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SCSL-2003-09-PT  
(1014-1054)

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**IN THE SPECIAL COURT FOR SIERRA LEONE**  
**(APPEAL CHAMBER)**

**Before: Judge Geoffrey Robertson, QC, President**

Date filed: 5<sup>th</sup> November 2003

**Case No. SCSL 2003-09-PT**

**In the Matter of:**

**AUGUSTINE BAO**

**re Appeal by The Truth and Reconciliation Commission for Sierra Leone (TRC or "The Commission") and Augustine Gbao against the decision of His Honour Judge Thompson delivered on 3<sup>rd</sup> November 2003 to deny the TRC'S request to hold a public hearing with Austine Gbao**

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**AUGUSTINE GBAO'S  
GROUNDS OF APPEAL**  
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**To: The Registrar**

**And to: The Prosecutor  
Special Court for Sierra Leone**

**And also to: The Truth and Reconciliation Commission for Sierra Leone**

<b>SPECIAL COURT FOR SIERRA LEONE</b>	
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## GROUNDINGS OF APPEAL

1. The decision of the learned Judge is in contravention of the customary right and general principle of law of freedom of speech, as enshrined in a number of international instruments and national constitutions. It has not been established that the refusal for Mr Gbao to testify before the Truth and Reconciliation Commission is a measure which is justifiable as reasonable and necessary in an open and democratic society, justifying a limitation on his right to freedom of speech;

See International Covenant on Civil and Political Rights of 1966, Article 19(2); African Charter on Human and People's Rights of 1981, Article 9 (2); European Convention on Human Rights and Fundamental Freedoms of 1950, Article 10; American Convention on Human Rights of 1969, Article 13; Universal Declaration of Human Rights of 1948, Article 19

2. It is submitted that the absolute bar on discussion before the Truth and Reconciliation Commission effected by the decision of the learned Judge does not fall within the parameters of a justifiable limitation of the right to freedom of expression or conform to the requirement of proportionality. It is recognised that while the courts are the appropriate forum for the determination of a person's guilt or innocence, this does not necessarily exclude prior or contemporaneous discussion of the subject-matter of a criminal trial elsewhere;

See *Worm and Austria* (1997) 25 EHRR 454, esp. at par 50

3. The said decision is further contrary to the presumption of innocence since it is premised on an assumption of control over the activities of the accused that is not strictly required by security considerations and therefore implies a greater power of control over the choices and activities of the accused than is consistent with the presumption of innocence;
4. Further and or in the alternative, the learned Judge erred in holding that the consent of the accused to the process is vitiated by the conditions requested in his response to the Truth and Reconciliation Commission. These conditions

were merely designed to protect the very interest that the learned Judge is aiming to protect, that is the interests of justice and the integrity of the proceedings before the Special Court, by ensuring that the right of the accused to be fair trial before the Special Court is not compromised by the process of the Truth and Reconciliation Commission. They in no way detract from his freely given consent and wish to appear before the Commission;

5. Further, the learned judge erred in placing undue and misplaced emphasis, in paragraph 13 of the decision, on the attempt by the accused to retain in its entirety his right to silence and not to incriminate himself, by wishing to maintain the right not to answer questions and withdraw from the proceedings;
6. Further and or in the alternative, the decision fails to take into any or any proper account of the role of the Truth and Reconciliation Commission in securing the rights of the victims in the previous conflict and the rights of the nation as a whole in investigating the truth about the past, building a proper historical record of the conflict, healing the wounds of the past and reconciling the nation. Nor did the learned judge give proper consideration to the interest of the accused in participating in this historic process before the termination of the mandate of the Truth and Reconciliation Commission;

See Lome Accord 1999, Article VI (2)(ix) and Article XXVI; Truth and Reconciliation Act 2000.

7. Further, the learned Judge's decision fails to consider the importance of not creating a conflict between the role and functions of the Special Court for Sierra Leone and those of the Truth and Reconciliation Commission, having regard to the fact that both mechanisms are designed to enhance peace and reconciliation in Sierra Leone.

See Security Council resolution 1315 (2000)

Girish Thanki

Andreas O'Shea

Glenna Thompson



**APPEAL BY THE TRUTH AND RECONCILIATION COMMISSION FOR SIERRA LEONE (TRC or THE COMMISSION) AND AUGUSTINE GBAO (also known as Bao) AGAINST THE DECISION OF HIS HONOUR JUDGE BANKOLE THOMPSON DELIVERED ON 3<sup>RD</sup> NOVEMBER 2003 TO DENY THE TRC'S REQUEST TO HOLD A PUBLIC HEARING WITH AUGUSTINE GBAO (also known as Bao)**

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1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

#### *Article 18*

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

#### *Article 19*

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

#### *Article 20*

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

# African Charter on Human & Peoples Rights

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Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

## ARTICLE 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

## ARTICLE 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

## ARTICLE 7

1. Every individual shall have the right to have his cause heard. This comprises:
  - a) The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
  - b) The right to be presumed innocent until proved guilty by a competent court or tribunal;
  - c) The right to defence, including the right to be defended by counsel of his choice;
  - d) The right to be tried within a reasonable time by an impartial court or tribunal.
2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

## ARTICLE 8

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

## ARTICLE 9

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

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*Article 8—Right to respect for private and family life*

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

*Article 9—Freedom of thought, conscience and religion*

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

*Article 10—Freedom of expression*

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 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.

*Article 11—Freedom of assembly and association*

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

**Article 11. Right to Privacy**

1. Everyone has the right to have his honor respected and his dignity recognized.
2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.
3. Everyone has the right to the protection of the law against such interference or attacks.

**Article 12. Freedom of Conscience and Religion**

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.
2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.
3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.
4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

**Article 13. Freedom of Thought and Expression**

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
  - a. respect for the rights or reputations of others; or
  - b. the protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.



*Article 14*

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

*Article 15*

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

*Article 16*

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

*Article 17*

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

*Article 18*

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

*Article 19*

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

*Article 20*

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

*Article 21*

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

*Article 22*

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

*Article 23*

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

*Article 24*

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

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 Terms: **worm vs austria and "freedom of expression"** ([Edit Search](#))

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(1998) 25 EHRR 454, [1997] ECHR 22714/93

**Worm v Austria** (App. no. 22714/93)

EUROPEAN COURT OF HUMAN RIGHTS

(1998) 25 EHRR 454, [1997] ECHR 22714/93

22 APRIL, 29 AUGUST 1997

29 AUGUST 1997

**PANEL:** JUDGE BERNHARDT (PRESIDENT), JUDGES, GVLC KL , MATSCHER, WALSH, MORENILLA, REPIK, JUNGWIERT, LOHMUS, CASADEVALL, AND MR H PETZOLD, REGISTRAR, AND MR P J MAHONEY, DEPUTY REGISTRAR

#### **CATCHWORDS:**

Human rights - Expression - Opinion - Criminal offence - Applicant publishing article during trial - Applicant being prosecuted for publication - Whether prohibition on publication necessary in democratic society - European Convention on Human Rights, art 10.

#### **HEADNOTE:**

The applicant was a journalist who had followed closely the affairs of A, a former finance minister, who was tried for tax evasion. Whilst the trial was continuing the applicant wrote an article to the effect that the defendant was guilty of the matters charged. He was charged with having exercised a prohibited influence upon the defendant's criminal proceedings. He was initially acquitted but subsequently convicted on appeal, the court holding the applicant's article went beyond permissible criticism of the defendant since it was a negative evaluation of his defence, liable to influence the tribunal. He complained that the interference with his right to **freedom of expression** was in violation of art 10 of the European Convention on Human Rights.

Held: On the evidence, the Vienna court of appeal's reasoning had been in pursuit of a lawful aim. The court had a discretion, having looked at the applicant's article as a whole, to conclude that the applicant had gone further than simply exercising his right to report on the proceedings against A. The applicant's interest in the case was nationally celebrated, and taking into account the presence on the tribunal of lay justices, who had not been screened from comment as they might be in other jurisdictions, the Vienna court of appeal's decision had been justified as being necessary in a democratic society. It followed that there had not been a violation of art 10 of the Convention.

#### **INTRODUCTION:**

##### PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 4 July 1996 and by the Government of the Republic of **Austria** ("the Government") on 11 September 1996, within the three-month period laid down by Article 32(1) and Article 47 of the Convention. It originated in an application (no. 22714/93) against **Austria** lodged with the Commission under Article 25 by an Austrian national, Mr Alfred **Worm**, on 28 July 1993.

The Commission's request referred to Articles 44 and 48 and to the declaration whereby **Austria** recognised the compulsory jurisdiction of the Court (art 46); the Government's application referred to Articles 44 and 48. The object of the request and of the application

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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 10 of the Convention.

2. In response to the enquiry made in accordance with r 35(3)(d) of Rules of Court B, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (r 31). The lawyer was given leave by the President to use the German language (r 28(3)).

3. The Chamber to be constituted included ex officio Mr F Matscher, the elected judge of Austrian nationality (art 43 of the Convention), and Mr R Bernhardt, the Vice-President of the Court (r 21(4)(b)). On 7 August 1996, in the presence of the Registrar, the President of the Court, Mr R Ryssdal, drew by lot the names of the other seven members, namely Mr F Gvlc|kl|, Mr B Walsh, Mr J M Morenilla, Mr B Repik, Mr K Jungwiert, Mr U Lohmus and Mr J Casadevall (art 43 in fine of the Convention and r 21(5)).

4. As President of the Chamber (r 21(6)), Mr Bernhardt, acting through the Registrar, consulted the Agent of the Austrian Government, the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (rr 39(1) and 40). Pursuant to the order made in consequence, the Registrar received the applicant's and the Government's memorials on 21 and 28 February 1997 respectively. The Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 22 April 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court: (a) for the Government: Mr F Cede, Ambassador, Legal Adviser, Head of the International Law Department, Federal Ministry of Foreign Affairs, (Agent), Mr S Benner, Public Prosecutor, Criminal Affairs and Pardons Department, Federal Ministry of Justice, Ms E Bertagnoli, International Law Department, Federal Ministry of Foreign Affairs, Ms I Ermacora, Constitutional Department, Federal Chancellery, (Advisers); (b) for the Commission: Mr J-C Geus, (Delegate); (c) for the applicant: Mr W Masser, of the Vienna Bar, (Counsel).

