



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

COURT (PLENARY)

**CASE OF AUTRONIC AG v. SWITZERLAND**

*(Application no. 12726/87)*

JUDGMENT

STRASBOURG

22 May 1990

**In the Autronic AG case\*,**

The European Court of Human Rights, taking its decision in plenary session pursuant to Rule 51 of the Rules of Court\*\* and composed of the following judges:

Mr R. RYSSDAL, *President*,  
Mr J. CREMONA,  
Mr Thór VILHJÁLMSSON,  
Mrs D. BINDSCHEDLER-ROBERT,  
Mr F. GÖLCÜKLÜ,  
Mr F. MATSCHER,  
Mr L.-E. PETTITI,  
Mr B. WALSH,  
Sir Vincent EVANS,  
Mr R. MACDONALD,  
Mr C. RUSSO,  
Mr R. BERNHARDT,  
Mr A. SPIELMANN,  
Mr J. DE MEYER,  
Mr J.A. CARRILLO SALCEDO,  
Mr S.K. MARTENS,  
Mrs E. PALM,  
Mr I. FOIGHEL,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 25 January and 24 April 1990,

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

## PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") and by the Government of the Swiss Confederation ("the Government") on 12 April and 6 July 1989 respectively, within the three-month period laid down by Article 32 § 1 and

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\* Note by the registry: The case is numbered 15/1989/175/231. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

\*\* Note by the registry: The amendments to the Rules of Court which entered into force on 1 April 1989 are applicable to this case.

Article 47 (art. 32-1, art. 47) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). It originated in an application (no. 12726/87) against Switzerland lodged with the Commission under Article 25 (art. 25) by a Swiss company, Autronic AG, on 9 January 1987.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) of the Convention and to the declaration whereby Switzerland recognised the compulsory jurisdiction of the Court (Article 46) (art. 46); the Government's application referred to Articles 45, 47 and 48 (art. 45, art. 47, art. 48). The object of the request and of the application 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 (art. 10).

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of the Rules of Court, the applicant company stated that it wished to take part in the proceedings and designated the lawyer who would represent it (Rule 30).

3. On 29 April 1989 the President of the Court decided that, in the interests of the proper administration of justice, this case should be considered by the Chamber constituted on 24 November 1988 to hear the case of *Groppera Radio AG and Others\** (Rule 21 § 6). That Chamber included ex officio Mrs D. Bindschedler-Robert, the elected judge of Swiss nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 § 3 (b)); and the five members drawn by lot (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43) were Mr F. Gölcüklü, Mr F. Matscher, Mr L.-E. Pettiti, Mr J. De Meyer and Mrs E. Palm.

4. In his capacity as President of the Chamber (Rule 21 § 5), Mr Ryssdal consulted - through the Registrar - the Agent of the Government, the Delegate of the Commission and the lawyer for the applicant company on the need for a written procedure (Rule 37 § 1). In accordance with his Order and his instructions, the Registrar received the Government's and Autronic AG's memorials on 12 September. On 13 November the Secretary to the Commission informed him that the Delegate would submit his observations at the hearing.

5. Having consulted, through the Registrar, those who would be appearing before the Court, the President directed on 15 June that the oral proceedings should open on 21 November 1989 (Rule 38).

6. On 20 June the Chamber decided to relinquish jurisdiction forthwith in favour of the plenary Court (Rule 51).

7. On 17 October the Commission's secretariat lodged in the registry the documents relating to the proceedings before the Commission.

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\* Note by the Registrar: Case no. 14/1988/158/214.

On 2 November the Government sent the Court the International Telecommunication Union's reply to the questions that the Government had put to it.

8. The hearing took place in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting immediately beforehand.

There appeared before the Court:

- for the Government

Mr O. JACOT-GUILLARMOD, Assistant Director,  
Federal Office of Justice, Head of the International Affairs  
Division, *Agent*,

Mr B. MÜNGER, Federal Office of Justice,  
Deputy Head of the International Affairs Division,

Mr P. KOLLER, Federal Department of Foreign Affairs,  
Deputy Head of the Cultural Affairs Section,

Mr A. SCHMID, Head Office of the PTT,  
Head of the General Legal Affairs Division,

Mr H. KIEFFER, Head Office of the PTT,  
Head of the Frequency Management and Broadcasting  
Rights Section,

Mr M. REGNOTTO, Federal Department  
of Transport, Communications and Energy - Radio and  
Television Department, *Counsel*;

- for the Commission

Mr J.A. FROWEIN, *Delegate*;

- for the applicant company

Mr R. GULLOTTI, Rechtsanwalt, *Counsel*,  
Mr W. STREIT, *Adviser*.

