In the case of Diennet 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 R. Bernhardt,
Mr L.-E. Pettiti,
Mr R. Macdonald,
Mr C. Russo,
Mrs E. Palm,
Mr J.M. Morenilla,
Mr L. Wildhaber,
Mr P. Kuris,

and also of Mr H. Petzold, Registrar,

Having deliberated in private on 23 March and 31 August 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 25/1994/472/553. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules 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 7 July 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 an application (no. 18160/91) against the French Republic lodged with the Commission under Article 25 (art. 25) by a French national, Mr Marcel Diennet, on 18 April 1991.

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 6 para. 1 (art. 6-1) 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 he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio

Mr L.-E. Pettiti, the elected judge of French nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 18 July 1994, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr R. Bernhardt, Mr R. Macdonald, Mr C. Russo, Mrs E. Palm, Mr J.M. Morenilla, Mr L. Wildhaber and Mr P. Kuris (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 lawyer 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 and the extension of time granted by the President at the Government's request, the Government's and the applicant's memorials were received at the registry on 5 December 1994. On 12 January 1995 the Secretary to the Commission indicated that the Delegate did not wish to reply in writing. On 22 December 1994 he had supplied the registry with various documents. The applicant's claim for just satisfaction was received at the registry on 20 February 1995.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 20 March 1995. At a preparatory meeting held beforehand the Court was informed that the applicant's lawyer, Ms C. Waquet, was stranded in Paris as a result of an airline strike. It decided to hold the hearing at the appointed time nevertheless and to fax a provisional record of it to Ms Waquet so that she could submit any observations in writing before the deliberations.

There appeared before the Court:

(a) for the Government

Mrs M. Merlin-Desmartis, administrative court judge,
on secondment to the Legal Affairs Department,
Ministry of Foreign Affairs, Agent,
Mr T.-X. Girardot, special adviser,
Legal Affairs Department,
Ministry of Foreign Affairs, Counsel;

(b) for the Commission

Mr M.A. Nowicki, Delegate.

The Court heard addresses by Mr Nowicki and Mrs Merlin-Desmartis.

6. A copy of Ms Waquet's address was received at the registry by fax on 21 March 1995. The Delegate of the Commission and the Government did not reply to it.

AS TO THE FACTS

I. Circumstances of the case

7. Dr Marcel Diennet, a general practitioner living in Paris, was the object of proceedings for professional misconduct.

8. On 11 March 1984 the Regional Council of the Ile-de-France ordre des médecins (Medical Association) struck him off the register. Its reasons for doing so included the following:

"...

The statements made by the doctor against whom proceedings have been brought amply established the 'method of consultation by correspondence' introduced by him. Dr Diennet sent patients whom he could not, or did not wish to, see at his surgery a printed letter containing a proposal for a consultation by means of a detailed questionnaire to enable him to make out for each patient an appropriate prescription for a slimming course.

...

By using this method, Dr Diennet never met his patients, did not personally make any examination of them and did not monitor or adjust the treatment prescribed. During his absences from France, which he admits were numerous, the patients were followed up by his secretarial staff, a fact which he does not deny.

The conduct of which he stands accused is amply substantiated and seriously contravenes the provisions of Articles 15, 18, 23, 33 and 36 of the Code of Professional Conduct. Such conduct is unacceptable on the part of a doctor and bears no relation to the medical profession.

These offences call for severe punishment.

..."

9. The applicant appealed to the disciplinary section of the National Council of the ordre des médecins, which on 30 January 1985 ordered that he should be disqualified from practising medicine for three years instead of being struck off.

10. On an application by Dr Diennet, the Conseil d'Etat quashed that decision on 15 January 1988 on the ground that there had been an irregularity in the proceedings which had led to it, as the disciplinary section of the National Council had ruled that pleadings filed by the doctor after the time-limit but before the hearing were inadmissible. The case was remitted to the disciplinary section.

11. On 26 April 1989, after a hearing in private, the disciplinary section of the National Council again disqualified the applicant from practising medicine for three years.

