legal status or the ordinary police powers, inherent in his office, for keeping public order. The applicant had accordingly never been legally authorised by the administrative authorities to enter the territory. Even supposing that she had been there lawfully, the considerations of public order which had warranted restrictions on her liberty of movement in Polynesia had also, the Government submitted, justified the ones imposed in New Caledonia.

48. The Commission accepted the Government's main argument in substance.

49. In the instant case the Court considers that the applicant's argument that the mere fact of going through immigration control regularises a person's position in a territory is too formalistic. At an airport such as Nouméa's a passenger remains liable to checks for as long as he remains within the perimeter. In this instance Mrs Piermont was stopped just after her passport had been stamped and the impugned order was served on her before she had left the airport, since she was still held in an office under police guard.

The order made by the High Commissioner of the Republic is headed "Order prohibiting an alien from entering the territory" and Article 1 of it embodies that prohibition. The Conseil d'Etat, in its decision of 12 May 1989, did not question the nature of the order. That being so, the applicant was never lawfully within the territory, a requirement if Article 2 of Protocol No. 4 (P4-2) is to apply. There has therefore been no breach of that provision (P4-2).

## II. ALLEGED VIOLATIONS OF ARTICLE 10 (art. 10) OF THE CONVENTION

50. The applicant alleged that the administrative measures taken against her also infringed her right to freedom of expression. She relied on Article 10 (art. 10) of the Convention, which provides:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article (art. 10) shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with

it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. The measure taken in French Polynesia

1. Whether there was an interference

51. In Mrs Piermont's submission, the expulsion measure coupled with the ban on re-entering French Polynesia was intended to censor her political opinions and the expression of them on Polynesian soil - this notwithstanding her position as a member of the European Parliament, which entitled her to take an interest in the territory. It therefore amounted to an "interference by public authority" with the exercise of her right to freedom of expression.

52. The Government admitted that there had been an interference but characterised it as minimal.

53. Like the Commission, the Court considers that there was indeed an interference.

2. Whether the interference was justified

54. The Government maintained that the interference in question had not breached Article 10 (art. 10) of the Convention, for three reasons: it was in accordance with "local requirements" within the meaning of Article 63 (art. 63) of the Convention; it came within the ambit of Article 16 (art. 16) of the Convention; and it satisfied the requirements of paragraph 2 of Article 10 (art. 10-2).

(a) Justification under Article 63 (art. 63) of the Convention

55. Article 63 (art. 63) of the Convention provides:

"1. Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the ... Convention shall extend to all or any of the territories for whose international relations it is responsible.

2. ...

3. The provisions of [the] Convention shall be applied in such territories with due regard, however, to local requirements.

4. ..."

56. The Government submitted that the "local requirements" of French Polynesia made the interference legitimate. France's declaration, at the time of ratification, on the applicability of the Convention to the OTs (see paragraph 28 above) was, they

said, equivalent to a reservation. In the instant case the "local requirements" were the indisputable special features of protecting public order in the Pacific territories, namely their island status and distance from metropolitan France and also the especially tense political atmosphere during the years 1985-86.

57. In the applicant's submission, the Government had not proved the existence of such "local requirements". There had been no particular unrest in Polynesia at the time and the mere fact that an election campaign had been in progress did not justify the application of Article 63 para. 3 (art. 63-3). This view was supported, she said, by the submissions of the Government Commissioner at the Papeete Administrative Court when it was considering her application for a stay of execution of the order of 2 March 1986: "I cannot, for my part, see what local requirements could justify not applying the Convention provisions relied on in this case."

58. The Delegate of the Commission, referring to the Tyrer v. the United Kingdom judgment (25 April 1978, Series A no. 26, p. 18, para. 38), considered that the Government had not adduced positive and conclusive proof of requirements arising from the special character of French Polynesia.

59. The Court notes that the arguments put forward by the Government relate essentially to the tense local political atmosphere taken together with an election campaign and therefore emphasise circumstances and conditions more than requirements. A political situation, admittedly a sensitive one but also one which could occur in the mother country, does not suffice in order to interpret the phrase "local requirements" as justifying an interference with the right secured in Article 10 (art. 10).