The Court heard addresses by Mr Jacot-Guillarmod and Mr Kieffer for the Government, by Mr Frowein for the Commission and by Mr Gullotti for the applicant company, as well as their answers to its questions.

9. The Agent of the Government and counsel for the applicant company produced several documents at the hearing.

## AS TO THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

10. Autronic AG is a limited company incorporated under Swiss law and has its head office at Dübendorf (Canton of Zürich). It specialises in electronics and in particular sells 90 cm-diameter dish aerials for home use.

11. Its application relates to the reception in Switzerland of uncoded television programmes made and broadcast in the Soviet Union. They are transmitted to the Soviet satellite G-Horizont (also called Stationar-4), which sends them back to receiving earth stations on Soviet territory, and these in turn distribute them to users. The satellite is a telecommunications satellite and not a direct-broadcasting one: it provides a fixed point-to-point radiocommunication service (number 22 of the Radio Regulations - see paragraph 36 below) and uses the frequencies allotted to radiocommunications. It also transmits telephone conversations, telexes or telegrams and data.

12. In 1982 the only television broadcasts by satellite that could be received in Switzerland by means of a dish aerial were those from G-Horizont.

### **A. Background to the case**

#### *1. The first application for permission*

13. In the spring of 1982 Autronic AG applied to the Radio and Television Division of the Head Office of the national Post and Telecommunications Authority (PTT). It requested permission to give a showing at the Basle Trade Fair (Mustermesse) from 17 to 26 April 1982 of the public television programme that it received direct from G-Horizont by means of a private dish aerial, its object being to give a demonstration of the technical capabilities of the equipment in order to promote sales of it.

14. The Division wrote to the Soviet Union's embassy in Berne, which on 21 April conveyed the Soviet authorities' consent for the duration of the fair.

#### *2. The second application for permission*

15. On 7 July 1982 Autronic AG made a similar approach in order to give demonstrations at the FERA exhibition, which was to be held in Zürich from 30 August to 6 September 1982 and covered the latest developments in radio, television and electronics.

16. The Radio and Television Division again applied to the Soviet embassy, but did not receive a reply. On 14 and 26 July and on 6 August it informed Autronic AG that without the express consent of the Soviet authorities it could not allow reception of the G-Horizont broadcasts and that the Radio Regulations (see paragraph 36 below) required it to prevent such reception.

## **B. The application for a declaratory ruling**

### *1. The proceedings before the Radio and Television Division*

#### **(a) The application of 1 November 1982**

17. As Autronic AG was anxious to give further demonstrations, it applied to the Radio and Television Division, on 1 November 1982, for a declaratory ruling (Feststellungsverfügung) that, in particular, reception for private use of uncoded television programmes from satellites such as G-Horizont should not require the consent of the broadcasting State's authorities.

18. The applicant company relied on several arguments: the confidentiality of a programme could not depend on the use of particular frequencies; numbers 1992-1994 of the Radio Regulations gave no indication of which kind of broadcast was to be kept confidential; reception of radio and television programmes intended for and accessible to the general public could be made subject only to the award of a licence under Swiss law, which was available to everybody; and, lastly, the reception in question did not infringe Swiss legislation on intellectual property, because while programmes taken individually could have the status of "works", the same was not true of a whole schedule.

#### **(b) The decision of 13 January 1983**

19. On 13 January 1983 the Radio and Television Division rejected the applicant company's application, stating that it could not grant a receiving licence without the consent of the broadcasting State's authorities.

20. The Division noted that only duly approved earth stations were entitled to receive signals from telecommunications satellites. In this connection it referred to number 960 of the Radio Regulations, under which each national authority could assign certain frequencies to point-to-point radiocommunications provided that the broadcasts were not intended for direct reception by the general public.