12. Dr Diennet appealed on points of law to the Conseil d'Etat. He argued, in particular, that the decision concerning him had not been reached in accordance with Article 6 para. 1 (art. 6-1) of the Convention, as three of the seven members of the disciplinary section of the National Council, including the rapporteur, had already heard the case on the occasion of the first decision - a circumstance that did not satisfy the impartiality requirement of Article 6 para. 1 (art. 6-1) - and the hearing on 26 April 1989 had not been held in public.

13. On 29 October 1990 the Conseil d'Etat dismissed the appeal in the following terms:

"...

As to the lawfulness of the impugned decision

Firstly, the provisions of Article 6 para. 1 (art. 6-1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms are not applicable to disciplinary tribunals, which do not hear criminal proceedings and do not determine civil rights and obligations. Mr Diennet accordingly

cannot challenge the decision appealed against on the grounds that it contravened the provisions of Article 6 para. 1 (art. 6-1) of the aforementioned Convention relating to the holding of hearings in public and the impartiality of tribunals.

Secondly, although section 11 of the Law of 31 December 1987 provides that a tribunal to which a case has been remitted by the Conseil d'Etat must, unless the nature of the tribunal makes it impossible, be differently constituted from the one that gave the original decision, the disciplinary section of the ordre des médecins was, having regard to its nature, entitled, for the purpose of hearing the case remitted to it by the Conseil d'Etat acting in its judicial capacity in a decision of 15 January 1988, to be constituted again as it had been on 30 January 1985, when it had given its first ruling. The grounds of appeal based on an infringement of the principle of the impartiality of tribunals and on the statutory provisions previously cited must therefore fail.

..."

II. The disciplinary rules governing the medical profession

14. It is compulsory for all doctors entitled to practise their profession in France to belong to the ordre national des médecins. This body ensures, among other things, that the principles of morality, probity and dedication essential to the practice of medicine are upheld and that all its members fulfil their professional duties and comply with the rules laid down in the Code of Professional Conduct. It discharges this function through département councils, regional councils and the National Council of the ordre (Articles 381 and 382 of the Public Health Code).

A. Procedure

1. Before the professional disciplinary bodies

(a) The regional councils

15. The regional councils exercise disciplinary jurisdiction at first instance within the ordre des médecins. Cases may be brought before them by the councils of the départements within their territorial jurisdiction and individual registered medical practitioners, among others (Article L. 417 of the Public Health Code).

(b) The disciplinary section of the National Council

16. After each election of a proportion of its members (every two years) the National Council of the ordre des médecins elects eight of its thirty-eight members to constitute a disciplinary section - chaired by a senior member of the Conseil d'Etat - with jurisdiction to hear appeals (Articles L. 404 to 408 and L. 411 of the Public Health Code). Substitute members are elected in the same way as full members (Article 21 of Decree no. 48-1671 of 26 October 1948, as amended, concerning, inter alia, the functioning of the disciplinary section).

The disciplinary section can only deliberate validly if, in addition to its chairman, at least four of its members are present. Where the number of members present is an even number, the youngest practitioner must withdraw (Article 24, first paragraph, of the Decree of 26 October 1948, as amended).

Appeals have a suspensive effect (Article L. 411 of the Public Health Code).

2. In the Conseil d'Etat

17. An appeal on points of law against decisions of the disciplinary section lies to the Conseil d'Etat (Article 22 of the Decree of 26 October 1948, as amended, and Article L. 411 of the Public Health Code) "as provided in ordinary administrative law" (Article L. 411 in fine of the Public Heath Code).

Section 11 - which came into force on 1 January 1989 - of Law no. 87-1127 of 31 December 1987 reforming administrative proceedings provides:

"...

If it quashes a decision by an administrative tribunal of last instance, the Conseil d'Etat may either remit the case to the same tribunal, which shall, unless the nature of the tribunal makes it impossible, be differently constituted, or remit the case to another tribunal of the same type, or determine the merits of the case itself where the interests of sound administration of justice warrant it.

