

1. THE CIRCUMSTANCES OF THE CASE:

- 1.1 The applicant, born in 1942, is a judge who on the 5th of March 1991, became a member of the Milan “Andriano lemmi” lodge.
- 1.2 In June 1994, the applicant had to appear before the Disciplinary Section of the Magistrates Superior Council. He was accused of having damaged the reputation of the Judiciary and having been in serious breach of his duties. Therefore he was no longer worthy of trust that had to be placed in a member of judiciary, because there was an incompatibility between the functions of a magistrate and membership of a Masonic lodge. Because the applicant had left Masonry prior to his appearance before the Council, the Council gave him a warning, but he was able to continue as a magistrate.
- 1.3 The applicant appealed to the Supreme Court (pourvu en cassation), which considered the case in plenary session on 13th June 1996, and in its decision of the 10th December 1996 rejected the appeal.
- 1.4 On 17th May 2000, the fourth commission of the Magistrate Superior Council refused the applicant promotion even though all the necessary conditions had been established since 17th October 1997, giving as the reason the disciplinary sanction against him.

2. RELEVANT DOMESTIC LAW AND PRACTICE:

- 2.1 The relevant particular provisions of the Italian Constitution were:
- “Article 54
All citizens are under the duty to be faithful to the Republic and to respect the Constitution and the laws.
- The citizens holding public functions are under duty to undertake them with discipline and honour, under oath in the cases stated by law.
- “Article 98
Civil servants are at the exclusive service of the nation.
- Limitations as to the right to register to political parties can be established by law for the magistrates, the active regular

soldiers, civil servants and police agents, consulates and embassies representatives' abroad.

- 2.2 According to the terms of Article 18 of the legislative order No 511 of the 31st May 1946 ("the 1946 order") a magistrate who "breaches his duties or has within the office or outside, behaved in a manner not worthy of the trust and consideration he requires" is liable to disciplinary sanction. In June 1981, the Italian Constitutional Court stated that Article 18 does not list the guides of behaviour, which can be considered as "being wrongful". It was not possible to enumerate all the behaviour which damages the values set out in Article 18.
- 2.3 On the 22nd March 1990, the Chairman of the Superior Council of the Judiciary issued a Directive stating that delicate problems are created if magistrates participate in associations which have strong links of hierarchy and solidarity imposed by solemn means, such as the ones required by Masonic lodges. A careful match must be kept to ensure that magistrates, in exercising their functions follow the principle that they are bound only by the law.
- 2.4 The Superior Council considered that:
- (i) There is an obligation under the Constitution for the impartial and independent exercise of judicial activity;
 - (ii) Citizen's trust in the judiciary must not be damaged by undermining its credibility.

3. THE APPLICANT'S CASE BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS:

3.1 The applicant alleges violation of Articles 8,9,10 and 11 of the Convention as well as Article 14 combined with all of the other provisions. It seemed to the Court that Article 11 of the Convention was the most relevant.

3.2 Alleged Violation of Article 11 of the Convention:

The applicant claims that the disciplinary sanction amounted to an interference with its right to freedom of association. Article 11 provides as follows:

"1. Everyone has the right to freedom of peaceful assembly and the freedom of association with others, including the right 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 the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights of members of the armed forces, of the police or of the administration of State.

- 3.3 The Court considers, and the Italian Government does not contest it, that there was an interference with the applicant’s right to respect of his freedom of association.
- 3.4 To be compatible with the Article 11, such an interference has to fulfil three conditions; to be “prescribed by the law”; “It must be in pursuance of one or more legitimate aim or aims as defined by paragraph 2”; and was “necessary in a democratic society”, to attain them.
- 3.5 It is necessary to consider whether the internal law of the state prescribed with sufficient precision the conditions in which a magistrate should refrain from associating himself to franc - Masonry.
- 3.6 Firstly Article 18 of the 1946 Order does not define if and how a magistrate can exercise his freedom of association. The Article does not list the kind of behaviour, which can be considered as “being wrongful”.
- 3.7 Secondly the Directive of the Superior Council of the Judiciary was ambiguous in referring to the “delicate problems” created. It could give the impression that membership of a Masonic lodge was not proscribed by law.
- 3.8 Consequently the Directive was not sufficiently precise to enable a person, even one legally qualified, to realise that membership of a Masonic lodge could lead to legal sanctions against Magistrates.
- 3.9 The Court therefore concludes that the first requirement of the proviso to Article 11 – “other than such as are prescribed by law”, is not fulfilled and there is a violation of Article 11.
- 3.10 Having come to this conclusion, the court does not need to determine whether the other requirements (legitimate aim, necessity of the interference and the special limitations for certain categories) required by the first and second sentences of paragraph 2 of Article 11 were respected.

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ALLEGED VIOLATION OF ARTICLES 8,9,10 AND 14

- 4.1 The applicant also claims a violation of Articles 8,9 and 10 on their own or combined with Article 14 of the Convention as well as a breach of article 11 combined with Article 14. His allegations relate to the disciplinary sanction made against him.
- 4.2 Regarding Article 8, the applicant also a violation created because of the release in the press of his belonging to the Masonic lodge, by the public prosecution's department.
- 4.3 The applicant alleges that the publication of his membership of the lodge by the press constitutes a violation of his right to respect of private life. According to him, this infringement is independent of the question of whether membership legal or not.
- 4.4 The Court considers that, according to its case-law, "the private life sphere, as conceived by the Court, covers the physical and moral integrity of a person. The guarantee offered by Article 8 of the Convention is mainly aimed at ensuring the development without external interference of each individual's personality in his relationships with his fellow men (see case *Botta v Italy* of 24th February 1998, *Receuil* 1998-I, pp. 422 para.32). In the present case, the applicant did not demonstrate that the disclosure by the press of his membership of the freemasons caused him such damage. He admitted that such a "membership could be known by anybody by consultation with the lodge". Accordingly there was no interference.
- 4.5 As regards the first claim under Article 8 and the other claims under the other Articles, in the light of the conclusion reached by the Court regarding the infringement of Article 11, the Court does not consider it necessary to examine these claims separately.