The Court heard addresses by Mr Geus, Mr Masser and Mr Cede and also replies to its questions.

## FACTS:

### AS TO THE FACTS

#### I. Circumstances of the Case

6. The applicant, Mr Alfred **Worm**, is a journalist. He was born in 1945 and lives in Vienna.

7. At the material time the applicant was working for Profil, an Austrian periodical dealing mostly with politics. For several years, he investigated into and reported on the case of Mr Hannes Androsch, a former Vice-Chancellor and Minister of Finance, who was involved in certain criminal proceedings.

#### A. Mr Androsch's Criminal Record

8. In 1989 Mr Androsch had been convicted by the Vienna Court of Appeal (Oberlandesgericht) of having made false statements as a witness on two occasions. The court found that he had, before a parliamentary investigating committee (Untersuchungsausschu\_), wrongly stated that certain amounts of money had been put at his disposal by a Mr S, whereas in fact they had been transferred from anonymous bank accounts operated by his wife and himself. Furthermore, in the context of criminal proceedings against financial officers charged with abuse of authority, Mr Androsch had

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stated that several anonymous accounts were held by a Mr S, whereas in fact they were operated by his wife, his mother and himself.

9. In 1991 the Vienna Regional Criminal Court (Landesgericht f|r Strafsachen), sitting as a court of two professional judges and two lay judges (Schvffengericht), conducted criminal proceedings against Mr Androsch concerning charges of tax evasion. It held hearings, inter alia, on 25 and 26 May 1991.

On 8 October 1991 Mr Androsch was convicted of having evaded taxes between 1973 and 1981. He was sentenced to a fine of 1.8 million Austrian schillings (ATS).

#### B. The Article

10. On 1 July 1991 Profil had published a two-page article written by the applicant, relating to the above proceedings. It read as follows:

#### "ADJOURNED FOR REFLECTION

A criminal court sitting with lay judges spent two days considering Hannes Androsch's tax evasion. The atmosphere during the trial was glacial.

'Above all, there were to be no mistakes during the proceedings. The case was to be handled with common prudence, properly and to the best of our knowledge and belief - but not with kid gloves!' (Mr Heinz Tschernutter, tax investigator and witness, when asked what principles had governed the hearing of the Androsch case.)

On the day before the trial [the Austrian newspaper] Die Presse dropped the bombshell that was meant to shake all **Austria**. Lawyer Herbert Schachter was quoted as saying: 'I'm sure that Dr Androsch will present his case in an impressive manner.'

The horizon was darkened by this impressive presentation and the earth shook as the accused worsened his lousy position by taking refuge in lapses of memory ('I can't remember' - 'I don't have any detailed knowledge') and by attempting to shift the blame onto others ('I was represented by tax advisers in all those years') or by playing the animal that has been maltreated ('There is not a single large-scale business in the whole of **Austria** that has been subjected for years to as many inspections as I have been').

Hannes Androsch's biggest problem is Hannes Androsch. His second biggest problem is his lawyer, Herbert Schachter. Together, defending counsel and client are invincible. If blatant scorn could change the temperature, the courtroom would be covered by a thick layer of ice.

The patient judge, Friedrich Zeilinger, enquires, 'So, what exactly happened?' The blasi defendant replies, 'I would ask you to infer exactly what happened from the file. You have the documents in front of you - I haven't.'

At another point Androsch said, with a disdainful gesture towards Friedrich Matousek: 'You, my dear Public Prosecutor . . . ' in a tone as if to say 'You wretched **worm!**' Androsch underestimates the judiciary. Once again. Judge Zeilinger knows the file inside out, as was clear from each of his questions. The public prosecutor, Matousek, is able to find his way around in the dark generated by the 'international legal adviser's' murky financial deals, and, after all, the prosecuting authorities have been examining the flow of funds to and from Hannes Androsch for a good decade.

The accused mistook the excessively polite and markedly accommodating manner of the presiding judge for weakness. He has also known the public prosecutor for years and yet still doesn't know him properly. Matousek speaks quietly and slowly so that one can follow what he says, and acts in a spectacularly unspectacular manner. Only the arrogant interpret his lack of grand gestures as cluelessness.

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Even the public prosecutor did make one mistake, however, when he cited the judgment of the Court of Appeal in the proceedings against Androsch for giving false evidence (now concluded) and referred to 'long-term, ingenious and sophisticated linking of accounts'. The alleged tax evasion was perhaps 'long-term' but by no means 'ingenious and sophisticated'.

The opposite was true: anyone venturing into the maze of Androsch's accounts containing undeclared money is amazed by the structure's simplicity. It is not only wholly lacking in sophistication but is almost astoundingly crude. Crude not because Androsch lacked intelligence but rather because it was based on the cast-iron foundation of the misplaced loyalty of officials. While Androsch was Finance Minister, until January 1981, he could rely on the zealous but unlawful obedience of a number of powerful officials. As soon as Androsch left, those officials had their hands full concealing their complicity in the cover-up. Admittedly, a whole string of other officials, by no means excessively brave but simply law-abiding, attempted again and again to ensure that the law prevailed. They foundered, however, on practicalities. The team led by the Carinthian tax investigator, Adolf Panzenbuck (1982 to 1984) certainly gathered all the relevant details, but the head of one of the Vienna tax offices who had been in charge of the case for only a day and a half issued a clean bill of health. And last week, when they appeared as witnesses, the tax officials Walter Handerek, Heinz Tschernutter and Gerhard Berner, who reopened the file between 1985 and 1988, were treated by defending counsel Herbert Schachter as though they were the accused rather than Androsch.

It has been known since 1980 that Androsch evaded taxes. The legal proceedings which were adjourned on Friday furnished further proof that for years the accused escaped prosecution thanks to the zealous obedience of officials. When this was no longer possible as an independent judge was in charge of the investigations, Androsch's advisers took every opportunity to delay the proceedings. It is both symptomatic and revealing that Androsch told the trial court again and again that 'seven inspections' had been carried out and on each occasion had found in his favour, and that it was very unfair that just the eighth inspection should shatter the ideal world of his illusory innocence. Everyone except him is to blame for this. Androsch has in the meantime become so completely immersed in the role of the innocent victim that he cannot subjectively conceive of ever having been the guilty party.

From an objective point of view, it should be pointed out in Androsch's favour that there may be several people in **Austria** who in nearly two decades (from 1965 to 1983) have evaded more than 6.3 million schillings in tax without, however, being subjected to such intensive publicity. On the other hand, no Austrian Finance Minister has simultaneously operated seven accounts containing undeclared funds. And, as the public prosecutor put it, although the origin of part of the money had been established, approximately five million schillings were left from unknown sources.

It was impious of Androsch to wheel out his 'adoptive uncle' again at the trial. Admittedly, he argued eloquently that the 'adoptive uncle' was actually an 'adoptive father', but nonetheless the name of a dead person had been taken in vain. Androsch alarmingly implicated not only his 'adoptive father' Gustav Steiner but also his father-in-law Paul Schdrf in these financial proceedings. Both were induced to sacrifice themselves for Androsch and to assume a responsibility for undeclared funds and fiduciary relationships which they had never had. The investigating judge Anton Zelenka and subsequently the tax authorities and other judges (Josef Zehetmayer and later the Court of Appeal) proved long ago that Androsch was lying on this point. The flow of funds into and out of the seven accounts containing money not declared to the tax authorities allows of no other interpretation than that Androsch was evading taxes. His defence in court was disgraceful; after so many years one would at least have expected properly constructed arguments. Each time Judge Zeilinger asked him a specific question he either took refuge in lapses of memory or blamed his 'adoptive father'. He even trotted out the late Sir Arthur Stein, the explorer of the Silk Road, from whom he claims to have received a legacy.

No new submissions were made in court - either as regards the accounts containing undeclared money or as regards the funding for his villas. Anyone who had expected Androsch to tell all and, as announced in the newspapers, to reveal new facts and adduce convincing arguments in his defence was bitterly disappointed. Only in respect of the charges of 'covert distribution of profits' was there any legal skirmishing.

Mr Schachter told the court that Androsch was a 'victim of politics'. 'Crimes had been attempted' against Androsch and his client had always had 'opponents who had gone as far as attempting to destroy Androsch psychologically and physically'.

Bruno Kreisky and others were to blame for this.

The court kept trying very gently to bring the defendant back down to earth from his long-winded waffling. And each time he replied 'I can't say. After all, I do have other things to do' (ie than grapple with such stupid questions).

If necessary, the authorities can always be blamed for everything. In the instant case this cliché clearly did not apply to Judge Zeilinger. For two mornings he demonstrated drawing-room justice at its best. The judge forced himself to be polite even when he was clearly irritated by the defendant's bored self-assurance. On the very first day of the trial an area of psychological tension built up which the former Minister clearly misinterpreted. From time to time the 53-year-old slipped into the role of a public speaker talking politics. He paid less and less attention to the judge's questions and treated the public prosecutor with increasingly provocative contempt. He turned to look more and more often at the public in the gallery, seeking approval, and his gestures increasingly reminded one of the self-satisfied, powerful Vice-Chancellor and Finance Minister accustomed to victory.

In those circumstances serious tactical errors were made. Defence counsel interrupted the judge and Androsch succumbed to his own charm. He talked and talked, a volubility that the Kronen Zeitung mistook for 'brilliant rhetoric'. In reality the defendant was distancing himself as much as possible from his own responsibility.

Others were to blame.

