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

FIRST SECTION

CASE OF WEH v. AUSTRIA

(Application no. 38544/97)

JUDGMENT

STRASBOURG

8 April 2004

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision

In the case of Weh v. Austria,

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

Mr P. LORENZEN, *President*,
Mr E. LEVITS,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY,
Mrs E. STEINER,
Mr K. HAIJYEV, *judges*,
and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 4 July 2002 and 18 March 2004,

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

PROCEDURE

1. The case originated in an application (no. 38544/97) against the Republic of Austria lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Austrian nationals, Mr Ludwig Weh and Mrs Evi Weh ("the applicants"), on 8 August 1997.

2. The applicants were represented by the first applicant, a lawyer practising in Bregenz. The Austrian Government ("the Government") were represented by their Agent, Ambassador H. Winkler, Head of the International Law Department at the Federal Ministry of Foreign Affairs.

3. The applicants alleged, *inter alia*, that the first applicant's right to remain silent and not to incriminate himself had been breached in criminal proceedings against him.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. On 30 January 2001 the Court decided to communicate to the respondent Government both applicants' complaint about the lack of a prosecuting authority before the Vorarlberg Independent Administrative Panel and the first applicant's complaint concerning the alleged violation of his right to remain silent and not to incriminate himself and declared the

remainder of the application inadmissible. The Government filed observations on the admissibility and merits. On 7 September 2001 the President of the Third Section refused the applicants' request to include their observations in reply of 8 and 9 August and 3 September 2001, filed outside the time-limit, in the case file (Rule 38 § 1).

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

8. By a decision of 4 July 2002 the Court declared the application partly admissible, namely as regards the first applicant's (hereafter "the applicant") complaint that his right to remain silent and not to incriminate himself had been breached in criminal proceedings against him.

9. The applicant filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant, Mr W. Weh, was born in 1952 and lives in Bregenz.

11. On 21 March 1995 the Bregenz District Authority (*Bezirkshauptmannschaft*) served an anonymous order (*Anonymverfügung*) upon the applicant in the sum of 800 Austrian schillings (ATS). It stated that on 5 March 1995 the driver of the car, registered in the applicant's name, had exceeded the city area speed limit of 50 km/h by 21 km/h.

12. The applicant did not comply with the anonymous order. Consequently, the order became invalid (see paragraph 31, below).

13. Subsequently, the Bregenz District Authority opened criminal proceedings for exceeding the speed limit against unknown offenders and, on 27 April 1995, it ordered the applicant as the registered car owner, under section 103 § 2 of the Motor Vehicles Act (*Kraftfahrgesetz*), to disclose who had been driving his car. The applicant answered that "C.K.[first and family name in full]", living in "USA/University of Texas" was the person who had used the car.

14. On 25 July 1995 the Bregenz District Authority issued a provisional penal order (*Strafverfügung*) in which it sentenced the applicant under sections 103 § 2 and 134 of the Motor Vehicles Act to pay a fine of ATS 900 (with 54 hours' imprisonment in default). It noted that he had submitted inaccurate information.

15. The applicant filed an objection (*Einspruch*) against this decision. On 22 August 1995 the Bregenz District Authority requested the applicant

to submit his defence either in writing or to appear at an oral hearing. The applicant did not react to this request.

16. On 18 September 1995 the Bregenz District Authority issued a penal order (*Straferkenntnis*) confirming its previous decision and sentenced the applicant to a fine of ATS 900 (with 24 hours' imprisonment in default). In addition it ordered him to pay ATS 90 by way of contribution to the costs of the proceedings. The District Authority found that the information supplied by the applicant had been inaccurate.

17. The applicant appealed to the Vorarlberg Independent Administrative Panel (*Unabhängiger Verwaltungssenat*).

18. On 15 April 1996 the Vorarlberg Independent Administrative Panel dismissed the applicant's appeal and ordered him to pay ATS 180 by way of contribution to the costs of the appeal proceedings. Prior to giving its decision, the Panel held a hearing in the presence of the applicant who stated that he considered the information submitted by him to be sufficiently accurate.