(b) Justification under Article 16 (art. 16) of the Convention

60. Article 16 (art. 16) of the Convention provides:

"Nothing in Articles 10, 11 and 14 (art. 10, art. 11, art. 14) shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens."

61. According to the Government, Mrs Piermont could not rely on her status either as a member of the European Parliament or as a European citizen and she therefore came within the scope of Article 16 (art. 16). She had, they submitted, been invited less in her capacity as an MEP than as a member of the German "Greens" party and she had expressed her views at the independence demonstration on issues relating to the territorial integrity of the host country and national defence, fields which lay outside the competence of the Community. Furthermore, the recognition, after the material time, of a "citizenship of the Union" was irrelevant. Lastly, the member States of the Community had reserved the right to lay down the circumstances in which nationality could be acquired or lost. Accordingly, anyone who did not possess the nationality of the country in which he intended to exercise the freedoms guaranteed in Articles 10, 11 and 14 (art. 10, art. 11, art. 14) had to be regarded as an alien.

62. The applicant replied that the restrictions in Article 16 (art. 16) did not apply in her case because of her dual status as a European citizen and an MEP. To object that she was an

alien when the nature of her functions entailed taking an interest in the whole of the Community's territory seemed to her to be beside the point.

63. The Commission accepted the applicant's submissions in substance.

64. The Court cannot accept the argument based on European citizenship, since the Community treaties did not at the time recognise any such citizenship. Nevertheless, it considers that Mrs Piermont's possession of the nationality of a member State of the European Union and, in addition to that, her status as a member of the European Parliament do not allow Article 16 (art. 16) of the Convention to be raised against her, especially as the people of the OTs take part in the European Parliament elections.

In conclusion, this provision (art. 16) did not authorise the State to restrict the applicant's exercise of the right guaranteed in Article 10 (art. 10).

(c) Justification under paragraph 2 of Article 10 (art. 10-2)

65. It must be ascertained whether the interference was prescribed by law, pursued a legitimate aim and was "necessary in a democratic society".

(i) "Prescribed by law"

66. In the applicant's submission, the interference resulting from the exclusion order had not been prescribed by law, because section 7 of the Act of 3 December 1849 (see paragraph 29 above) did not give the Minister of the Interior the power to prohibit someone from "re-entering the territory", as was stated in the order made on 2 March 1986 by the High Commissioner in French Polynesia.

67. The Government argued that there was a legal basis for the interference in the Act of 3 December 1849 and the Act of 6 September 1984, the latter of which vested the powers of the Minister of the Interior in the High Commissioner of the Republic in the OTs (see paragraph 29 above).

68. As Mrs Piermont has not returned to Polynesia, the Court considers it pointless to rule on the exclusion. Like the Commission, it finds that the expulsion was based on section 7 of the Act of 3 December 1849.

(ii) "Legitimate aim"

69. The applicant asserted that the prevention of disorder could not justify the expulsion order as the latter nowhere stated that what she had said had caused public disorder.

70. The Government argued that the impugned interference pursued two aims recognised in the Convention: the prevention of disorder, and territorial integrity.

71. The Commission accepted the legitimacy of the first of those but expressed no view as to the second.

72. The Court considers that, regard being had to the particular circumstances of the case, the interference pursued

the two aims relied on by the Government.

(iii) "Necessary in a democratic society"

73. Mrs Piermont contended that the measure had been neither necessary in a democratic society nor proportionate to the aims pursued. The utterances held against her appeared in the programmes of the local political parties and had in no way constituted a threat to public order, as had been noted by the Papeete Administrative Court; the situation in Polynesia in March 1986 had been peaceful. The impugned speech went with the tide of history, seeing that the French Government had suspended nuclear tests in the region in 1992 and, under the Matignon agreements, had recognised the right of the Caledonian people to self-determination through a referendum. The applicant had merely taken part in a democratic debate initiated locally by elected representatives of the people, whom she met in her capacity as a European elected representative. It was a case in which the requirements of the upholding of public order had to be weighed against the interests of "free discussion of political issues". At all events, the measure taken could not be justified by a threat to public order in the sense in which the term was used in both national and Community case-law. Lastly, the freedom guaranteed in Article 10 (art. 10) applied regardless of frontiers, and alternative legal means existed for punishing the conduct complained of, such as criminal proceedings for defamation.