Judge Zeilinger did not lose control of the situation for a second, however. From time to time, as was apparent from his posture, he had a sharp word on the tip of his tongue, but he never actually uttered it.

The defendant sensed weakness and made full use of his own - supposed - strength; he forged a link with the public while severing the one with the court.

Judge Zeilinger had prepared for this trial keenly and diligently. By citing facts he kept forcing Androsch into corners from which he could only escape by taking refuge in memory lapses.

In many major trials the sinner has been given a fair chance to the very end. Androsch too had a fair chance last Friday; of twelve defence motions, ten were dismissed and two allowed. The court admitted evidence as to whether in the tax proceedings against Androsch any unlawful influence had been exerted or instructions issued which adversely affected the taxpayer. In the next stage of trial, in August or September (the court even took account of defence counsel's summer holidays!), officials from the Regional Tax Office and the Ministry of Finance will therefore be heard as witnesses.

There comes, however, a point in every trial after which the court expects some sign of understanding. It hopes for a trace of humility that may be appraised as a mitigating circumstance.

The defendant has shown no humility to date, not even for a second. But he now has a few weeks to consider whether it is consonant with the principles of a State based on the rule of law for a Finance Minister and his family to have at their disposal accounts

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containing millions in undeclared funds.

It is now for him to display greatness. The judicial system has uncovered serious matters. The court nevertheless was guided wholly by the principles of fairness up to the very last moment of the trial last Friday, when it adjourned the proceedings.

For reflection."

#### C. Proceedings in the Vienna Regional Criminal Court

11. Mr **Worm** was charged under s.23 of the Media Act (Mediengesetz - see para. 23 below) for having exercised prohibited influence on criminal proceedings (verbotene Einflu\_nahme auf ein Strafverfahren).

12. On 12 May 1992 the Vienna Regional Criminal Court, sitting with one judge (Einzelrichter), acquitted the applicant. It found that the text in issue was not capable of influencing the outcome of the proceedings against Mr Androsch and that it was not established that the applicant had acted with such an intention.

13. The court recalled that in 1991 Mr Androsch had been convicted of tax evasion (see para. 9 above). In establishing whether the impugned article was capable of influencing the result of these proceedings, the court noted that the wording and content of the article as a whole, as well as the development of the proceedings reported upon, the person of the accused, and the person of the applicant had to be taken into account. The article, unlike court reports of the scandal press, analysed the conduct of the presiding judge, the public prosecutor, defence counsel and in particular the accused, Mr Androsch, almost as a psychologist would have done.

Furthermore, the court found that it was clear for every reader, who was vaguely familiar with the issue, that the applicant, who had been working for Profil for many years, had intensively dealt with the so-called "Causa Androsch" and had frequently reported on it. It appeared from the article that the applicant assumed that the investigations carried out by the tax authorities were correct. He subjected the statements made by the accused at the trial to a critical psychological analysis. However, his way of writing and the wording used were not capable of influencing these proceedings. Even to a lay judge, the applicant's person and his activities as a journalist in the Androsch case were well known. Thus he would not expect the applicant to give a neutral account of the proceedings.

Moreover, it had not been established that the applicant had acted with the intention of influencing the outcome of the proceedings, in particular as it appeared that he was convinced that Mr Androsch would in any event be convicted.

#### D. Proceedings in the Vienna Court of Appeal

14. On 19 October 1992 the Vienna Court of Appeal, sitting as a court of three professional judges on an appeal by the public prosecutor, held a hearing in the presence of the applicant and his counsel. Mr **Worm** was questioned and stated in particular that the first sentence of the incriminated passage, namely that:

"the flow of funds into and out of the seven accounts containing money not declared to the tax authorities allows of no other interpretation than that Androsch was evading taxes,"

was a quotation from the public prosecutor's statement during the trial. The latter had also frequently made reference to Mr Androsch's conviction for having made false statements as a witness (see para. 8 above).

15. At the end of the hearing, the operative provisions of the judgment as well as the relevant reasons were read out. The court convicted the applicant of having exercised prohibited influence on criminal proceedings and imposed on him forty day-fines of ATS

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1,200 each, that is ATS 48,000, or twenty days' imprisonment in default of payment. The publishing firm was made jointly and severally liable for payment of the fine.

16. The full text of the judgment was served on the applicant on 25 March 1993.

17. The court held, inter alia:

"The prosecution appeal is therefore well-founded. It rightly takes as its starting-point that the offence defined in s.23 of the Media Act must be classified as a potentially endangering offence [abstraktes Gefährdungsdelikt] . . .

In general, a potentially endangering offence is defined as conduct typically capable of bringing a dangerous situation into existence, even if in any given case no one is actually exposed to the danger concerned . . .

The law regulates only the offender's conduct - in this case comment on the value of evidence - and links to it the inference that such comment is also capable of influencing the outcome of criminal proceedings. A potentially endangering offence accordingly amounts to conduct which is criminal irrespective of any result it may have [schlichtes Tdtigkeitsdelikt] . . .

The considerations set out in the judgment at first instance as to the extent to which the comment on Mr Androsch's defence was capable of influencing the outcome of the criminal proceedings were therefore pointless . . .

The defendant's replies under examination in criminal proceedings constitute evidence . . .

[The passage in issue] constitutes (unfavourable) comment on the value of the answers given by Mr Androsch, not just - as the court below held - a critical psychological analysis . . ."

18. It observed that:

"the objective element of the offence defined in s.23 of the Media Act is constituted not only by unfavourable comment on evidence but also by favourable comment."

19. The Court of Appeal also contested the Regional Court's assumption that everybody, including the lay judges, knew the applicant's long-standing commitment in the Androsch case and would therefore not be influenced by his article. It was in no way certain that the lay judges regularly read Profil. On the contrary, in spectacular proceedings like the ones in issue, it happened frequently that lay judges would follow the reports in papers they did not usually read. There was no doubt that, at least with regard to the lay judges, the reading of the incriminated article was capable of influencing the outcome of the criminal proceedings.

20. The court added:

"[The above finding] is all the more true in the present case because it can be inferred from the article that the accused wished to usurp the position of the judges dealing with the case.

The objective element of the offence defined in s.23 of the Media Act is accordingly made out.

As regards the subjective element, it should be observed that it is hard to understand why the court below should have concluded that there was no intention to influence the outcome of the trial when that intention was, on the contrary, quite obvious."

21. The court further found that the applicant's expertise and involvement in the subject



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matter rather reinforced the impression that he had written the article with the intention of influencing the outcome of the proceedings. He had researched into the case since 1978 and had written more than a hundred articles about it. From the beginning he had been convinced that Mr Androsch had committed tax evasion. In the article in issue he had not only criticised Mr Androsch's statement but had also anticipated the outcome of the proceedings, namely the conviction of the accused.

22. The judgment ended as follows:

"Even the quotation of the answer given by Mr Heinz Tschernutter placed at the top of the article - 'Above all, there were to be no mistakes during the proceedings. The case was to be handled with common prudence, properly and to the best of our knowledge and belief - but not with kid gloves!' - gives the average reader the impression that the court was being advised and urged to follow the same approach, in other words not to make any mistakes and not to handle Mr Androsch with kid gloves."

## II. Relevant Domestic Law

23. Section 23 of the Media Act (Mediengesetz) is entitled "Prohibited influence on criminal proceedings" (Verbotene Einflu\_nahme auf ein Strafverfahren) and reads as follows:

"Anyone who discusses, subsequent to the indictment . . . [and] before the judgment at first instance in criminal proceedings, the probable outcome of those proceedings or the value of evidence in a way capable [geeignet] of influencing the outcome of the proceedings shall be punished by the court with up to 180 day-fines."

24. Article 77 of the Code of Criminal Procedure reads:

"(1) Judicial decisions are made public either by being read out in court or by service of the original or a certified copy thereof.

(2) When read out, judgments must be put on record. Upon request, anyone concerned may receive a copy of the judgment."

In practice, written copies of decisions such as the one at issue in the present case are automatically served on the persons concerned.

25. Under Austrian criminal procedural law, the time allowed for appeals begins to run from the date when the written version of the decision appealed against has been served on the party concerned (art 79(2) of the Code of Criminal Procedure).

## PROCEEDINGS BEFORE THE COMMISSION

26. Mr **Worm** applied to the Commission on 28 July 1993. He relied on Article 10 of the Convention, complaining that his conviction under s.23 of the Media Act violated his right to **freedom of expression**.

27. The Commission declared the application (no. 22714/93) admissible on 25 November 1995. In its report of 23 May 1996 (art 31), it expressed the opinion by eighteen votes to eleven that there had been a violation of Article 10 of the Convention.

## ORAL-PROCEEDINGS:

### FINAL SUBMISSIONS TO THE COURT

28. In his memorial the applicant asked the Court to establish that there had been a violation of his right to **freedom of expression** enshrined in Article 10 of the Convention as a result of the incorrect interpretation by the Vienna Court of Appeal of s.23 of the Media Act.

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29. The Government requested the Court to refuse to entertain the application for having been introduced later than six months after the final domestic decision was issued. Alternatively, the Court was asked to declare that the Vienna Court of Appeal's judgment of 19 October 1992 did not violate the applicant's rights under Article 10 of the Convention.

**DECISION:****AS TO THE LAW****I. The Government's Preliminary Objection**

30. By way of preliminary objection, the Government pleaded, as they had already done before the Commission, that Mr **Worm** had not complied with the rule, in Article 26 of the Convention, that applications to the Commission must be lodged "within a period of six months from the date on which the final decision was taken".

The Government observed that on 19 October 1992, at the end of the appellate hearing, the Vienna Court of Appeal gave its judgment in the applicant's case (see para. 15 above). Since a draft judgment was already available, not only the operative provisions but also all the relevant reasons were read out. The applicant and his counsel were both present. In those circumstances, the Government submitted that the six-month period should be deemed to have started to run from that date. This had moreover been the Commission's practice thus far.