19. The Panel dismissed the applicant's defence, noting that section 103 § 2 of the Motor Vehicles Act required the registered car owner to disclose the name and address of the driver. Further, it referred to the Administrative Court's case-law according to which not only the failure to give any information at all but also the disclosure of inaccurate information amounted to a failure to comply with section 103 § 2. Finally, the Panel observed that the University of Texas had 14 different locations in Texas. Therefore the information provided by the first applicant had indeed been inaccurate.

20. On 3 June 1996 the applicant lodged a complaint with the Constitutional Court (*Verfassungsgerichtshof*). He raised various issues regarding the tribunal quality of the Independent Administrative Panel and the fairness of the proceedings. However, given that the relevant sentence of section 103 § 2 of the Motor Vehicles Act has the rank of constitutional law (see paragraph 25, below), he did not raise the issue of his right to remain silent and not to incriminate himself.

21. On 26 November 1996 the Constitutional Court refused to deal with the applicant's complaint for lack of prospects of success.

22. On 27 June 1997 the Administrative Court (*Verwaltungsgerichtshof*) refused to deal with the applicant's complaint pursuant to section 33a of the Administrative Court Act (*Verwaltungsgerichtshofgesetz*) since the amount of the penalty did not exceed ATS 10,000, and no important legal problem was at stake.

23. The applicant was not prosecuted for exceeding the speed limit.

II. RELEVANT DOMESTIC LAW

A. The Motor Vehicles Act

24. Section 103 § 2 of the Motor Vehicles Act (*Kraftfahrgesetz*), as amended in 1986, provides as follows:

> "The authority may request information as to who had driven a certain motor vehicle identified by the number plate .... at a certain time or had last parked such a motor vehicle ... at a certain place before a certain date. The registered car owner ... must provide such information, which must include the name and address of the person concerned; if he or she is unable to give such information, he/she must name a person who can do so and who will then be under an obligation to inform the authority; the statements made by the person required to give information do not release the authority from its duty to review such statements where this seems appropriate in the circumstances of the case. The requested information is to be provided immediately or, in case of a written request, within two weeks after the request has been served; where such information cannot be provided without keeping pertinent records, such records shall be kept. The authority's right to require such information shall take precedence over the right to refuse to give information."

25. The ultimate sentence of this provision was enacted as a provision of constitutional rank after the Constitutional Court had, in its judgments of 3 March 1984 and 8 March 1985, quashed previous similar provisions on the ground that they were contrary to Article 90 § 2 of the Federal Constitution which prohibits *inter alia* that a suspect be obliged on pain of a fine to incriminate himself.

26. In its judgment of 29 September 1988 the Constitutional Court found that the first to third sentences of section 103 § 2 of the Motor Vehicles Act as amended in 1986 were, like the previous provisions, contrary to the right not to incriminate oneself which flowed from Article 90 § 2 of the Federal Constitution and from Article 6 of the European Convention of Human Rights but were saved by the ultimate sentence of that provision which had constitutional rank. In reaching that conclusion the Constitutional Court had examined whether the ultimate sentence of section 103 § 2 was contrary to the guiding principles of the Constitution, but had found that this was not the case.

27. Section 134 of the Motor Vehicles Act, in the version in force at the material time, provided for a fine of up to ATS 30,000 to be imposed on a person who violates the regulations of this Act.

B. The Law on Administrative Offences

28. The 1987 amendment of the Law on Administrative Offences (*Verwaltungsstrafgesetz*) introduced a possibility to issue and serve an

anonymous order (*Anonymverfügung*) in case of minor administrative criminal offences.

29. According to section 49a of the Law on Administrative Offences, the competent authority may determine by decree minor offences for which it may serve an anonymous order.

30. If the person who has committed a minor administrative criminal offence is unknown to the competent authorities, the latter may serve an anonymous order on the person who is supposed to know the offender. The fine imposed must not exceed ATS 1,000 and may not be converted into a prison term in default.

31. The anonymous order is not regarded as an act of prosecution. No remedy lies against it. If the fine imposed is not paid within four weeks, the anonymous order automatically becomes invalid and a normal prosecution against unknown offenders is to be commenced. If the fine imposed is paid within four weeks, no prosecution is to take place. The anonymous order is not entered into any register and may not be taken into account when determining the sentence for other administrative criminal offences.