Where a second appeal on points of law is brought in a case, the Conseil d'Etat shall give a final ruling on it."

B. Penalties

18. The following penalties may be imposed on doctors found guilty of disciplinary offences: a warning; a reprimand; temporary or permanent disqualification from performing some or all of the medical duties carried out for or remunerated by the State, départements, municipalities, public corporations or private corporations promoting the public interest, or the medical duties carried out pursuant to welfare legislation; temporary disqualification from practising medicine (for a maximum of three years); and striking off the register of the ordre.

The first two penalties also entail loss of the right to be a member of a département council, a regional council or the National Council of the ordre for three years; the other penalties entail permanent loss of that right. A doctor who has been struck off cannot have his name entered in another register (Article L. 423 of the Public Health Code).

C. Right of challenge

19. A doctor against whom proceedings are brought may exercise a right of challenge before a regional council or the National Council, as laid down in Articles 341 to 355 of the New Code of Civil Procedure (Article L. 421 of the Public Health Code).

Article 341 of the New Code of Civil Procedure provides that a judge may be challenged:

"...

1. if he or his spouse has a personal interest in the dispute;

2. if he or his spouse is a creditor, debtor, heir presumptive or donee of one of the parties;

3. if he or his spouse is a blood relative or a relative by marriage of one of the parties or of the spouse of one of the

parties up to the fourth degree inclusive;

4. if there have been or are still legal proceedings pending between him or his spouse and one of the parties or the spouse of one of the parties;

5. if the case has earlier come before him as a judge or arbitrator or if he has advised one of the parties;

6. if the judge or his spouse is responsible for administering the property of one of the parties;

7. if there is a relationship of subordination between the judge or his spouse and one of the parties or the spouse of one of the parties;

8. if it is common knowledge that friendship or enmity subsists between the judge and one of the parties;

..."

D. Holding of proceedings in public

1. The rules applicable to the instant case

20. Article 15, second paragraph, and Article 26, seventh paragraph, of Decree no. 48-1671 of 26 October 1948, as amended, provided:

"Hearings shall not be held in public and the deliberations shall remain secret."

The decisions of the disciplinary bodies of the ordre were recorded in a special register to which third parties did not have access and they were not published. They were notified to certain individuals and institutions only.

2. The present rules

21. Those rules were amended by Decree no. 93-181 of 5 February 1993.

Hearings before a body of the ordre sitting to determine disciplinary charges are now held in public. However, the chairman of the body in question may, of his own motion or on an application by one of the parties or by the person whose complaint has led to the case being brought before a regional council, exclude the public from all or part of the hearing in the interests of public order or where respect for private life or medical confidentiality so justifies (Articles 13, 15 and 26 of the Decree of 26 October 1948, as amended by the Decree of 5 February 1993).

Decisions are now made public, but the bodies in question may decide not to include in the certified copies any details - such as surnames - which might be incompatible with respect for private life or medical confidentiality (Articles 13 and 28 of the Decree of 26 October 1948, as amended by the Decree of 5 February 1993).

PROCEEDINGS BEFORE THE COMMISSION

22. Dr Diennet applied to the Commission on 18 April 1991. He alleged a violation of the right to a hearing in public and by an impartial tribunal, guaranteed in Article 6 para. 1 (art. 6-1) of the Convention.

23. The Second Chamber of the Commission declared the application

(no. 18160/91) admissible on 2 December 1992 and, under Article 20 para. 4 (art. 20-4) of the Convention, subsequently relinquished jurisdiction in favour of the plenary Commission.

In its report of 5 April 1994 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a violation of the right to a hearing in public and, by fourteen votes to nine, the opinion that there had not been a violation of the right to an impartial tribunal. The full text of the Commission's opinion and of the partly dissenting opinion contained in the report is reproduced as an annex to this judgment (1).