In the Government's further submission, the fact that a written copy of the decision was not served on the applicant until 25 March 1993 (see para. 16 above) was irrelevant since this did not contain any more information than the judgment as delivered in open court.

31. The applicant contended that he had not been in a position to acquaint himself with the court's full reasoning concerning the public prosecutor's appeal until he received a written version of the judgment. In particular, where as in the present case complex legal issues are involved, an applicant cannot be expected to file an application with the Commission on the basis of an oral decision. The starting date for the six-month period should therefore be 25 March 1993, the date when the written version of the judgment was served.

32. The Commission agreed with the applicant while acknowledging that the present case had led it to reconsider its previous approach. In its view, the six-month rule contained in Article 26 not only pursues the aim of ensuring legal certainty, it also affords the prospective applicant time to consider whether to lodge an application with the Commission and, if so, to decide on the specific complaints and arguments to be raised. In that respect, the Commission found that when, in accordance with domestic law, the written text of a final decision has to be served on an applicant, the period of six months should be counted from the date of this service, irrespective of whether the judgment concerned, or part thereof, was previously delivered orally.

33. The Court notes that, under domestic law and practice (see para. 24 above), the applicant was entitled to be served ex officio a written copy of the Court of Appeal's judgment, and that the long delay for this service was exclusively the responsibility of the judicial authorities. The said judgment, which in its final version ran to over nine pages, contained detailed legal reasoning. In these circumstances, the Court shares the Commission's view (see para. 32 above) that the object and purpose of Article 26 are best served by counting the six-month period as running from the date of service of the written judgment. Moreover, this is the solution adopted by Austrian law in respect of time-limits for lodging domestic appeals (see para. 25 above).

34. The judgment of the Vienna Court of Appeal was served on the applicant on 25 March 1993 (see para. 16 above) and the application to the Commission was introduced less than six months thereafter, namely on 28 July 1993 (see para. 1 above). It follows that the Government's preliminary objection must be dismissed.

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## II. Alleged Violation of Article 10 of the Convention

35. The applicant alleged that his conviction and the fine imposed upon him for having published an article commenting on Mr Androsch's trial constituted a violation of Article 10 of the Convention, which reads:

"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 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."

36. It was uncontested that the applicant's conviction constituted an interference with his right to **freedom of expression** as guaranteed by para. 1 of Article 10 and the Court sees no reason to hold otherwise. It must therefore be examined whether the interference was justified under the second para. of that provision.

### A. Whether the Interference was "Prescribed by Law"

37. It was common ground that convictions for "prohibited influence on criminal proceedings" have a legal basis in domestic law, namely s.23 of the Media Act (see para. 23 above).

The applicant maintained, however, that the facts in his case did not fall within the ambit of that provision and that the Vienna Court of Appeal had erred in its finding that his article was calculated to influence the criminal proceedings against Mr Androsch.

38. The Court reiterates that the relevant national law must be formulated with sufficient precision to enable the persons concerned - if need be with appropriate legal advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. It is primarily for the national authorities, notably the courts, to interpret and apply domestic legislation (see, inter alia, the *Chorherr v Austria* judgment of 25 August 1993, Series A no. 266-B, pp. 35-36, paras. 24-25). In the present case, the Court is satisfied that the Vienna Court of Appeal's application of s.23 of the Media Act to the applicant's case did not go beyond what could be reasonably foreseen in the circumstances.

Accordingly, the Court concludes that the impugned conviction was "prescribed by law".

### B. Whether the Interference Pursued a Legitimate Aim

39. In the present case it was not contested that the applicant's conviction was aimed at "maintaining the authority and impartiality of the judiciary" and that it thus pursued a legitimate aim under the Convention.

40. In this regard, the Court has consistently held that the expression "authority and impartiality of the judiciary" has to be understood "within the meaning of the Convention". For this purpose, account must be taken of the central position occupied in this context by Article 6 which reflects the fundamental principle of the rule of law (see, inter alia, the *Sunday Times v United Kingdom* (no. 1) judgment of 26 April 1979, Series A no. 30, p. 34, para. 55).

The phrase "authority of the judiciary" includes, in particular, the notion that the courts are, and are accepted by the public at large as being, the proper forum for the settlement of legal disputes and for the determination of a person's guilt or innocence on a criminal charge; further, that the public at large have respect for and confidence in the courts' capacity to fulfil that function (*ibid.*, *mutatis mutandis*).

"Impartiality" normally denotes lack of prejudice or bias (see the *Piersack v Belgium* judgment of 1 October 1982, Series A no. 53, p. 14, para. 30). However, the Court has repeatedly held that what is at stake in maintaining the impartiality of the judiciary is the confidence which the courts in a democratic society must inspire in the accused, as far as criminal proceedings are concerned, and also in the public at large (see, *mutatis mutandis*, among many other authorities, the *Fey v Austria* judgment of 24 February 1993, Series A no. 255-A, p. 12, para. 30).

It follows that, in seeking to maintain the "authority and impartiality of the judiciary", the Contracting States are entitled to take account of considerations going - beyond the concrete case - to the protection of the fundamental role of courts in a democratic society.

41. In view of the above, the various reasons contained in the judgment of the Vienna Court of Appeal of 19 October 1992 (see paras. 17 to 22 above) are to be regarded as falling within the aim of "maintaining the authority and impartiality of the judiciary".

42. The Government submitted that the applicant's conviction also pursued the aim of protecting Mr Androsch's right to the presumption of innocence. Having regard to its analysis in the preceding paragraphs, the Court does not find it necessary to address this question separately.

#### C. Whether the Interference was "Necessary in a Democratic Society"

43. The applicant asserted that his right to **freedom of expression** had been restricted beyond the limits imposed by the second para. of Article 10 of the Convention. He submitted that since the subject matter of his report was the trial of a former Minister of Finance for tax offences committed when in office, indisputably an issue of public concern, the limits of permissible criticism should be wider. As to the risk of influencing the outcome of Mr Androsch's trial, he pointed out that the passage where the latter's responsibility for tax evasion was alluded to referred to activities for which Mr Androsch had already been convicted and which were well known to the court.

44. The Commission expressed the opinion that the Vienna Court of Appeal did not weigh the public interest in preventing undue influence of the media on pending criminal proceedings against the public interest in receiving information relating to the conduct of a former Minister of Finance facing charges of tax evasion. When examining whether the incriminated text was likely to influence the outcome of the proceedings, the appellate court, unlike the first-instance court, had not taken the wording and the content of the two-page article as a whole into account. Having regard to its specific context, the conclusion suggested by the applicant in one passage, namely that Mr Androsch was evading taxes, appeared as merely describing a state of suspicion, which the members of the trial court, including the lay judges, were in a position to evaluate independently. The Commission further observed that the appellate court should have dealt with the applicant's defence that the incriminated passage merely paraphrased a statement the public prosecutor had made at the trial.

The Commission accordingly concluded that the reasons adduced by the Court of Appeal were not sufficient for the purposes of Article 10(2). The interference with the applicant's right to **freedom of expression** could thus not be said to have been "necessary in a democratic society" for maintaining the "authority and impartiality of the judiciary".

45. At the hearing, the Delegate of the Commission submitted that the question of necessity under Article 10(2) would have required that the domestic courts ascertain

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whether any real influence had indeed been exerted on the lay judges.

46. For the Government, the applicant's conduct went beyond the limits of permissible reporting on a pending trial. Even if the entire content of the article were to be taken into account, there was no question that the incriminated statement amounted to a typical predetermination by the media of an accused's guilt. If the statement in issue was indeed a quotation of the public prosecutor, the applicant would have had to indicate it, which he did not.

They further pointed out that although lay judges are likely to read press reports on the cases they try, Austrian law, unlike other legal systems, does not seek to insulate them from exposure to outside influence while they are exercising their functions. There was therefore a high probability that the opinion of Mr **Worm**, leading expert of the "Causa Androsch", would exert influence on those judges, thereby jeopardising the impartiality of the court.

The Government finally submitted that the fine imposed on the applicant was not disproportionate to the aim pursued.

47. The Court recalls that **freedom of expression** constitutes one of the essential foundations of a democratic society and that the safeguards to be afforded to the press are of particular importance (see, among other authorities, the *Jersild v Denmark* judgment of 23 September 1994, Series A no. 298, p. 23, para. 31).

As a matter of general principle, the "necessity" for any restriction on **freedom of expression** must be convincingly established (see the *Sunday Times v United Kingdom* (no. 2) judgment of 26 November 1991, Series A no. 217, pp. 28-29, para. 50). Admittedly, it is in the first place for the national authorities to assess whether there is a "pressing social need" for the restriction and, in making their assessment, they enjoy a certain margin of appreciation. In the present context, however, the national margin of appreciation is circumscribed by the interest of democratic society in ensuring and maintaining a free press. Similarly, that interest will weigh heavily in the balance in determining, as must be done under para. 2 of Article 10, whether the restriction was proportionate to the legitimate aim pursued.

The Court's task, in exercising its supervisory function, is not to take the place of the national authorities but rather to review under Article 10 the decisions they have taken pursuant to their power of appreciation. In so doing, the Court must look at the "interference" complained of in the light of the case as a whole and determine whether the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see, among many other authorities, the *Goodwin v United Kingdom* judgment of 27 March 1996, Reports of Judgments and Decisions 1996-II, pp. 500-01, para. 40).

48. In the instant case, the Vienna Court of Appeal, after carefully examining the character of the incriminated article, concluded that it was objectively capable of influencing the outcome of the proceedings. The Court of Appeal also dealt with the question of the applicant's intent in publishing the article, in particular saying that it could be inferred from the article that he wished to usurp the position of the judges dealing with the case (see paras. 16-21 above).

The reasons given by the Court of Appeal were therefore "relevant" with regard to the aim pursued. It remains to be ascertained whether they were also "sufficient" for that same purpose.