THE LAW

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

32. The applicant complained under Article 6 § 1 of the Convention that the obligation to divulge the driver of his car pursuant to section 103 § 2 of the Motor Vehicles Act violated his right to remain silent and the privilege against self-incrimination. Article 6, insofar as relevant, reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal ..."

A. The parties' submissions

33. The applicant pointed out that the Constitutional Court had quashed two previous versions of section 103 § 2 of the Motor Vehicles Act on the ground that the registered car owner's obligation to disclose who had been driving the car at a specific time, violated the right not to incriminate oneself. The current version of section 103 § 2 equally did so, although the legislator had exempted it from review by the Constitutional Court by enacting the relevant sentence as a provision of constitutional rank.

34. Further, the applicant contended that the case of *P., R. and H. v. Austria* (nos. 15135/89, 15136/89 and 15137/89, Commission's decision of 5 September 1989, Decisions and Reports 62, p. 319) was no longer

relevant, as it had been issued before the Court's *Funke v. France* judgment (of 25 February 1993, Series A no. 256-A) and had, moreover, only examined whether the car owner's obligation to divulge the driver of the car violated the presumption of innocence.

35. The Government argued that the right to remain silent was not absolute. However, in the present case the applicant's failure to give adequate information did not lead the authorities to the conclusion that he committed the offence of exceeding the speed limit. In fact he was not sentenced for this offence but was punished under section 103 § 2 of the Motor Vehicles Act for failure to give accurate information. In this connection the Government expressed doubt's whether the applicant could at all claim to be a victim of a violation of his right not to incriminate himself as the - albeit inaccurate - information he had provided to the authorities - made it clear that he had not been the driver at the relevant time.

36. Furthermore, the Government referred to the case-law of the European Commission of Human Rights (*P., K. and H. v. Austria*, cited above; *Duschel v. Austria*, no. 15226/89, Commission decision of 11 October 1989) which had found that a sentence under section 103 § 2 of the Motor Vehicles Act and under a similar provision of the Vienna Parking Fees Act, respectively, did not violate Article 6.

37. The Government distinguished the present case from cases in which the Court found a violation of the right to remain silent (in particular, *Funke*, cited above and, as a recent authority, *J.B. v. Switzerland*, no. 31827/96, ECHR 2001-III), in that the applicant's choice was not limited to either remaining silent and having a fine imposed on him or incriminating himself. He remained free to disclose the name and address of a third person as driver of the car or to state that the car had been used without his consent by a person unknown to him. Moreover, the offence to which he could have indirectly confessed as well as the fine imposed on him under section 103 § 2 of the Motor Vehicles Act were not of a very severe nature.

38. Finally, given the public interest in the prosecution of speeding, which is frequently the cause of serious traffic accidents, the provision strikes a fair balance between this public interest and the individual car owner's interest to remain silent and therefore appears proportionate.

B. The Court's assessment

39. The Court reiterates that, although not specifically mentioned in Article 6 of the Convention, the right to silence and the right not to incriminate oneself are generally recognised international standards which lie at the heart of the notion of a fair procedure under Article 6. Their rationale lies, *inter alia*, in the protection of the accused against improper compulsion by the authorities, thereby contributing to the avoidance of

miscarriages of justice and to the fulfilment of the aims of Article 6 (see, *John Murray v. the United Kingdom*, judgment of 8 February 1996, *Reports of Judgments and Decisions* 1996-I, p. 49, § 45). The right not to incriminate oneself in particular presupposes that the prosecution in a criminal case seek to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused. In this sense the right in question is closely linked to the presumption of innocence contained in Article 6 § 2 of the Convention (see *Saunders v. the United Kingdom*, judgment of 17 December 1996, *Reports* 1996-VI, p. 2064, § 68; *Serves v. France*, judgment of 20 October 1997, *Reports* 1997-VI, pp. 2173-74, § 46; *Heaney and McGuinness v. Ireland*, no. 34720/97, § 40, ECHR 2000-XII; *J.B.*, cited above, § 64).

40. The right not to incriminate oneself is primarily concerned with respecting the will of an accused person to remain silent (*Saunders*, cited above, p. 2064, § 69; *Heaney and McGuinness*, cited above, § 40).

41. A perusal of the Court's case-law shows that there are two types of cases in which it found violations of the right to silence and the privilege against self-incrimination.