It also stressed the difference between broadcasting satellites and telecommunications satellites. The former transmitted radio and television programmes to an undefined number of receiving stations within a given area, on frequencies expressly reserved for direct reception, while the latter were covered by the secrecy of broadcasts which all member States were obliged to ensure under Article 22 of the International Telecommunication Convention and numbers 1992-1994 of the Radio Regulations (see paragraphs 34 and 36 below). It added, lastly (translation from German):

"As to whether a broadcast is intended for direct reception by the general public, the decisive factor is accordingly not the content of the radiocommunication transmitted (a television programme, for example) but the mode of its transmission, in other words

its classification as a telecommunication. It follows that radio or television programmes transmitted via a telecommunications satellite cannot be received in a country unless the telecommunications authority of the broadcasting State ... has given its permission to the telecommunications authority of the receiving State. This will ensure compliance with the provisions on the secrecy of telecommunications. There is no apparent reason why telecommunications authorities should not be able to keep certain radiocommunications secret since they are under an obligation to ensure that the provisions of the International Telecommunication Convention and of the Radio Regulations are complied with."

### *2. The proceedings before the Head Office of the PTT*

21. On 14 February 1983 Autronic AG lodged an appeal (Beschwerde) against the Radio and Television Division's decision but this was rejected by the Head Office of the PTT on 26 July.

The Head Office began by holding that it had jurisdiction and that the company had an interest, worthy of protection, in having the disputed decision set aside under section 48 of the Federal Administrative Procedure Act.

It went on to set out its reasons for dismissing the appeal. Protection of the material information could not depend on whether the broadcasts were intended for the general public, since as a rule it was not known, at the time of transmission by telecommunications satellites, which broadcasts were intended for general use. Furthermore, Article 10 (art. 10) of the European Convention on Human Rights secured only the right to receive information from generally accessible sources, which telecommunications satellites were not. Lastly, it was irrelevant that the broadcasts were ultimately intended for general use, as the obligation to keep the transmitted data secret subsisted at the time of broadcasting.

### *3. The proceedings in the Federal Court*

22. On 13 September 1983 Autronic AG lodged an administrative-law appeal with the Federal Court against the decision of the Head Office of the PTT. It applied to have that decision set aside and sought a judgment which would clarify the legal situation for the future; it asked the court in particular to rule that reception for private use of uncoded broadcasts emanating from telecommunications satellites and intended for the general public should not be subject to the broadcasting State's consent.

#### **(a) Consideration of the appeal**

23. In reply to a request for information made by the Radio and Television Division of the Head Office of the Swiss PTT, the Head Office of the Soviet Union's Gostelradio said the following in a telex of 7 February 1984:

"With reference to your letter of 9 January 1984, we should like to inform you that the programmes transmitted by 'Stationar 4' [G-Horizont] are not satellite broadcasts intended for foreign countries. The programmes are intended for Soviet television viewers and are our internal affair. On the other hand, we have no technical means of preventing them from reaching other countries, particularly Switzerland. As regards the international use of the signal, only discussion and settlement of the problem at world level will provide a solution."

24. On 9 July 1984 the Federal Court put a number of questions to the parties about the factual and legal position. The Head Office of the PTT replied on 22 August and the applicant company on 31 August.

25. On 10 June 1985 the rapporteur informed Autronic AG that the Federal Court had not yet been able to consider the appeal and that the company had until 16 August 1985 to submit any further observations.

26. On 26 June 1985 the Radio and Television Division sent the Netherlands telecommunications authorities the following telex:

"...

In connection with the judgment of a request, we would like to know on which conditions reception of TV programmes via telecommunications satellites is permitted in the Netherlands. Please let us also know if the Soviet communications satellite G-Horizont Stationar is received in your country (by cable operators).

..."

The Netherlands authorities replied on 1 July 1985 as follows:

"... The conditions for reception of TV programmes by cable operators in the Netherlands seem to be quite similar to those in your country.

The Netherlands PTT issues licences to cable operators, separate for each particular TV program. With such a licence the operator can install his own TVRO antenna, although it is advisable for him to consult with PTT for frequency co-ordination purposes in order to avoid interference from terrestrial microwaves.

...

A few years ago some reception of the G-Horizont satellite did indeed take place.

This was considered illegal because of the absence of agreements with the USSR program provider and satellite operator, and the cable operators were so informed.

..."

In response to a similar request for information, the Finnish telecommunications authorities stated the following on 8 July 1985:

"...

We have permission from the Telecommunications Ministry of USSR to receive as an experiment the [G-Horizont] signal up to 31.12.1985. Authorization for distribution has been given in seven cases so far."