49. In assessing this question, the Court recalls that the domestic margin of appreciation is not identical as regards each of the aims listed in Article 10(2). With respect to the notion of "authority and impartiality of the judiciary", the Court has already noted its objective character and the fact that, in this area, the domestic law and practice of the member States of the Council of Europe reveal a fairly substantial measure of common ground (see, *mutatis mutandis*, the *Sunday Times* (no. 1) judgment cited above, p. 36,

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para. 59). This does not mean that absolute uniformity is required and, indeed, since the Contracting States remain free to choose the measures which they consider appropriate, the Court cannot be oblivious of the substantive or procedural features of their respective domestic laws (*ibid.*, pp. 37-38, para. 61). It cannot thus hold that the applicant's conviction was contrary to Article 10 of the Convention simply because it might not have been obtained under a different legal system.

50. Restrictions on **freedom of expression** permitted by the second para. of Article 10 "for maintaining the authority and impartiality of the judiciary" do not entitle States to restrict all forms of public discussion on matters pending before the courts.

There is general recognition of the fact that the courts cannot operate in a vacuum. Whilst the courts are the forum for the determination of a person's guilt or innocence on a criminal charge (see para. 40 above), this does not mean that there can be no prior or contemporaneous discussion of the subject matter of criminal trials elsewhere, be it in specialised journals, in the general press or amongst the public at large (see, *mutatis mutandis*, the Sunday Times (no. 1) judgment cited above, p. 40, para. 65).

Provided that it does not overstep the bounds imposed in the interests of the proper administration of justice, reporting, including comment, on court proceedings contributes to their publicity and is thus perfectly consonant with the requirement under Article 6(1) of the Convention that hearings be public. Not only do the media have the task of imparting such information and ideas: the public also has a right to receive them (*ibid.*). This is all the more so where a public figure is involved, such as, in the present case, a former member of the Government. Such persons inevitably and knowingly lay themselves open to close scrutiny by both journalists and the public at large (see, among other authorities, the *Lingens v Austria* judgment of 8 July 1986, Series A no. 103, p. 26, para. 42). Accordingly, the limits of acceptable comment are wider as regards a politician as such than as regards a private individual (*ibid.*).

However, public figures are entitled to the enjoyment of the guarantees of a fair trial set out in Article 6, which in criminal proceedings include the right to an impartial tribunal, on the same basis as every other person. This must be borne in mind by journalists when commenting on pending criminal proceedings since the limits of permissible comment may not extend to statements which are likely to prejudice, whether intentionally or not, the chances of a person receiving a fair trial or to undermine the confidence of the public in the role of the courts in the administration of criminal justice.

51. The applicant was convicted of having attempted to exert prohibited influence on the outcome of the criminal proceedings concerning Mr Androsch. He was sentenced to a fine of ATS 48,000, or twenty days' imprisonment in case of default of payment (see para. 15 above).

As summarised above (see paras. 17-22) the Vienna Court of Appeal first considered whether the impugned article was objectively capable of influencing the outcome of the proceedings pending at the material time before the Vienna Regional Criminal Court.

It found that the applicant had commented unfavourably on the answers given by Mr Androsch at the trial and not merely carried out a critical psychological analysis, as held by the first-instance court. The court further considered that it could not be excluded that the members of Mr Androsch's trial court, more particularly the lay judges, might read the article. It concluded that the applicant's article fell within the ambit of s.23 of the Media Act.

The appellate court held that Mr **Worm's** long-standing involvement in the "Causa Androsch" - he had been researching into the case since 1978 and had written more than a hundred articles about it - reinforced the impression gained from the wording of the article that he had written it with the intention of influencing the outcome of the proceedings. From the beginning, the applicant had been convinced that Mr Androsch had committed tax evasion and had stated so. In his article, he had not only criticised Mr

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Androsch; he had deliberately attempted to lead the reader to conclude that Mr Androsch was guilty of the charges against him and had predicted his conviction.

52. The Court of Appeal's judgment was not directed to restricting the applicant's right to inform the public in an objective manner about the development of Mr Androsch's trial. Its criticism went essentially to the unfavourable assessment the applicant had made of the former minister's replies at trial, an element of evidence for the purposes of s.23 of the Media Act. The Court does not share the Commission's view that the passage where it is implied that Mr Androsch was evading taxes merely described a state of suspicion. In particular, the words "allows of no other interpretation than that Androsch was evading taxes" point rather to a clearly stated opinion that Mr Androsch was guilty of the charges against him. This view was, moreover, formulated in such absolute terms that the impression was conveyed to the reader that a criminal court could not possibly do otherwise than convict Mr Androsch.

53. The Court considers that it transpires from the Court of Appeal's judgment that it did take into account the incriminated article in its entirety. Further, the content of the article cannot be said to be incapable of warranting the conclusion arrived at by the Vienna Court of Appeal as to the article's potential for influencing the outcome of Mr Androsch's trial.

54. Having regard to the State's margin of appreciation, it was also in principle for the appellate court to evaluate the likelihood that at least the lay judges would read the article as it was to ascertain the applicant's criminal intent in publishing it. As to the latter point, the Court of Appeal pointed out that:

"it can be inferred from the article that [the applicant] wished to usurp the position of the judges dealing with the case." (see para. 20 above)

In this respect, to paraphrase the Court's words in its judgment in the Sunday Times (no. 1) case (cited above), it cannot be excluded that the public's becoming accustomed to the regular spectacle of pseudo-trials in the news media might in the long run have nefarious consequences for the acceptance of the courts as the proper forum for the determination of a person's guilt or innocence on a criminal charge (p. 39, para. 63). For this reason, the fact that domestic law as interpreted by the Vienna Court of Appeal did not require an actual result of influence on the particular proceedings to be proved (see para. 18 above) does not detract from the justification for the interference on the ground of protecting the authority of the judiciary.

55. The above findings are not called into question by the assertion - disregarded by the appellate court - that the incriminated passage was a quotation of a statement made by the public prosecutor at the trial. In the first place, even assuming that the public prosecutor actually made such remarks, the applicant ought to have indicated that he was merely quoting them. In any event, it was the public prosecutor's role, and not that of the applicant, to establish Mr Androsch's guilt.

56. Against this background, the Court concludes that the reasons adduced by the Vienna Court of Appeal to justify the interference with the applicant's right to **freedom of expression** resulting from his conviction were also "sufficient" for the purposes of Article 10(2). In particular, the respective interests of the applicant and the public in imparting and receiving his ideas concerning a matter of general concern which was before the courts were not such as to outweigh the considerations relied on by the Vienna Court of Appeal as to the adverse consequences of the diffusion of the impugned article for the authority and impartiality of the judiciary in **Austria**.

57. Given the amount of the fine and the fact that the publishing firm was ordered to be jointly and severally liable for payment of it (see para. 15 above), the sanction imposed cannot be regarded as disproportionate to the legitimate aim pursued.

58. The Court accordingly finds that the national courts were entitled to consider that the applicant's conviction and sentence were "necessary in a democratic society" for

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maintaining both the authority and the impartiality of the judiciary within the meaning of Article 10(2) of the Convention.

59. In sum, there has been no violation of Article 10 of the Convention.

FOR THESE REASONS, THE COURT

1. Dismisses unanimously the Government's preliminary objection;
2. Holds by seven votes to two that there has been no violation of Article 10 of the Convention.

PARTLY DISSENTING OPINION OF JUDGE CASADEVALL, JOINED BY JUDGE JUNGWIERT

(Translation) 1. I agree that the Government's preliminary objection should be dismissed, but I am unable to concur with the majority as to the merits.

2. The **freedom of expression** enshrined in Article 10, one of the fundamental pillars of a democratic society, justifies circumscribing the States' margin of appreciation more narrowly. It follows that the exceptions laid down in Article 10, such as "national security" or "maintaining the authority and impartiality of the judiciary", are justified - in my opinion - only in particularly serious situations.

3. I accept that the interference had a legal basis in domestic law and that it pursued a legitimate aim. I do not, on the other hand, see that it was necessary.

4. I even doubt whether s.23 of the Media Act (see para. 23 of the judgment) is compatible with the Convention. Not only is it drafted in such broad terms that it would make it possible to restrict any comment on pending criminal cases as "capable of influencing the outcome of criminal proceedings", but in the instant case it was also interpreted in an abstract manner (see para. 17 of the judgment) - an approach which was, in my view, open to criticism.

5. While it is possible to understand that in some fields (public health, traffic) public-order requirements dictate that penalties may be imposed without it being necessary to prove that there is a real risk of any kind, this should not be so where the penalty entails restriction of one of the fundamental rights, in this instance the right to **freedom of expression**.

6. For such restrictions to be justified for the purposes of the Convention, it appears to me essential that it should be shown that the information and ideas in issue might pose a real, substantial risk - not merely a hypothetical one - to "national security", "the disclosure of information received in confidence" or "the authority and impartiality of the judiciary". The Vienna Court of Appeal considered that such an assessment of the risk was not necessary for the offence in s.23 of the Media Act to be made out (see para. 17 of the judgment).

7. For want of evidence allowing me to conclude that the statutory provision is invariably applied as it was in the instant case, I prefer to say that the reasons adduced by the Vienna Court of Appeal were not "sufficient" in relation to the legitimate aim pursued.

8. Admittedly, the majority stated - and I concur in their view - that in seeking to maintain:

"the authority and impartiality of the judiciary, the Contracting States are entitled to take account of considerations going - beyond the concrete case - to the protection of the fundamental role of courts in a democratic society." (see para. 40 of the judgment)

For this reason, in the opinion of the majority, the fact that domestic law:



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"did not require an actual result of influence on the particular proceedings to be proved does not detract from the justification for the interference."

9. In other words, the interference in issue was justified not on the basis that it was "capable of influencing the outcome of the proceedings" concerning Mr Androsch (a question of impartiality) but rather because it offended the principle that "the courts are the proper forum for the settlement of legal disputes" (a question of authority). I do not find this approach any more convincing.