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1. Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 325-A of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

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FINAL SUBMISSIONS TO THE COURT

24. In their memorial the Government asked the Court "to reject Mr Diennet's application".

25. The applicant asked the Court to

> "hold that in the proceedings which ended with the Conseil d'Etat's judgment of 9 October 1990 there was a twofold violation by France of Article 6 (art. 6) of the European Convention on Human Rights, firstly in that the disciplinary tribunal did not hear his case in public, and secondly in that the disciplinary tribunal was not constituted impartially within the meaning of the said Article 6 (art. 6)".

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1) OF THE CONVENTION

26. Dr Diennet complained that he had not had a public hearing by an impartial tribunal. He relied on Article 6 para. 1 (art. 6-1) of the Convention, which provides:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

A. Applicability of Article 6 para. 1 (art. 6-1)

27. It is clear from the Court's settled case-law that disciplinary proceedings in which, as in the instant case, the right to continue to practise medicine as a private practitioner is at stake give rise to "contestations (disputes) over civil rights" within the meaning of Article 6 para. 1 (art. 6-1) (see, among other authorities, the König v. Germany judgment of 28 June 1978, Series A no. 27, pp. 29-32, paras. 87-95; the Le Compte, Van Leuven and De Meyere v. Belgium judgment of 23 June 1981, Series A no. 43, pp. 19-23, paras. 41-51; and

the Albert and Le Compte v. Belgium judgment of 10 February 1983, Series A no. 58, pp. 14-16, paras. 25-29). The applicability of Article 6 para. 1 (art. 6-1) to the circumstances of this case, which was in issue before the Commission but was not disputed before the Court, is therefore not in doubt.

28. The Court considers it unnecessary to determine whether, as the applicant maintained, there was any "criminal charge" against him within the meaning of Article 6 para. 1 (art. 6-1) of the Convention: as in the König, Le Compte, Van Leuven and De Meyere, and Albert and Le Compte cases (judgments previously cited, p. 33, para. 96, pp. 23-24, para. 53, and p. 17, para. 30, respectively), those of the Article 6 para. 1 (art. 6-1) rules which the applicant alleged to have been breached apply to both civil and criminal matters.

B. Compliance with Article 6 para. 1 (art. 6-1)

29. Dr Diennet submitted that there had been a breach of Article 6 para. 1 (art. 6-1) both because the proceedings before the professional disciplinary bodies had not been public and because one of those bodies had not been impartial.

1. Holding of proceedings in public

30. The applicant complained that the proceedings before the Ile-de-France Regional Council and the disciplinary section of the National Council of the ordre des médecins had not been held in public.

31. The Government did not dispute the fact. They recognised, moreover, that the applicant could not be regarded as having tacitly waived a public hearing by not seeking one, inasmuch as the French rules expressly excluded one (see paragraph 20 above and, among other authorities and mutatis mutandis, the H. v. Belgium judgment of 30 November 1987, Series A no. 127-B, p. 36, para. 54). They considered, nevertheless, that the Conseil d'Etat had compensated for that shortcoming by sitting in public on 15 January 1988 and 15 October 1990. When sitting in disciplinary cases, the Conseil d'Etat had, they continued, powers of review that went beyond questions of law alone since it verified the accuracy of the facts which formed the basis of the charges and the correctness of the legal classification of those facts and also, where appropriate, reviewed the assessment made by the tribunal of fact, by checking that evidence had not been misinterpreted; it had proceeded in that manner in the instant case.

In the alternative, the Government argued that, at all events, the misconduct of which the applicant had been accused related directly to practice of the medical profession and therefore came under the exceptions provided for in Article 6 para. 1 (art. 6-1). The disciplinary bodies of the ordre were under a duty to verify the factual accuracy of the charges against the applicant, against whom proceedings had been taken for having issued medical prescriptions for the treatment of obesity without examining his patients or following up their treatment. Specific examples therefore had to be cited during the proceedings, so that inevitably, if these had been held in public, professional confidentiality would have been jeopardised and patients' private lives intruded upon.

32. The Commission, referring to the Court's case-law on the matter, found that there had been a violation of the right to public proceedings.