**(b) The judgment of 10 July 1986**

27. The Federal Court gave judgment on 10 July 1986 and served the text on Autronic AG on 11 November.

The court held that the appellant company was seeking a review in the abstract of the legal position, whereas in reality it could only complain of the ban on receiving the disputed broadcasts during the FERA exhibition. There was, however, no point in ruling on the admissibility of the appeal, since at all events the company had failed to show that it had an interest worthy of protection.

Apart from G-Horizont, there was no other satellite over Europe at the time whose broadcasts were receivable by means of a domestic dish aerial. Autronic AG picked up the signals from the Soviet satellite because there was no alternative source. As long as this situation continued, there would be practically no market for such equipment and only "eccentrics" (Sonderlinge) would be inclined to buy it. Although two other satellites - one German and one French - were to be launched, it remained unclear how they would be used and it was impossible to assess either the interest that direct reception of their broadcasts would arouse or the number of dish aerials that would come into use.

The Federal Court concluded that as it had failed to adduce evidence of any direct economic interest, the applicant company had no interest worthy of protection. It therefore refused to determine the merits of the case.

**C. Subsequent developments**

28. At the present time, there are still only a handful of direct-broadcasting satellites, whereas there are more than 150 telecommunications satellites such as G-Horizont, covering all or part of western Europe and broadcasting all kinds of uncoded programmes intended for the general public.

**II. THE LEGAL RULES IN ISSUE****A. Swiss legislation**

29. Article 36 § 4 of the Federal Constitution guarantees "inviolability of the secrecy of letters and telegrams".

*1. The Federal Act of 1922*

30. The relevant provisions of the Federal Act of 14 October 1922 regulating telegraph and telephone communications are as follows:

**Section 1**

"The Post and Telecommunications Authority shall have the exclusive right to set up and operate transmitting and receiving equipment or equipment of any kind for the electric or radio transmission of signals, images or sounds."

**Section 3**

"The competent authority shall be able to issue licences for setting up and operating equipment for the electric and radio transmission of signals, images and sounds."

**Section 46 § 2**

"The provisions required for the implementation of this Act shall be incorporated into the Ordinance on telegraphs and telephones to be enacted by the Federal Council and in the detailed regulations ..."

**2. *The 1973 Ordinance***

31. On 10 December 1973 the Federal Council enacted Ordinance no. 1 relating to the 1922 Act; among other things the Council laid down the scope of television licences:

**Article 66**

"1. Licence I for television-receiving equipment shall entitle the holder to operate equipment for the private reception, by means of radio waves or by electric wire, of Swiss and foreign public television broadcasts.

2. Reception of television broadcasts on premises which are not accessible to the public shall be deemed to be private.

3. The licence-holder may himself install his equipment for receiving broadcasts by means of radio waves.

4. A special licence must be held in order to exercise rights vested in the State other than those mentioned in paragraphs 1 and 3, in particular in order to demonstrate how receiving equipment works, to install receiving equipment in the homes of third parties and to arrange for public reception of broadcasts."

32. The revised text of Ordinance no. 1, which was enacted on 17 August 1983, came into force on 1 January 1984. Although it does not apply in the instant case, several of its provisions are worth quoting:

**Article 19 § 1**

"Licences may be refused where there is good reason to suppose that the telecommunications equipment will be used for a purpose that is

(a) unlawful;

(b) contrary to public morals or public policy; or

(c) prejudicial to the higher interests of the country, of the Post and Telecommunications Authority or of broadcasting."

#### **Article 57 § 1**

"Radio- and television-receiving licences shall authorise their holders to receive Swiss and foreign radio broadcasts privately or publicly."

#### **Article 78 § 1**

"A community-antenna licence shall entitle the holder to:

(a) Operate the local distribution network defined in the licence and rebroadcast by this means radio and television programmes from transmitters which comply with the provisions of the International Telecommunication Convention of 25 October 1973 and the International Radio Regulations and with those of the international conventions and agreements concluded within the International Telecommunication Union;

...

(f) Transmit programmes and special broadcasting services which, on the authorisation of the Post and Telecommunications Authority, which itself requires the Department's consent, are received from telecommunications satellites;

..."

#### **Article 79 § 2**

"The authorisation referred to in Article 78 § 1 (f) shall be granted where the appropriate telecommunications authority has given its consent and none of the grounds for refusal provided for in Article 19 exist."