42. First, there are cases relating to the use of compulsion for the purpose of obtaining information which might incriminate the person concerned in pending or anticipated criminal proceedings against him, or - in other words - in respect of an offence with which that person has been "charged" within the autonomous meaning of Article 6 § 1 (see *Funke,* p. 22, § 44; *Heaney and McGuinness,* §§ 55-59; *J.B.*, §§ 66-71, all cited above).

43. Second, there are cases concerning the use of incriminating information compulsorily obtained outside the context of criminal proceedings in a subsequent criminal prosecution (*Saunders*, cited above, p. 2064, § 67, *I.J.L. and Others v. the United Kingdom*, no. 29522/95, § 82-83, 2000-IX).

44. However, it also follows from the Court's case-law that the privilege against self-incrimination does not per se prohibit the use of compulsory powers to obtain information outside the context of criminal proceedings against the person concerned.

45. For instance, it has not been suggested in *Saunders* that the procedure whereby the applicant was requested to answer questions on his company and financial affairs, with a possible penalty of up to two years' imprisonment, in itself raised an issue under Article 6 § 1 (*Saunders*, ibid.; see also *I.J.L. and Others*, cited above, § 100). Moreover, in a recent case the Court found that a requirement to make a declaration of assets to the tax authorities did not disclose any issue under Article 6 § 1, although a penalty was attached to a failure to comply and the applicant was actually fined for making a false declaration. The Court noted that there were no pending or anticipated criminal proceedings against the applicant and the fact that he

may have lied in order to prevent the revenue authorities from uncovering conduct which might possibly lead to a prosecution did not suffice to bring the privilege against self-incrimination into play (see *Allen v. the United King*dom (dec.), no. 76574/01, ECHR 2002-VIII). Indeed, obligations to inform the authorities are a common feature of the Contracting States' legal orders and may concern a wide range of issues (see for instance, as to the obligation to reveal one's identity to the police in certain situations, *Vasileva v. Denmark*, no. 52792/99, § 34, 25 September 2003).

46. Furthermore, the Court accepts that the right to silence and the right not to incriminate oneself are not absolute, as for instance the drawing of inferences from an accused's silence may be admissible (*Heaney and McGuinness*, § 47 with a reference to *John Murray*, cited above, p. 49, § 47). Given the close link between the right not to incriminate oneself and the presumption of innocence, it is also important to reiterate that Article 6 § 2 does not prohibit, in principle, the use of presumptions in criminal law (see *Salabiaku v. France*, judgment of 7 October 1988, Series A no. 141, p. 15, p. 28).

47. The Court notes in this connection that the Government relied on the case-law of the Commission which, in the above cited *P., R. and H. v. Austria* case, had found that the rule contained in section 103 § 2 of the Motor Vehicles Act (in the version here at issue) was akin to a presumption in that it obliged a car-owner either to assume responsibility for the use of the car or to name the actual driver.

48. The Court is not convinced by this argument, as section 103 § 2 does not contain a presumption that the registered car owner was the driver and does not allow for the prosecution of the registered car owner - unless he admits to having driven the car - for the underlying traffic offence. Moreover, as the applicant has correctly pointed out, the decision in the *P. R. and H.* case was given before the Court's *Funke* judgment. A subsequent case concerning the imposition of a fine on a car-owner for refusal to disclose who had driven his car when it had been caught speeding (*Tora Tolmos v. Spain*, no. 23816/94, decision of 17 May 1995, Decisions and Reports 81, p. 82) is not indicative either, as the Commission simply followed its previous approach without examining the possible implications of the *Funke* judgment. The Court will therefore examine the issue in the light of the *Funke* case and its subsequent case-law outlined above.

49. Before turning to the facts of the present case, the Court reiterates that in proceedings originating in an individual application it has to confine itself, as far as possible, to an examination of the concrete case before it (see for instance, *J.B.*, cited above, § 63). Consequently, it is only called upon to decide whether, in the circumstances of the present case, the applicant's right to silence and his right not to incriminate himself were violated.

50. The heart of the applicant's complaint is that he was punished for failure to give information which may have incriminated him in the context

of criminal proceedings for speeding. However, neither at the time when the applicant was requested to disclose the driver of his car nor thereafter were these proceedings conducted against him.