33. The Court reiterates that the holding of court hearings in public constitutes a fundamental principle enshrined in paragraph 1 of

Article 6 (art. 6-1) (see, as the most recent authority, the Schuler-Zgraggen v. Switzerland judgment of 24 June 1993, Series A no. 263, p. 19, para. 58). This public character protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts can be maintained. By rendering the administration of justice transparent, publicity contributes to the achievement of the aim of Article 6 para. 1 (art. 6-1), namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention (see, for example, the Sutter v. Switzerland judgment of 22 February 1984, Series A no. 74, p. 12, para. 26).

Admittedly, the Convention does not make this principle an absolute one, since by the very terms of Article 6 para. 1 (art. 6-1), "... the press and public may be excluded from all or part of the trial in the interests of morals ..., where the ... protection of the private life of the parties so require[s], or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice".

34. The Court takes account of several factors.

Firstly, the Government did not dispute that the hearings before the disciplinary bodies of the ordre des médecins had not been held in public.

Secondly, where the Conseil d'Etat hears appeals on points of law from decisions of the disciplinary section of the National Council of the ordre des médecins, it cannot be regarded as a "judicial body that has full jurisdiction", in particular because it does not have the power to assess whether the penalty was proportionate to the misconduct; the fact that hearings before it are held in public is therefore not sufficient to remedy the defect found to exist at the stage of the disciplinary proceedings (see, inter alia and mutatis mutandis, the Albert and Le Compte judgment previously cited, p. 16, para. 29, and p. 19, para. 36).

Lastly, while the need to protect professional confidentiality and the private lives of patients may justify holding proceedings in camera, such an occurrence must be strictly required by the circumstances. In the instant case, however, as the applicant and the Commission rightly pointed out, the proceedings were to deal only with the "method of consultation by correspondence" adopted by Dr Diennet (see paragraph 8 above). There was no good reason to suppose that either the tangible results of that method in respect of a given patient or any confidences that Dr Diennet might have picked up in the course of practising his profession would be mentioned. If it had become apparent during the hearing that there was a risk of a breach of professional confidentiality or an intrusion on private life, the tribunal could have ordered that the hearing should continue in camera. At all events, the public was excluded because of the automatic prior application of the provisions of the Decree of 26 October 1948 (see paragraph 20 above). That decree was amended after the events in the instant case had occurred; with a number of strictly defined exceptions, hearings before a body of the ordre in disciplinary proceedings are now held in public (see paragraph 21 above).

35. In sum, there has been a breach of Article 6 para. 1 (art. 6-1) in that the applicant did not receive a "public" hearing before the Ile-de-France Regional Council and the disciplinary section of the National Council of the ordre des médecins.

2. Impartiality

36. The applicant did not contest the personal impartiality of the members of the disciplinary section of the National Council of the ordre des médecins as constituted when his case was referred back to it by the Court of Cassation.

On the other hand, he did state that the combination of several factors objectively gave rise to very serious doubts about the impartiality of the section as such: not only had three of its seven members - including the rapporteur - heard the case on appeal but the second decision had been identical with the first one, except for the addition of a paragraph in which an amnesty that had been enacted in the meantime was taken into account.

He maintained that the three members in question could have been replaced by substitutes. In this connection, he could not be blamed for not having challenged the three members, as, on the one hand, such a procedure - which was exceptional in French law - would have been bound to fail and, on the other hand, the defect relating to the reasons given for the disciplinary section's second decision did not become apparent to him until the decision was served on him, when he was able to see that it was identical with the first decision.

37. The Government and the Commission referred to the Ringeisen v. Austria judgment of 16 July 1971, according to which "... it cannot be stated as a general rule resulting from the obligation to be impartial that a superior court which sets aside an administrative or judicial decision is bound to send the case back to a different jurisdictional authority or to a differently composed branch of that authority" (Series A no. 13, p. 40, para. 97). The Government said that section 11 of the Law of 31 December 1987 reforming administrative proceedings expressly provided that if the Conseil d'Etat remitted a case to the same tribunal, the latter had to be differently constituted unless the nature of the tribunal made it impossible (see paragraph 17 above); and as it was the one and only body of its kind, the nature of the disciplinary section of the National Council of the ordre des médecins did make it impossible.