74. The Government had no intention of denying a member of the European Parliament the right to speak freely and to talk with representatives of a recognised political party. Nevertheless, the values she embodied should prompt her to express herself in a manner consistent with those very values. Since freedom of expression also entailed duties, the tense local political atmosphere and the imminence of two sets of elections called for some caution on Mrs Piermont's part, particularly when she intended to speak in her capacity as an MEP. She had, however, made vehement utterances calling in question the legal order of the French Republic and the institutions of Polynesia. Lastly, she could not complain of a continuing interference as she had not sought to have the order revoked.

75. The Commission considered the interference to be unjustified under Article 10 (art. 10). It had regard to the fact that no unrest had been caused in the archipelago by the applicant's stances and to the risk that such measures might discourage politicians from contributing to the political discussion of controversial issues.

76. The Court reiterates that freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress. Subject to paragraph 2 of Article 10 (art. 10-2), it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society" (see the *Castells v. Spain* judgment of 23 April 1992, Series A no. 236, p. 22, para. 42). A person opposed to official ideas and positions must be able to find a place in the political arena. "While freedom of expression is important for everybody, it is especially so for an elected representative of the people ... Accordingly, interferences with [his] freedom of expression ... call for the closest scrutiny on

the part of the Court" (ibid., pp. 22-23, para. 42).

Freedom of political debate is undoubtedly not absolute in nature. A Contracting State may make it subject to certain "restrictions" or "penalties", but it is for the Court to give a final ruling on the compatibility of such measures with the freedom of expression enshrined in Article 10 (art. 10) (ibid., p. 23, para. 46).

77. In the Court's opinion, the political atmosphere prevailing in French Polynesia at the time and the prospect of the two sets of elections are factors of some weight (see paragraph 9 above). The conduct of the applicant, whose political ideas were well known, could undoubtedly have had a special impact on the political atmosphere. Furthermore, she was requested on her arrival to show some discretion in what she said in public.

Nevertheless, the utterances held against Mrs Piermont were made during a peaceful, authorised demonstration. At no time did the MEP call for violence or disorder; she spoke in support of the anti-nuclear and independence demands made by several local parties. Her speech was therefore a contribution to a democratic debate in Polynesia. Moreover, the demonstration was not followed by any disorder and the Government did not show that the stances taken up by the applicant caused any unrest in Polynesia. According to the Papeete Administrative Court, her utterances were "not in any way seditious and could not in themselves constitute a serious threat to public order". Furthermore, although the expulsion order was served just before the applicant's departure, it was made the day after the demonstration in issue. There is nothing to show that the intention of the High Commissioner of the Republic had been to take a purely symbolic measure.

A fair balance was accordingly not struck between, on the one hand, the public interest requiring the prevention of disorder and the upholding of territorial integrity and, on the other, Mrs Piermont's freedom of expression.

78. In short, since the measure was not necessary in a democratic society, there has been a breach of Article 10 (art. 10).

B. The measure taken in New Caledonia

1. Whether there was an interference

79. The applicant maintained that neither lawful entry nor lawful residence was required for Article 10 (art. 10) of the Convention to apply. Because of the measure taken against her, she had not been able to meet her hosts, who wished to have a discussion with her, or to speak in New Caledonia.

80. In the view of the Government and the Commission, the fact that Mrs Piermont had been unable to exercise her right to freedom of expression in that territory was a necessary consequence of the refusal to let her enter it, a measure which in itself complied with the Convention.

81. The Court does not share this opinion. The exclusion order made by the High Commissioner of the Republic amounted to an interference with the exercise of the right secured by Article 10 (art. 10) as, having been detained at the airport, the

applicant had not been able to come into contact with the politicians who had invited her or to express her ideas on the spot.

2. Whether the interference was justified

82. The applicant reiterated, *mutatis mutandis*, her submissions in respect of the measure taken against her in French Polynesia. She highlighted the fact that the interference had not been prescribed by law as the relevant order prohibited her from entering the territory, a measure that was not covered by section 7 of the Act of 1849 (see paragraph 29 above). Admittedly, the situation was not as quiet in New Caledonia as in Polynesia, but the French Government had very large forces available to it locally for keeping order and these would have had no difficulty in containing and dispersing a demonstration by forty anti-independence campaigners.