51. Thus, the present case is not one concerned with the use of compulsorily obtained information in subsequent criminal proceedings (see the cases referred to above, paragraph 43).

52. Moreover, the present case differs from the group of cases in which persons, against whom criminal proceedings were pending or were at least anticipated, were compelled on pain of a penalty to give potentially incriminating information. In *J.B.* (cited above) mixed tax-evasion and tax-assessment proceedings had already been opened against the applicant when he was requested to provide information on investments made by him. In *Funke* and in *Heaney and McGuinnes* (both cited above) criminal proceedings were anticipated, though they had not been formally opened, at the time the respective applicants were required to give potentially incriminating information. In *Funke* the customs authorities had a specific suspicion against the applicant, in *Heaney and McGuinness* the applicants had been arrested on suspicion of terrorist offences.

53. In the present case the proceedings for speeding were conducted against unknown offenders, when the authorities requested the applicant under section 103 § 2 of the Motor Vehicles Act to disclose who had been driving his car on 5 March 1995. There were clearly no proceedings for speeding pending against the applicant and it cannot even be said that they were anticipated as the authorities did not have any element of suspicion against him.

54. There is nothing to show that the applicant was "substantially affected" so as to consider him being "charged" with the offence of speeding within the autonomous meaning of Article 6 § 1 (see *Heaney and McGuinness*, cited above, § 41, with a reference to *Serves*, also cited above, p. 2172, § 42). It was merely in his capacity as the registered car owner that he was required to give information. Moreover, he was only required to state a simple fact – namely who had been the driver of his car – which is not in itself incriminating.

55. In addition, although this is not a decisive element in itself, the Court notes that the applicant did not refuse to give information, but exonerated himself in that he informed the authorities that a third person had been driving at the relevant time. He was punished under section 103 § 2 of the Motor Vehicles Act only on account of the fact that he had given inaccurate information as he had failed to indicate the person's complete address. Neither in the domestic proceedings nor before the Court did he ever allege that he had been the driver of the car at the time of the offence.

56. The Court reiterates that it is not called upon to pronounce on the existence or otherwise of potential violations of the Convention (see *mutatis mutandis, Soering v. the United Kingdom*, judgment of 7 July 1989, Series

A no. 161, p. 35, § 90). It considers that, in the present case, the link between the applicant's obligation under section 130 § 2 of the Motor Vehicles Act to disclose the driver of his car and possible criminal proceedings for speeding against him remains remote and hypothetical. However, without a sufficiently concrete link with these criminal proceedings the use of compulsory powers (i.e. the imposition of a fine) to obtain information does not raise an issue with regard to the applicant's right to remain silent and the privilege against self-incrimination.

57. Accordingly, there has been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT

1. *Holds* by four votes to three that there has been no violation of Article 6 § 1 of the Convention;

Done in English, and notified in writing on 8 April 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Peer LORENZEN
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint dissenting opinion of Mr Lorenzen, Mr Levits and Mr Hajiyev is annexed to this judgment.

P.L.
S.Q.

JOINT DISSENTING OPINION OF JUDGES LORENZEN, LEVITS AND HAJIYEV

For the reasons stated below we are not able to share the majority's opinion that there has been no violation of Article 6 § 1 of the Convention:

1. The present case differs in the majority's opinion from the group of cases in which persons, against whom criminal proceedings were pending or were at least anticipated, were compelled on pain of a penalty to give potentially incriminating information (cf. § 52 above). Even if we agree that the applicants in the various cases were not in an identical situation, we cannot find that a distinction between the cases in respect of the existence of a "criminal charge" is justified. Looking behind the appearances at the reality of the situation, criminal proceedings for speeding were with some probability contemplated against the applicant. In our opinion the request under section 103 § 2 was no more than a preliminary to such proceedings against the applicant (see *Deweer v. Belgium*, judgment of 27 February1980, Series A no. 35, p. 23-24, §§ 44-45). When the applicant was requested to disclose who had been the driver of his car at a specific time when it had been speeding, he was in a situation in which he was compelled on pain of a fine up to ATS 30,000 to give potentially incriminating information or to be punished for remaining silent. There is little doubt that the proceedings for speeding which were so far conducted against unknown offenders would have been turned into proceedings against the applicant had he admitted to having driven the car and, thus, furnished the prosecution with a major element of the case against him. In these circumstances the applicant was in our opinion "substantially affected" and therefore "charged" within the autonomous meaning of Article 6 § 1 (see *Heaney and McGuinness*, cited above, § 41, with a reference to *Serves*, also cited above, p. 2172, § 42) with the offence of speeding, once the request to divulge the driver of the car was made. The fact that eventually no criminal proceedings for speeding were brought against the applicant, does not remove his victim status (*Funke,* cited above, p. 20, § 39 and *Quinn v. Ireland*, no. 36887/97, §§ 43-46, 21 December 2000, unreported; see also, *mutatis mutandis*, *Heaney and McGuinness*, cited above, §§ 43-46).