10. It does not convince me, firstly, because the same requirement of an assessment of the danger at which the interference was directed should apply where the aim is to provide general protection for the authority or impartiality of the judiciary and, secondly, because that approach can only, in my view, be regarded as an ex post facto justification for the interference in issue.

11. It is clear from a reading of the Vienna Court of Appeal's judgment that only the question of the impartiality of the court that had tried Mr Androsch was at issue. To claim that by means of a single clause ("it can be inferred from the article that [the applicant] wished to usurp the position of the judges dealing with the case") the Vienna Court of Appeal intended to ensure the:

"acceptance of the courts as the proper forum for the determination of a person's guilt or innocence on a criminal charge,"

with the aim of preventing the "spectacle of pseudo-trials in the news media" (see para. 54 of the judgment) seems to me to be at the very least artificial.

12. The national authorities have not therefore adduced sufficient reasons to persuade me that the applicant's words in his article were such as to create a need for interference tantamount to a "pressing social need" (see the *Sunday Times v United Kingdom* (no. 2) judgment of 26 November 1991, Series A no. 217, pp. 28-29, para. 50) when weighed against a journalist's right to **freedom of expression** and the public's right to information and ideas, even those "that offend, shock or disturb the State" (see the *Vereinigung demokratischer Soldaten Vsterreichs and Gubi v Austria* judgment of 19 December 1994, Series A no. 302, p. 17, para. 36).

13. I therefore consider that there has been a violation of Article 10 of the Convention.

(1998) 25 EHRR 454, [1997] ECHR 22714/93

Source: [Legal > Area of Law - By Topic > International Law > Cases > Human Rights Cases](#) 

Terms: **worm vs austria and "freedom of expression"** ([Edit Search](#))

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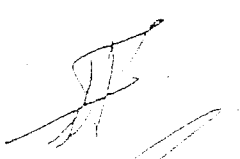





ARTICLE VI

COMMISSION FOR THE CONSOLIDATION OF PEACE -

1. A Commission for the Consolidation of Peace (hereinafter after termed the CCP), shall be established within two weeks of the signing of the present Agreement to implement a post-conflict programme that ensures reconciliation and the welfare of all parties to the conflict, especially the victims of war. The CCP shall have the overall goal and responsibility for supervising and monitoring the implementation of and compliance with the provisions of the present Agreement relative to the promotion of national reconciliation and the consolidation of peace.

2. The CCP shall ensure that all structures for national reconciliation and the consolidation of peace already in existence and those provided for in the present Agreement are operational and given the necessary resources for realizing their respective mandates. These structures shall comprise:

- (i) the Commission for the Management of Strategic Resources, National Reconstruction and Development;
- (ii) the Joint Monitoring Commission;
- (iii) the Provincial and District Cease-fire Monitoring Committees;
- (iv) the Committee for the Release of Prisoners of War and Non-Combatants;
- (v) the Committee for Humanitarian Assistance;
- (vi) the National Commission on Disarmament, Demobilization and Reintegration;
- (vii) the National Commission for Resettlement, Rehabilitation and Reconstruction;



(viii) the Human Rights Commission; and

(ix) the Truth and Reconciliation Commission.

3. The CCP shall have the right to inspect any activity or site connected with the implementation of the present Agreement.

4. The CCP shall have full powers to organize its work in any manner it deems appropriate and to appoint any group or sub-committee which it deems necessary in the discharge of its functions.

5. The Commission shall be composed of the following members:

i) Two representatives of the civil society ;

ii) One representative each named by the Government, the RUF/SL and the Parliament.

6. The CCP shall have its own offices, adequate communication facilities and secretariat support staff.

7. Recommendations for improvements or modifications shall be made to the President of Sierra Leone for appropriate action. Likewise, failures of the structures to perform their assigned duties shall also be brought to the attention of the President.

8. Disputes arising out of the preceding paragraph shall be brought to the Council of Elders and Religious Leaders for resolution, as specified in Article VIII of the present Agreement.

9. Should Protocols be needed in furtherance of any provision in the present Agreement, the CCP shall have the responsibility for their preparation.

10. The mandate of the CCP shall terminate at the end of the next general elections.

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[Handwritten signatures and scribbles]



2. The Parties further pledge to promote Human Rights education throughout the various sectors of Sierra Leonean society, including the schools, the media, the police, the military and the religious community.
3. In pursuance of the above, technical and material assistance may be sought from the UN High Commissioner for Human Rights, the African Commission on Human and Peoples Rights and other relevant international organisations.
4. A consortium of local human rights and civil society groups in Sierra Leone shall be encouraged to help monitor human rights observance.

ARTICLE XXVI 26

HUMAN RIGHTS VIOLATIONS

1. A Truth and Reconciliation Commission shall be established to address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, get a clear picture of the past in order to facilitate genuine healing and reconciliation.

2. In the spirit of national reconciliation, the Commission shall deal with the question of human rights violations since the beginning of the Sierra Leonean conflict in 1991.

This Commission shall, among other things, recommend measures to be taken for the rehabilitation of victims of human rights violations.

3. Membership of the Commission shall be drawn from a cross-section of Sierra Leonean society with the participation and some technical support of the International Community. This Commission shall be established within 90 days after the signing of the present Agreement and shall, not later than 12 months after the commencement of its work, submit its report to the Government for immediate implementation of its recommendations.

IX.

THE TRUTH AND RECONCILIATION  
COMMISSION ACT 2000  
Supplement to the Sierra Leone  
Gazette Vol. CXXXI, No. 9, dated  
10<sup>th</sup> February, 2000.

ARRANGEMENT OF SECTIONS

Section

Part I PRELIMINARY

1. Interpretation

Part II ESTABLISHMENT OF COMMISSION

- 2. Establishment of Commission
- 3. Composition of Commission ✓
- 4. Remuneration of members ✓
- 5. Duration of Commission ✓

Part III FUNCTIONS OF COMMISSION

- 6. Functions of Commission ✓
- 7. Mode of operation ✓
- 8. Powers of Commission ✓
- 9. Penalties for obstruction of Commission ✓

Part IV ADMINISTRATIVE PROVISION

- 10. Committees of Commission
- 11. Office and staff of Commission
- 12. Funds and resources of Commission
- 13. Budget, accounts and audit
- 14. Independence of Commission ✓

Part V REPORT AND RECOMMENDATIONS

- 15. Report of Commission ✓
- 16. Publication of report of Commission
- 17. Implementation of recommendations
- 18. Body to monitor implementation of recommendations
- 19. Dissolution of Commission

Schedule (Subsection (1) of Section 3)

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Being an Act to establish the Truth and Reconciliation Commission in line with Article XXVI of the Lomé Peace Agreement and to provide for related matters.

Enacted by the President and Members of Parliament in this present Parliament assembled.

PART I - PRELIMINARY

1. In this Act, unless the context otherwise requires -

"Chairman" means the Chairman of the Commission appointed under subsection (3) of section 3;

"Commission" means the Truth and Reconciliation Commission established by section 2;

"Lomé Peace Agreement" means the Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone signed in Lomé on 7th July, 1999;

"Moral Guarantors" means the Moral Guarantors referred to in Article XXXIV of the Lomé Peace Agreement;

"Selection Coordinator" means the UN Special Representative of the Secretary-General in Sierra Leone;

"Selection Panel" means the selection panel of six persons referred to in subparagraph (ii) of paragraph (a) of the schedule composed of one member appointed by each of the following

The President, the Revolutionary United Front of Sierra Leone, the erstwhile Armed Forces Revolutionary Council, the Inter-Religious Council, the National Forum for Human Rights and the National Commission for Democracy and Human Rights (or the Human Rights Commission, as set out in the Lomé Peace Agreement, if such a Commission has been inaugurated).

PART II - ESTABLISHMENT OF COMMISSION

2.(1) There is hereby established a body known as the Truth and

Reconciliation Commission.

(2) The Commission shall be body corporate having perpetual succession and capable of acquiring, holding and disposing of any property, whether moveable or immovable and of suing and being sued in its corporate name and, subject to this Act, of performing all such acts as bodies corporate may by law perform.

(3) The Commission shall have a common seal the use of which shall be authenticated by the signatures of the Chairman and the Deputy Chairman or by any other members designated in that behalf by the Commission.

3. (1) The Commission shall consist of seven members, four of whom shall be citizens of Sierra Leone and the rest shall be non-citizens, all of whom shall be appointed by the President after being selected and recommended in accordance with the procedure prescribed in the schedule.

(2) The members of the Commission shall be -

a) persons of integrity and credibility who would be impartial in the performance of their functions under this Act and who would enjoy the confidence generally of the people of Sierra Leone; and

b) persons with high standing or competence as lawyers, social scientists, religious leaders, psychologists and in other professions or disciplines relevant to the functions of the Commission.

(3) The Commission shall have a Chairman and a Deputy Chairman both of whom shall be appointed by the President from among persons recommended by the Selection Coordinator and the United Nations High Commissioner for Human Rights.

(4) Where a vacancy occurs in the membership of the

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Commission because of the death, disability, resignation or dismissal of a member, the President shall appoint a replacement-

- a) where the vacancy is in respect of a citizen of Sierra Leone, from among the short-listed persons considered by the Selection Panel in accordance with the Schedule, giving due consideration to the rankings and comments of the Selection Panel, if any; and
- b) where the vacancy is in respect of a non-citizen, a person recommended by the United Nations High Commissioner for Human Rights.

(5) A member of the Commission may resign his office by written notice to the President and may be removed from office but only for inability to perform the functions of his office, whether arising from infirmity of body or mind or for a misconduct under this Act.

4. Members of the Commission shall work full-time or nearly as full-time as possible and shall, accordingly, be paid such remuneration as the President may determine, on the recommendation of the Selection Coordinator, acting on the advice of the United Nations High Commissioner for Human Rights.

5. (1) The Commission shall be inaugurated within two weeks of the appointment of its members and shall operate for one year. Provided that for good cause shown, the President may, by statutory instrument, extend the term of the Commission for a further six months.