### ***3. The Federal Decree of 1987***

33. On 20 December 1985 the Federal Council submitted to Parliament, by means of a communication, a draft decree of general application on satellite broadcasting. The decree, enacted on 18 December 1987 and effective from 1 May 1988, contained an Article 28 concerning foreign programmes, which was worded as follows:

"1. A licence from the [appropriate federal] department shall be required in order to retransmit programmes broadcast by satellite under a foreign licence.

2. Such a licence shall be granted where this is not contrary to the country's higher interests and where

(a) the PTT finds that the requirements of Swiss and international telecommunications law are satisfied;

...

3. The department may refuse to grant a licence where a State whose licensing system allows a programme does not accept the retransmission on its territory of programmes broadcast under a Swiss licence."

## **B. The international rules**

### *1. The International Telecommunication Convention*

34. The International Telecommunication Convention, which was concluded in 1947 within the International Telecommunication Union and has been revised several times, came into force on 1 January 1975 and has been ratified by all the Council of Europe's member States. In Switzerland it has been published in full in the Official Collection of Federal Statutes (1976, p. 994, and 1985, p. 1093) and in the Compendium of Federal Law (0.784.16).

Article 22, entitled "Secrecy of telecommunications", provides:

"1. Members agree to take all possible measures, compatible with the system of telecommunication used, with a view to ensuring the secrecy of international correspondence.

2. Nevertheless, they reserve the right to communicate such correspondence to the competent authorities in order to ensure the application of their internal laws or the execution of international conventions to which they are parties."

Under Article 44 member States are bound to abide by the Convention and the Administrative Regulations in all telecommunications offices and stations established or operated by them which engage in international services or which are capable of causing harmful interference with radio services of other countries.

35. The Convention is complemented by three sets of detailed administrative rules (as indicated in Article 83): the Radio Regulations, the Telegraph Regulations and the Telephone Regulations. Only the Radio Regulations are relevant in the instant case.

### *2. The Radio Regulations*

36. The Radio Regulations date from 21 December 1959 and were likewise amended in 1982 and also on other occasions. They run to over a thousand pages and - except for numbers 422 and 725 - have not been published in the Official Collection of Federal Statutes. The latter contains the following reference to them:

"The administrative regulations relating to the International Telecommunication Convention of 25 October 1973 are not being published in the Official Collection of Federal Statutes. They may be consulted at the Head Office of the PTT, Library and Documentation, Viktoriastrasse 21, 3030 Berne, or may be obtained from the ITU, International Telecommunication Union, Place des Nations, 1202 Geneva."

The following provisions are the ones relevant in the present case:

**Number 22**

"Fixed-Satellite Service: A radiocommunication service between earth stations at specified fixed points when one or more satellites are used; in some cases this service includes satellite-to-satellite links, which may also be effected in the inter-satellite service; the fixed-satellite service may also include feeder links for other space radiocommunication services."

**Number 37**

"Broadcasting-Satellite Service: A radiocommunication service in which signals transmitted or retransmitted by space stations are intended for direct reception by the general public.

In the broadcasting-satellite service, the term 'direct reception' shall encompass both individual reception and community reception."

**Number 960**

"Any administration may assign a frequency in a band allocated to the fixed service or allocated to the fixed-satellite service to a station authorized to transmit, unilaterally, from one specified fixed point to one or more specified fixed points provided that such transmissions are not intended to be received directly by the general public."

**Numbers 1992-1994**

"In the application of the appropriate provisions of the Convention, administrations bind themselves to take the necessary measures to prohibit and prevent:

- (a) the unauthorized interception of radiocommunications not intended for the general use of the public;
- (b) the divulgence of the contents, simple disclosure of the existence, publication or any use whatever, without authorization, of information of any nature whatever obtained by the interception of the radiocommunications mentioned [in subparagraph (a)]"

3. *The International Telecommunication Union's reply to the Swiss Government's questions*

37. On 29 September 1983 the Permanent Mission of Switzerland to the international organisations in Geneva put two questions to the International Telecommunication Union, which replied on 31 October, saying *inter alia*:

"17. With regard to this aspect of [the] practical pursuance [of the principle of secrecy of telecommunications], it is ... important, indeed essential, to note also that no precise measures concerning practical ways of effectively ensuring such 'secrecy of telecommunications' are prescribed by either the Convention or the RR [Radio Regulations], but that the RR leave the choice of these practical measures to the administrations of the Union's Members.