As to the complaint about the reasoning, the Government pointed out that the first decision had been quashed only on account of a procedural irregularity and no new facts had been relied on after the case had been remitted, so that the similarity of the texts of the two decisions, even taken in conjunction with the membership of the disciplinary section as constituted on the second occasion, likewise did not justify any objective doubts as to the impartiality of the disciplinary section.

38. In the Court's view, no ground for legitimate suspicion can be discerned in the fact that three of the seven members of the disciplinary section had taken part in the first decision (see the Ringeisen judgment previously cited, loc. cit., and paragraph 12 above). Furthermore, even if the second decision had been differently worded, it would necessarily have had the same basis, because there were no new factors. The applicant's fears therefore cannot be regarded as having been objectively justified.

39. There has accordingly been no breach of Article 6 para. 1 (art. 6-1) in this respect.

II. APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

40. Article 50 (art. 50) of the Convention provides:

"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

41. The applicant sought, firstly, 500,000 French francs (FRF) in respect of non-pecuniary damage and FRF 500,000 in compensation for the "harassment" that he had suffered as a consequence of the disciplinary penalty that had been imposed on him.

42. The Delegate of the Commission left the matter to the Court's discretion. However, he pointed out that the applicant's claim was based on the assumption that there had been a double breach of Article 6 para. 1 (art. 6-1), so that it would be appropriate not to award the whole of the amount sought if the Court agreed with the Commission's opinion.

43. Like the Government, the Court considers that the finding of a breach of Article 6 para. 1 (art. 6-1) constitutes in itself sufficient just satisfaction.

B. Costs and expenses

44. Dr Diennet also sought FRF 47,000 in respect of the costs and expenses incurred before the French disciplinary and judicial bodies and FRF 30,000, plus FRF 3,720 in value added tax (VAT), in respect of those relating to the proceedings before the Convention institutions.

45. The Government left the matter to the Court's discretion. The Delegate of the Commission did not express a view.

46. Taking into account the fact that it has accepted only one of the complaints and making its assessment on an equitable basis, the Court awards the applicant FRF 20,000 including VAT.

FOR THESE REASONS, THE COURT

1. Holds unanimously that Article 6 para. 1 (art. 6-1) of the Convention applies in the instant case;

2. Holds unanimously that there has been a breach of Article 6 para. 1 (art. 6-1) of the Convention in that the applicant did not receive a public hearing;

3. Holds by eight votes to one that there has been no breach of the same Article (art. 6-1) in respect of the applicant's other complaint;

4. Holds unanimously that this judgment constitutes in itself sufficient just satisfaction in respect of the alleged damage;

5. Holds unanimously that the respondent State is to pay the applicant, within three months, 20,000 (twenty thousand) French francs in respect of costs and expenses;

6. 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 26 September 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 partly dissenting opinion of Mr Morenilla is annexed to this judgment.

Initialled: R. R.

Initialled: H. P.

PARTLY DISSENTING OPINION OF JUDGE MORENILLA

(Translation)

1. I regret that I must disagree with the majority as regards the applicant's complaint - based on Article 6 para. 1 (art. 6-1) of the Convention - concerning the infringement of his right to an impartial tribunal. In my view, the facts of the case disclose a breach of that Article (art. 6-1).

2. The majority (paragraph 38 of the judgment) discern no ground for legitimate suspicion in the fact that three of the seven members of the disciplinary section of the National Council of the ordre des médecins, which gave the final ruling on Dr Diennet's professional conduct and imposed the penalty of disqualification from practising medicine for three years, had taken part in the same section's earlier decision in the same case.