(2) Before the commencement of the period of one year specified in subsection (1), the Commission shall have a preparatory period of three months during which it may undertake all tasks necessary to ensure that it is able to work effectively from the commencement of its operations.

(3) The tasks to be undertaken during the preparatory period shall include procurement of office space, preparing a budget, securing funds for the Commission, hiring staff, discussing questions of methodology, designing and undertaking a public education campaign for the purposes and procedures of the Commission, designing and putting in place a database, undertaking a preliminary background research, collecting supporting materials for its investigations and prioritising its work.

(4) Both during the preparatory period and after it commences operations, the Commission shall endeavour to inform the public of its existence and the purposes of its work, and, when appropriate, shall invite all interested parties who may wish to do so, to make statements or submit information to the Commission.

### PART III - FUNCTIONS OF COMMISSION

6. (1) The object for which the Commission is established is to create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the Conflict in 1991 to the signing of the Lomé Peace Agreement; to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered.

(2) Without prejudice to the generality of subsection (1), it shall be the function of the Commission -

- a) to investigate and report on the causes, nature and extent of the violations and abuses referred to in subsection (1) to the fullest degree possible, including their antecedents, the context in which the violations and abuses occurred, the question of, whether those violations and abuses were the result of deliberate planning, policy or authorisation by any government, group or individual, and the role of both internal and



external factors in the conflict;

b) to work to help restore the human dignity of victims and promote reconciliation by providing an opportunity for victims to give an account of the violations and abuses suffered and for perpetrators to relate their experiences, and by creating a climate which fosters constructive interchange between victims and perpetrators, giving special attention to the subject of sexual abuses and to the experiences of children within the armed conflict; and

c) to do all such things as may contribute to the fulfillment of the object of the Commission.

7. (1) The Commission shall, subject to this Act, solely determine its operating procedures and mode of work with regard to its functions which shall include the following three components:

a) undertaking investigation and research into key events, causes, patterns of abuse or violation and the parties responsible;

b) holding sessions, some of which may be public, to hear from the victims and perpetrators of any abuses or violations or from other interested parties; and

c) taking individual statements and gathering additional information with regard to the matters referred to in paragraphs (a) or (b).

(2) The Commission may seek assistance from traditional and religious leaders to facilitate its public sessions and in resolving local conflicts arising from past violations or abuses or in support of healing and reconciliation.

(3) At the discretion of the Commission, any person shall

be permitted to provide information to the Commission on a confidential basis and the Commission shall not be compelled to disclose any information given to it in confidence.

(4) The Commission shall take into account the interests of victims and witnesses when inviting them to give statements, including the security and other concerns of those who may wish to recount their stories in public and the Commission may also implement special procedures to address the needs of such particular victims as children or those who have suffered sexual abuses as well as in working with child perpetrators of abuses or violations.

(5) Decisions of the Commission shall, as far as possible, be taken by consensus and in the absence of consensus, by the majority vote of members of the Commission and the Chairman shall cast the deciding vote where there is a tie.

(6) During the course of its operations, the Commission may provide information or recommendations to or regarding the Special Fund for War Victims provided for in Article XXIV of the Lomé Peace Agreement, or otherwise assist the Fund in any manner the Commission considers appropriate but the Commission shall not exercise any control over the operations or disbursements of that Fund.

(1) The Commission shall have power generally to organise its work and shall, in its operations, have power

a) to gather, by means it deems appropriate, any information it considers relevant, including the ability to request reports, records, documents or any information from any source, including governmental authorities, and to compel the production of such information as and when necessary;

b) to visit any establishment or place without giving prior notice, and to enter upon any land or premises for any purpose which is material to the

fulfillment of the Commission's mandate and in particular, for the purpose of obtaining information or inspecting any property or taking copies of any documents which may be of assistance to the Commission, and for safeguarding any such property or document;

c) to interview any individual, group or members of organisations or institutions and, at the Commission's discretion, to conduct such interviews, in private;

d) subject to adequate provision being made to meet his expenses for the purpose, to call upon any person to meet with the Commission or its staff, or to attend a session or hearing of the Commission, and to compel the attendance of any person who fails to respond to a request of the Commission to appear and to answer questions relevant to the subject matter of the session or hearing;

e) to require that statements be given under oath or affirmation and to administer such oath or affirmation;

f) to request information from the relevant authorities of a foreign country and to gather information from victims, witnesses, government officials and others in foreign countries;

g) to issue summonses and subpoenas as it deems necessary in fulfillment of its mandate; and

h) to request and receive police assistance as needed in the enforcement of its powers.

(2) Failure to respond to a summons or subpoena issued by the Commission, failure to truthfully answer questions of the Commission after responding to a summons or

subpoena, or intentionally providing misleading or false information to the Commission shall be deemed equivalent to contempt of court and may, at the discretion of the Commission, be referred to the High Court for trial and punishment.

9. (1) All persons, including members and officers of the Government and political parties, shall cooperate with and provide unrestricted access for the Commission and its staff for any purposes necessary in the fulfillment of the Commission's mandate under this Act, as determined by the Commission.

(2) Any person who willfully obstructs or otherwise interferes with the Commission or any of its members or officers in the discharge of the Commission's functions under this Act, commits an offence and shall be liable on conviction to a fine not exceeding one million leones or to a term of imprisonment not exceeding one year or both such fine and imprisonment.

PART IV - ADMINISTRATIVE PROVISIONS

10. (1) To assist it in the performance of its functions, the Commission may appoint such committees as it may consider necessary.

(2) A committee under this section shall include persons who are not members of the Commission but who are appointed, taking into account gender representation and regional participation in the work of the Commission.

(3) A member of a committee who is not a member of the Commission shall be paid such allowances as the Commission may determine.

11. (1) The Commission shall have such offices and may employ such staff, including citizens of Sierra Leone, as it may consider necessary for the efficient performance of its functions.

(2) Public officers may be seconded or otherwise render assistance to the Commission.

31 (3) The staff of the Commission shall be employed on such terms as the Commission shall, after consultation with the Selection Coordinator, determine.

1048 (1) The operations of the Commission shall be financed by a fund consisting of moneys and other resources -

a) paid or made available to the Commission by the Government; and

b) obtained by the Commission as gift or donation from foreign governments, intergovernmental organisations, foundations and non-governmental organisations.

(2) In accordance with the Lomé Peace Agreement, the Commission shall seek technical assistance from the international community, as it deems appropriate.

13. (1) The funds of the Commission shall be utilized only on the basis of the budget prepared under subsection (3) of section 5.

(2) The Commission shall keep proper books of account and other records in relation to the operation of the Commission and shall prepare quarterly statements of accounts in a form designed to -

a) indicate monthly expenditures;

b) provide data for up-to-date budget control based on the management information system of the Commission; and

c) ensure correct use of the funds of the Commission.

(3) The accounts of the Commission kept under subsection (2) shall be audited by an auditor, being a professional accountant of high standing, appointed by the

Commission and the statement of accounts together with the auditor's report thereon shall be submitted to the Government and other contributors to the funds of the Commission.

14. (1) Subject to this Act, the Commission shall, in the performance of its functions under this Act, not be subject to the direction or control of any person or authority.

(2) Each member of the Commission and member of staff of the Commission shall serve in his individual capacity, independent of any political party, government or other organisational interests, and shall avoid taking any action which could create an appearance of partiality or otherwise harm the credibility or integrity of the Commission.

(3) No member of the Commission or member of staff of the Commission shall make private use of or profit from any confidential information gained as a result of his work in the Commission or divulge such information to any other person except in the course of his functions as a member or staff of the Commission and any contravention of this provision may result in dismissal from the Commission.

(4) No member of the Commission or staff of the Commission shall be held liable for any acts carried out within the scope of his duties.

(5) Any member or member of staff of the Commission who contravenes subsection (2) shall be guilty of misconduct and liable to be dismissed from the Commission.

#### PART V - REPORT AND RECOMMENDATIONS

15. (1) The Commission shall submit report of its work to the President at the end of its operations.

(2) The report shall summarise the findings of the Commission and shall make recommendations concerning the reforms and other measures, whether legal, political, administrative or otherwise, needed to achieve the object of the

Commission, namely the object of providing impartial historical record, preventing the repetition of the violations or abuses suffered, addressing impunity, responding to the needs of victims and promoting healing and reconciliation.

16. (1) Immediately upon submitting the report to the President, the Commission shall publish the report in The Gazette by the insertion of the appropriate Government Notice and in such other publications as it may consider appropriate and shall, in collaboration with the Government of Sierra Leone, make copies of the report or summaries thereof, widely available to the public.

(2) The President shall -

a) immediately upon receiving the report of the Commission, submit a copy to the United Nations Secretary-General with a request that it be tabled before the Security Council of the United Nations within thirty days; and

b) within thirty days of receiving the report of the Commission, submit a copy to Parliament with a request that it be lodged in the archive of Parliament.

17. The Government shall faithfully and timeously implement the recommendations of the report that are directed to state bodies and encourage or facilitate the implementation of any recommendations that may be directed to others.

18. (1) The Government shall, upon the publication of the report of the Commission, establish a committee or other body, including representatives of the Moral Guardians of the Lomé Peace Agreement, hereinafter referred to as "the follow-up Committee" to monitor the implementation of the recommendations of the Commission and to facilitate their implementation.

(2) The Government shall, during the period of eighteen

months or such longer or shorter period after the establishment of the follow-up Committee as that Committee shall determine, provide quarterly reports to the follow-up committee summarizing the steps it has taken towards implementation of the recommendations of the Commission.

(3) The follow-up Committee shall publish the reports of the Government under subsection (2) in the appropriate form and submit quarterly reports to the public evaluating the efforts of the Government and the efforts of any other person or body concerned to implement the recommendations of the Commission.

19. (1) The President shall, not later than three months after the submission of the report of the Commission to him, dissolve the Commission by notice in a statutory instrument.