83. The Government added to their arguments concerning the first measure the observation that there had been a more acrimonious atmosphere in New Caledonia. Tension between the independence campaigners and those in favour of the territory's remaining in the French Republic had, they said, become exacerbated in 1985 and early 1986, a period which had been marked by numerous attacks on public buildings. Movable and immovable property belonging to independence campaigners had been destroyed and this had led to reprisals in the form of arson attacks and stone-throwing. The announcement of Mrs Piermont's arrival in Nouméa had contributed to heightening this tension, as was shown by the incidents at the airport. The exclusion had therefore been fully justified by the authorities' duty to maintain public order.

84. The Court accepts that the measure was prescribed by law, and it refers to the submissions of the Government Commissioner at the Nouméa Administrative Court. Even if some doubts may be entertained as to whether section 7 of the Act of 3 December 1849 applied to the instant case, which concerned not an expulsion in the strict sense but a refusal of entry, the High Commissioner was entitled to use his general police powers to ban the applicant from entering New Caledonia on grounds of public safety.

85. As to the proportionality of the measure, the Court again stresses the importance of freedom of expression. The applicant's behaviour and the fear that she would express her views on sensitive topics on the spot could account for the reasons given for the refusal to let her enter Caledonian territory. Even if the political atmosphere was tense and Mrs Piermont's arrival led to a limited demonstration of hostility, the Court discerns no substantial difference in the applicant's position *vis-à-vis* the two territories. The reasons which prompted it to hold that the measure taken in French Polynesia was not justified in the light of the requirements of paragraph 2 of Article 10 (art. 10-2) lead it to make an identical finding in respect of New Caledonia.

86. In conclusion, there has been a breach of Article 10 (art. 10).

III. ALLEGED VIOLATIONS OF ARTICLE 14 OF THE CONVENTION, TAKEN TOGETHER WITH ARTICLE 10 (art. 14+10)

87. Relying on Article 14 of the Convention taken together

with Article 10 (art. 14+10), Mrs Piermont lastly claimed that she was the victim of discrimination in comparison with French citizens resident in Polynesia and in New Caledonia. Foreigners were not able to enjoy the right secured in Article 10 (art. 10).

88. The Government disputed that submission, relying on the lack of evidence as regards the measure taken in Polynesia and the non-applicability of Article 14 (art. 14) as regards the one taken in New Caledonia.

89. The Commission considered that it was not necessary for the measure taken in Polynesia to be looked at under Article 14 (art. 14). It also pointed out that since the applicant had not entered New Caledonia, she had not been able to exercise there the rights guaranteed by Articles 10 and 14 (art. 10, art. 14).

90. Having regard to its findings in relation to Article 10 (art. 10), the Court considers it unnecessary to ascertain whether there has also been a breach of Article 14 taken together with Article 10 (art. 14+10).

#### IV. APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

91. Under Article 50 (art. 50) of the Convention,

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

##### A. Damage

92. Mrs Piermont sought compensation for non-pecuniary damage in the amount of 200,000 French francs (FRF). As justification for this sum, she cited her exclusion from both territories and the contemptuous way in which the French authorities, particularly in New Caledonia, had treated her.

93. Like the Government and the Delegate of the Commission, the Court considers that the findings of violations of Article 10 (art. 10) constitute sufficient just satisfaction, especially as the applicant has not sought to have the exclusion order revoked (see paragraph 25 above).

##### B. Costs and expenses

94. In respect of the costs and expenses relating to the proceedings in Papeete and Nouméa and thereafter before the Convention institutions, Mrs Piermont claimed a sum of FRF 489,654.40, of which she provided particulars. She also sought reimbursement of a sum of FRF 60,000 relating to her personal expenses, comprising refund of the cost of the ticket for travel by air from Tokyo to Bonn, her journeys to consult her lawyers and attend the hearings before the Commission and the Court and sundry expenses, to which she added 15,267 German marks, representing the cost of the ticket for travel by air from Nouméa to Bonn, which had not been used on account of her having been put on an aircraft bound for Tokyo.

95. The Government and the Delegate of the Commission left it to the Court's discretion to assess the costs and expenses that had actually and reasonably been incurred by the applicant.