3. Such a conclusion is, in my opinion, contrary to the concept of "objective" impartiality combined with the "doctrine of appearances" that has been developed by the Court, in particular in the Piersack v. Belgium judgment of 1 October 1982 (Series A no. 53, pp. 13-16, paras. 28-32), the De Cubber v. Belgium judgment of 26 October 1984 (Series A no. 86, pp. 14-16, paras. 25-30) and the Hauschildt v. Denmark judgment of 24 May 1989 (Series A no. 154, pp. 21-22, paras. 46-52) (see Marc-André Eissen, Jurisprudence relative à l'article 6 (art. 6) de la Convention, European Court of Human Rights, 1985, pp. 28-30).

4. The circumstances described justified the applicant's fears as to the impartiality of the tribunal which was to give the final ruling on his professional conduct. I reach this conclusion whether the circumstances are analysed from the subjective point of view of the tribunal members' attitude to a case they had already considered and decided earlier or whether they are looked at from an objective point of view, namely that the applicant's fears were justified in view of "the appearances" of partiality on the part of a body three of whose seven members had already tried and convicted him (see, among other authorities, the De Cubber judgment, pp. 13-14, para. 24, and the Hauschildt judgment, p. 21, para. 46, both previously cited).

5. The fact that the second decision was almost a literal reproduction of the first one - which can be explained by the fact that the rapporteur of the disciplinary section as constituted to rehear the case had been a member of the section as originally constituted - makes this defect all the more obvious. It is therefore not a question of these three members of the section possibly being malevolent towards Dr Diennet - who has never argued that they were - but of their

attitude to the case and their personal conviction as to the breaches of professional ethics of which the applicant was accused.

6. From the point of view of an objective test, the circumstances described gave reason to doubt whether those three members could be impartial in retrying Dr Diennet in respect of the same facts. They should have stood down, as the applicant was entitled to have fears as to their impartiality in view of their detailed knowledge of the case and the decision they had already given at an earlier stage. The impartiality of the tribunal could well appear questionable and "this fear could be held to be objectively justified" (see the Hauschildt judgment previously cited, p. 21, paras. 48-49, and the Thorgeir Thorgeirson v. Iceland judgment of 25 June 1992, Series A no. 239, p. 23, para. 51).

7. The majority consider that the applicant's fears cannot be regarded as having been "objectively justified" and they conclude that there has been no breach. They refer to the case of Ringeisen v. Austria (judgment of 16 July 1971, Series A no. 13), whose facts were, however, very different from those in the instant case. The proceedings taken by Mr Ringeisen were intended to secure approval for a transfer of ownership of farmland and were therefore purely civil in nature, whereas Dr Diennet had proceedings brought against him for breaches of the medical profession's code of ethics. The Court is thus extending - without explanation - to disciplinary bodies a trend that is fairly recent in its case-law (see the following judgments: Fey v. Austria of 24 February 1993, Series A no. 255-A, p. 12, para. 30; Padovani v. Italy of 26 February 1993, Series A no. 257-B, p. 20, para. 27; Nortier v. the Netherlands of 24 August 1993, Series A no. 267, pp. 15-16, paras. 31-37, with my concurring opinion, pp. 18-19; and Saraiva de Carvalho v. Portugal of 22 April 1994, Series A no. 286-B) and is difficult enough as it is to reconcile with the earlier case-law as set forth in the Piersack, De Cubber, Hauschildt and Thorgeir Thorgeirson judgments previously cited. Yet this case-law concerned only criminal courts which at the pre-trial stage of a case ordered that a suspect should be held in detention and subsequently - in most of the cases as a result of the chance constitution of the courts or changes in the judicial staff - had to rule on the relevant accused's guilt.

8. The present case, however, has nothing to do with the taking of pre-trial measures at an earlier stage of the proceedings but concerns decisions already taken on the applicant's guilt in disciplinary proceedings by judges required to rehear the case. In my view, this interpretation of Article 6 para. 1 (art. 6-1) of the Convention in respect of the right to an impartial tribunal makes our case-law on the assessment of this vital component of a fair trial more uncertain.