(2) Before it is dissolved, the members of the Commission shall, among the final administrative activities of the Commission -

a) organise its archives and records, as appropriate, for possible future reference, giving special consideration to -

i. what materials or information might be made available to the public of Sierra Leone, either immediately or when conditions and resources allow; and

ii. what measures may be necessary to protect confidential information; and

b) organise the disposal of the remaining property of the Commission.

SCHEDULE - (Subsection (1) of section 3)  
Procedure for the Selection of Nominees for Appointment to the Commission

To best ensure the Commission's independence and credibility, the members of the Commission shall be selected through a consultative process relying on both national and international expertise as follows:

(a) The four national members of the Commission shall be selected as follows:

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Nominations, which may be put forward by anyone within or outside Sierra Leone, should be submitted to the United Nations Special Representative of the Secretary-General in Sierra Leone, who will serve as Selection Coordinator.

ii. With the assistance of an advisory committee, and after broad consultation with a cross-section of Sierra Leonean society and with the United Nations High Commissioner for Human Rights, the Selection Coordinator shall draw up a list of 10 to 20 finalists. The advisory committee shall include a representative of the National Council of Paramount Chiefs, a representative of the Inter-Religious Council, and a member of the international community based in Sierra Leone, and perhaps others, at the discretion of the Selection Coordinator.

iii. Each of the finalists will be interviewed by a Selection Panel of six persons, composed of one member appointed by each of the following: - the President, the Revolutionary United Front, the erstwhile Armed Forces Revolutionary Council, the Inter-religious Council, the National Forum for Human Rights and the National Commission for Democracy and Human Rights (or the Human Rights Commission, as set out in the Lomé Peace Agreement, if such a Commission has been inaugurated).

iv. Selection Panel shall then rank and provide comments regarding each of the finalists to the Selection Coordinator on a confidential basis. Where possible, the Selection Panel should submit consensus views on each finalist, though each panelist may submit comments

individually if views differ. In addition, the Selection Panel should suggest a possible Chair for the Commission, especially if consensus can be reached on such recommendation. The Selection Coordinator shall assist the Selection Panel as needed and may establish a deadline for its submission.

v. Based on the recommendations from the Selection Panel and the criteria established in subsection (2) of section 3, the Selection Coordinator shall recommend four citizens members for appointment to the Commission, and will suggest a possible Chair. Both the Selection Panel and the Selection Coordinator should take into account gender representation and regional considerations in making their selections. While the four members might not necessarily be from each of the four regions of the country, the Commission as a whole should represent the interests and perspectives of the country at large. If further regional representation is later desired, the Commission itself might co-opt representatives from each of the country's four regions.

(b) Suggestions for non-citizen members may be submitted directly to the United Nations High Commissioner for Human Rights, or to the Selection Coordinator who will forward them to the High Commissioner. Giving due consideration to those suggestions, but not limited to those, the High Commissioner for Human Rights will recommend three persons who are not citizens of Sierra Leone for appointment to the Commission, including one person proposed as possible Chair. The High Commissioner for Human Rights shall first submit these recommendations to the Selection Panel, with an invitation to make comments, before submitting them to the President.

MEMORANDUM OF OBJECTS AND REASONS (attached to the Bill)

The object of this Bill is to establish the Truth and Reconciliation Commission proposed by Article XXVI of the Lomé Peace Agreement as part of the process of healing the

wounds of the armed conflict, which began in 1991. By clause 2 of the Bill, the Commission is being established as a body <sup>1057</sup> corporate.

Section 1 of Article XXVI of the Peace Agreement envisaged the proceedings of the Commission as a catharsis for constructive interchange between the victims and perpetrators of human rights violations and abuses and from this catharsis the Commission is to compile 'a clear picture of the past'. Accordingly, by clause 6, the principal function of the Commission is to create an impartial historical record of events in question as the basis for the task of preventing their recurrence.

To best ensure the Commission's independence and impartiality, the members of the Commission are to be appointed after a selection process involving both national and international expertise as stipulated in the Schedule to the Bill and involving a Selection Panel on which all the protagonists to the conflict and other interested parties are represented; (clause 3). By clause 5, the Commission shall operate for one year preceded by a period of three months during which the Commission is to carry out all the groundwork necessary for its effectiveness when operations begin. For good cause shown, the President may extend the term of the Commission by statutory instrument for a period of six months.

Under clause 12, the Commission is required to raise the funds to finance its operations from both governmental and international non-governmental sources to which it is required to submit quarterly reports to account for the moneys donated (clause 13). Under clause 15, the Commission reports to the President who will then arrange to send copies of the report to the U.N. and Parliament. By clause 18, the Government is required to set up a follow-up Committee to monitor and stimulate the progress of the implementation of the Commission's findings. Under clause 19, the President is required to dissolve the Commission by notice in a statutory instrument not later than three months after the submission of the Commission's report.

SOLOMON E. BEREWA  
Attorney-General and Minister of Justice

Freetown, Sierra Leone  
February 2000

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**Security Council**

Distr.: General  
14 August 2000

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**Resolution 1315 (2000)**

**Adopted by the Security Council at its 4186th meeting, on  
14 August 2000**

*The Security Council:*

*Deeply concerned* at the very serious crimes committed within the territory of Sierra Leone against the people of Sierra Leone and United Nations and associated personnel and at the prevailing situation of impunity,

*Commending* the efforts of the Government of Sierra Leone and the Economic Community of West African States (ECOWAS) to bring lasting peace to Sierra Leone,

*Noting* that the Heads of State and Government of ECOWAS agreed at the 23rd Summit of the Organization in Abuja on 28 and 29 May 2000 to dispatch a regional investigation of the resumption of hostilities,

*Noting also* the steps taken by the Government of Sierra Leone in creating a national truth and reconciliation process, as required by Article XXVI of the Lomé Peace Agreement (S/1999/777) to contribute to the promotion of the rule of law,

*Recalling* that the Special Representative of the Secretary-General appended to his signature of the Lomé Agreement a statement that the United Nations holds the understanding that the amnesty provisions of the Agreement shall not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law,

*Reaffirming* the importance of compliance with international humanitarian law, and *reaffirming further* that persons who commit or authorize serious violations of international humanitarian law are individually responsible and accountable for those violations and that the international community will exert every effort to bring those responsible to justice in accordance with international standards of justice, fairness and due process of law,

*Recognizing* that, in the particular circumstances of Sierra Leone, a credible system of justice and accountability for the very serious crimes committed there would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace,

*Taking note* in this regard of the letter dated 12 June 2000 from the President of Sierra Leone to the Secretary-General and the Suggested Framework attached to it (S/2000/786, annex),

*Recognizing further* the desire of the Government of Sierra Leone for assistance from the United Nations in establishing a strong and credible court that will meet the objectives of bringing justice and ensuring lasting peace,

*Noting* the report of the Secretary-General of 31 July 2000 (S/2000/751) and, in particular, *taking note* with appreciation of the steps already taken by the Secretary-General in response to the request of the Government of Sierra Leone to assist it in establishing a special court,

*Noting further* the negative impact of the security situation on the administration of justice in Sierra Leone and the pressing need for international cooperation to assist in strengthening the judicial system of Sierra Leone,

*Acknowledging* the important contribution that can be made to this effort by qualified persons from West African States, the Commonwealth, other Member States of the United Nations and international organizations, to expedite the process of bringing justice and reconciliation to Sierra Leone and the region,

*Reiterating* that the situation in Sierra Leone continues to constitute a threat to international peace and security in the region,

1. *Requests* the Secretary-General to negotiate an agreement with the Government of Sierra Leone to create an independent special court consistent with this resolution, and *expresses* its readiness to take further steps expeditiously upon receiving and reviewing the report of the Secretary-General referred to in paragraph 6 below;

2. *Recommends* that the subject matter jurisdiction of the special court should include notably crimes against humanity, war crimes and other serious violations of international humanitarian law, as well as crimes under relevant Sierra Leonean law committed within the territory of Sierra Leone;

3. *Recommends further* that the special court should have personal jurisdiction over persons who bear the greatest responsibility for the commission of the crimes referred to in paragraph 2, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone;

4. *Emphasizes* the importance of ensuring the impartiality, independence and credibility of the process, in particular with regard to the status of the judges and the prosecutors;

5. *Requests*, in this connection, that the Secretary-General, if necessary, send a team of experts to Sierra Leone as may be required to prepare the report referred to in paragraph 6 below;

6. *Requests* the Secretary-General to submit a report to the Security Council on the implementation of this resolution, in particular on his consultations and negotiations with the Government of Sierra Leone concerning the establishment of the special court, including recommendations, no later than 30 days from the date of this resolution;



7. *Requests* the Secretary-General to address in his report the questions of the temporal jurisdiction of the special court, an appeals process including the advisability, feasibility, and appropriateness of an appeals chamber in the special court or of sharing the Appeals Chamber of the International Criminal Tribunals for the Former Yugoslavia and Rwanda or other effective options, and a possible alternative host State, should it be necessary to convene the special court outside the seat of the court in Sierra Leone, if circumstances so require;

8. *Requests* the Secretary-General to include recommendations on the following:

(a) any additional agreements that may be required for the provision of the international assistance which will be necessary for the establishment and functioning of the special court;

(b) the level of participation, support and technical assistance of qualified persons from Member States of the United Nations, including in particular, member States of ECOWAS and the Commonwealth, and from the United Nations Mission in Sierra Leone that will be necessary for the efficient, independent and impartial functioning of the special court;

(c) the amount of voluntary contributions, as appropriate, of funds, equipment and services to the special court, including through the offer of expert personnel that may be needed from States, intergovernmental organizations and non-governmental organizations;

(d) whether the special court could receive, as necessary and feasible, expertise and advice from the International Criminal Tribunals for the Former Yugoslavia and Rwanda;

9. *Decides* to remain actively seized of the matter.

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