96. The Court notes, *inter alia*, that Mrs Piermont's claims have succeeded only in part and that the applicant called on the services of three lawyers. Making its assessment on an equitable basis, in the light of the information in its possession and its own case-law, the Court awards her FRF 80,000.

FOR THESE REASONS, THE COURT

1. Holds unanimously that there has been no breach of Article 2 of Protocol No. 4 (P4-2) as regards the measure taken in French Polynesia;
2. Holds unanimously that there has been no breach of Article 2 of Protocol No. 4 (P4-2) as regards the measure taken in New Caledonia;
3. Holds by five votes to four that there has been a breach of Article 10 (art. 10) of the Convention as regards the measure taken in French Polynesia;
4. Holds by five votes to four that there has been a breach of Article 10 (art. 10) of the Convention as regards the measure taken in New Caledonia;
5. Holds unanimously that it is unnecessary to consider the case under Article 14 of the Convention taken together with Article 10 (art. 14+10);
6. Holds unanimously that the present judgment constitutes in itself sufficient just satisfaction as regards the alleged non-pecuniary damage;
7. Holds unanimously that the respondent State is to pay the applicant, within three months, 80,000 (eighty thousand) French francs in respect of costs and expenses;
8. Dismisses unanimously the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 27 April 1995.

Signed: Rolv RYSSDAL  
President

Signed: Herbert PETZOLD  
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of Rules of Court A, the joint partly dissenting opinion of Mr Ryssdal, Mr Matscher, Sir John Freeland and Mr Jungwiert is annexed to this judgment.

Initialled: R. R.

Initialled: H. P.

JOINT PARTLY DISSENTING OPINION OF

JUDGES RYSSDAL, MATSCHER, SIR JOHN FREELAND AND JUNGWIERT

I. Article 10 (art. 10)

1. We are unable to agree with the conclusions of the majority as regards the compatibility of the treatment of Mrs Piermont in Polynesia and New Caledonia with Article 10 (art. 10) of the Convention.

A. French Polynesia

2. We accept that the expulsion measure, coupled with the ban on re-entering French Polynesia, amounted to an "interference by public authority" with the exercise of her right of freedom of expression. Where we differ from the majority is on the question whether the interference was justified.

Justification under Article 63 (art. 63)

3. Even if, as the judgment concludes, the factors adduced by the Government fell short of establishing that the situation in French Polynesia necessitated the interference in question, we take the view that circumstances in a territory such as this one, at the distance it is from metropolitan France and in the political atmosphere which existed at the time, may because of potential consequences for public order or territorial integrity amount to "local requirements" within the meaning of Article 63 (art. 63) to which "due regard" should be paid. We would not, however, go so far as to conclude that the paying of "due regard" to such circumstances should of itself lead inescapably to a finding that the interference was justified in this case. What it would do is more to condition the approach to be adopted in considering the question of possible justification under paragraph 2 of Article 10 (art. 10-2).

Justification under Article 16 (art. 16)

4. The judgment asserts, without supporting reasoning, that Mrs Piermont's "possession of the nationality of a member State of the European Union and, in addition to that, her status as a member of the European Parliament do not allow Article 16 (art. 16) of the Convention to be raised against her, especially as the people of the OTs take part in the European Parliament elections" (paragraph 64). It thus, in effect, adds by judicial action a new immunity to those which the member States saw fit to provide for members of the European Parliament by the terms of the Protocol of 8 April 1965 on the privileges and immunities of the European Communities (paragraph 35). We cannot subscribe to this approach. Mrs Piermont, a German national, was at the relevant time (before, as the judgment acknowledges, a European citizenship was recognised by the Community treaties) indubitably an alien in the eyes of French law, notwithstanding her status as a member of the European Parliament (and the elections for which campaigning was in progress were not elections to the European Parliament). We consider, therefore, that Article 16 (art. 16) has to be regarded as at least of some relevance: its reference to "aliens" is unambiguous and without express exception; and convincing grounds would be required for an exception to be inferred. We are not satisfied that such grounds exist.