2. In cases concerning the use of compulsory powers to obtain information, the Court has examined whether the degree of compulsion imposed on the accused destroyed the very essence of the privilege against self-incrimination and the right to remain silent (see *Heaney and McGuiness*, cited above, §§ 48 and 55 with a reference to the *Funke*, cited above, p. 22, § 44 and to *John Murray*, cited above, p. 50, § 49). What is decisive for the finding of a violation is that the accused had no other choice than either to break his silence and to provide possibly incriminating information or to have a fine or term of imprisonment imposed on him for

failure to do so. It is true that the applicant was not punished for remaining silent, but for giving the name and incomplete address of a third person. However, he may have done so to protect himself from prosecution for speeding and there is no other evidence in the case which excludes that the applicant could himself have been the driver. We are, therefore, not convinced by the Government's argument that, on the facts of the case, the applicant was not the driver and could therefore not incriminate himself. When assessing a possible risk of incriminating oneself, we see no reason to distinguish between situations where the owner of the car has refused to give any information and where he has given wrong or insufficient information. However, the situation is different where on the basis of the evidence it is clear that the owner of the car could not have been the driver and therefore would not risk to incriminate himself of speeding by being compelled to identify the driver.

3. The Government appear to argue that the degree of compulsion involved in the present case was not sufficiently important, as they pointed to the minor nature of the sanction. It is true that that the Court has found that not every measure taken with a view to encouraging individuals to give the authorities information which may be of potential use in criminal proceedings must be regarded as improper compulsion (see *Allen* cited above). In the present case the applicant risked being fined up to ATS 30,000 and was in fact sentenced to pay a fine of ATS 900 with 24 hours' imprisonment in default. We consider that these sanctions, though being less severe than the penalties in comparable cases (accumulating fines in *Funke*, a six months' prison term in *Heaney and McGuiness* and repeated fines in *J.B*), were not negligible and, therefore, brought a degree of compulsion to bear on the applicant which was capable of destroying the very essence of the privilege against self-incrimination and the right to remain silent.

4. Finally, we are not convinced by the Government's argument that the registered car owner's obligation to divulge the driver was a proportionate response to the public interest in the prosecution of speeding which outweighs a car owner´s interest in not being compelled to incriminate himself of having committed such an offence. The general requirements of fairness contained in Article 6 including the right not to incriminate oneself, apply to criminal proceedings in respect of all types of criminal offences without distinction from the most simple to the most complex (see *Saunders*, cited above, p. 2066, §74). It certainly should not be overlooked that the prosecution of traffic offences like speeding, though they are in themselves often of a minor nature, serves to prevent traffic accidents and thus to prevent injury and loss of life. Nevertheless, a provision like section 103 § 2 of the Motor Vehicles Act possibly obliges the registered car owner, on pain of a fine, to admit to having driven the car at the time a specific offence was committed. He will thus have to provide the prosecution with a

major element of evidence, being left with limited possibilities of defence in the subsequent criminal proceedings. Seen in this light the infringement of the right to remain silent does not appear proportionate. Consequently, the vital public interest in the prosecution of traffic offences cannot in our opinion justify the departure from one of the basic principles of a fair procedure (see, *mutatis mutandis*, *Saunders*, cited above, § 74, relating to corporate fraud and *Heaney and McGuinness,* cited above, § 58, relating to terrorist offences).

5. In conclusion, we find that there has been a violation of the applicant's right to remain silent and his right not to incriminate himself guaranteed by Article 6 § 1 of the Convention.