5. It does not, however, follow that, even if Article 16 (art. 16) is relevant, any restriction at all, at the unfettered discretion of the host State, may justifiably be imposed on the

political activity of an alien without contravention of Article 10 (art. 10). Account must be taken of the increased internationalisation of politics in modern circumstances, and, so far as the present case in particular is concerned, of the interest which nowadays an MEP may legitimately have in the affairs of a Community territory. In the light of these developments, limits may have to be admitted to the restrictions on the political activity of aliens permissible under Article 16 (art. 16). With this in mind, and having regard to the approach adopted by the Court in its *Groppera Radio AG and Others v. Switzerland* judgment of 28 March 1990 (Series A no. 173) to the interpretation of the third sentence of paragraph 1 of Article 10 (art. 10-1), we would accept that the object and purpose of Article 16 (art. 16) should, like that sentence, be examined in the context of paragraph 2 of Article 10 (art. 10-2). In particular, when the proportionality of the interference with Mrs Piermont's freedom of expression is under consideration, account should be taken of the principle embodied in Article 16 (art. 16).

Justification under paragraph 2 of Article 10 (art. 10-2)

6. We agree that, for the reasons given in the judgment, the interference was prescribed by law and pursued a legitimate aim.

7. As to whether the interference was "necessary in a democratic society", our conclusion on the issue of proportionality differs from that of the majority. Taking into account, to the extent to which, for the reasons indicated above, we consider it right to do so, the prevailing local circumstances, in the light of Article 63 (art. 63), and Mrs Piermont's status as an alien, in the light of Article 16 (art. 16), we do not regard the interference as disproportionate to the aim pursued. There was an atmosphere of considerable tension in French Polynesia at the time and the intervention of the applicant in the election campaign could reasonably be regarded as liable to provoke disorder. For this reason she had been asked by the authorities, on her arrival in the territory, to be discreet in her public statements. She nevertheless proceeded to express opinions publicly, in by no means temperate terms, on sensitive issues such as independence for the territory and nuclear testing in the Pacific.

8. The interference was, in any event, of very limited practical consequence for the applicant. Throughout her visit she expressed her views freely. The expulsion and exclusion order was not served on her until she was on the aircraft awaiting departure. She has not established that, in the circumstances, either the expulsion or the exclusion involved any substantial detriment for her.

9. For these reasons, we are satisfied that the interference can, allowing for the margin of appreciation to be afforded to the authorities, reasonably be accepted as being proportionate to the aim pursued. We therefore conclude that the treatment of Mrs Piermont in French Polynesia involved no violation of Article 10 (art. 10).

B. New Caledonia

10. The Court has concluded that, in the light of the exclusion order which was served on Mrs Piermont after she had been held at Nouméa Airport for some hours under police guard, she was never lawfully within the territory of New Caledonia,

with the result that there was no breach of Article 2 of Protocol No. 4 (P4-2). Since her detention at the airport prior to the making of the order and thereafter until the departure of her flight for Tokyo was a necessary part of the process of denying her, legitimately in terms of Convention obligations (as the Court has found), entry into the territory, it did not amount to an interference with rights under Article 10 (art. 10): she had not, because of the exclusion, become entitled to exercise such rights there. On this ground we would conclude that the treatment of her in New Caledonia involved no violation of Article 10 (art. 10).

11. Even if, however, the exclusion order and her detention at the airport should be regarded as having amounted, as the majority conclude, to an interference with her rights under Article 10 (art. 10), we would consider that the interference was justified. The political atmosphere in New Caledonia was even more tense than in French Polynesia and Mrs Piermont's arrival had led to a demonstration of hostility by some forty activists. By parity of reasoning with that which we have indicated in relation to her treatment in French Polynesia, our conclusion would be that the measure was proportionate to the aim pursued.

12. We therefore find no violation of Article 10 (art. 10) in relation to Mrs Piermont's treatment in New Caledonia.

II. Article 14, taken together with Article 10  
(art. 14+10)

13. When the Court voted on this issue, we took the view that it was not necessary to examine the case under Article 14 of the Convention taken in conjunction with Article 10 (art. 14+10). However, if the Court had examined this complaint, we would not have found a violation. There is no evidence that the treatment accorded to the applicant differed from that which would have been accorded to another person in a similar situation. If only on this ground, we conclude that the complaint under Article 14 in conjunction with Article 10 (art. 14+10) has not been established.