18. That is how it is necessary to understand and interpret numbers 1992 and 1993 of the RR, which stipulate that it is administrations that bind themselves to take the necessary measures to prohibit and prevent: (a) the unauthorised interception of radiocommunications not intended for the general use of the public (... that also applies, of course, to number 1994 of the RR).

19. This means that it is for the administration of each of the Union's Members itself to take whatever measures it deems necessary to prohibit and prevent on its territory the unauthorised interception of the radiocommunications referred to in number 1993 of the RR. This, incidentally, is in accordance with the first principle laid down in the preamble to the Convention, which is worded as follows: "While fully recognising the sovereign right of each country to regulate its telecommunication ... ". In the case under consideration here ..., it is for the Swiss Administration to put into effect Switzerland's undertaking to ensure the secrecy of telecommunications by whatever measures it itself considers necessary for the purpose. Such measures may, of course, be different from those regarded as necessary by the administrations of other Members of the Union which have given the same undertaking.

20. With regard, lastly, to the authorisation required for the interception of radiocommunications not intended for the general use of the public ..., it should be inferred from the terms of numbers 1992 and 1993 of the RR that an administration which has committed itself to taking the necessary measures to prohibit and prevent such unauthorised interception in order to ensure the secrecy of telecommunications is also to be regarded as the one empowered to give, where appropriate, the authorisation for such interception on its territory and hence to lay down the terms and conditions on which it grants such authorisation. In the case under consideration here ... it is therefore the Swiss Administration that, with a view to ensuring the secrecy of telecommunications, should decide whether or not such authorisation is to be granted and lay down the terms and conditions it itself considers necessary for the purposes of that decision. By way of a conclusion and a final legal consequence, it should be borne in mind that what was stated in the preceding paragraph also applies, *mutatis mutandis*, in respect of the authorisation itself."

4. *Recommendation T/T2*

38. At a session held in Vienna from 14 to 25 June 1982 the European Conference of Postal and Telecommunications Administrations adopted Recommendation T/T2, which reads:

"The European Conference of Postal and Telecommunications Administrations, considering

(a) ...

(b) that fixed-satellite service signals are intended for reception only by known correspondents duly authorised under the Radio Regulations appended to the International Telecommunication Convention;

(c) ...

(d) that there is a risk that the technical development of small earth stations may facilitate the unauthorised reception and use of fixed-satellite service signals, particularly television signals, thus turning the fixed-satellite service into a broadcasting-satellite service, which would be unlawful under the International Telecommunication Convention and the Radio Regulations;

(e) ...

(f) ...

(g) that all ITU Members are under an obligation to apply and enforce the provisions of the International Telecommunication Convention and the Radio Regulations appended to the Convention; ...

Recommends

1. ...

2. that reception of these signals should be authorised only with the consent of the Administration of the country in which the station transmitting to the satellite is situated and of that of the country in which the prospective receiving earth station is located;

3. ..." (translation by the registry)

### *5. The European Convention on Transfrontier Television*

39. The European Convention on Transfrontier Television, which was drawn up within the Council of Europe and signed on 5 May 1989 by nine States, including Switzerland, is not yet in force. Article 4, entitled "Freedom of reception and of retransmission", provides:

"The Parties shall ensure freedom of expression and information in accordance with Article 10 (art. 10) of the Convention for the Protection of Human Rights and Fundamental Freedoms and they shall guarantee freedom of reception and shall not restrict the retransmission on their territories of programme services which comply with the terms of this Convention."

The Swiss Government made a declaration to the effect that the Confederation would apply the Convention provisionally, in accordance with Article 29 § 3.

## PROCEEDINGS BEFORE THE COMMISSION

40. Autronic AG applied to the Commission on 9 January 1987 (application no. 12726/87). The company complained that the granting of permission to receive uncoded television broadcasts for general use from a telecommunications satellite had been made subject to the consent of the broadcasting State and it alleged an infringement of its right to receive information, as guaranteed in Article 10 (art. 10) of the Convention.

41. The Commission declared the application admissible on 13 December 1988. In its report of 8 March 1989 (made under Article 31) (art. 31) the Commission expressed the opinion, by eleven votes to two with one abstention, that there had been a breach of Article 10 (art. 10). The full text of the Commission's opinion and of the two separate opinions contained in the report is reproduced as an annex to this judgment\*.

## FINAL SUBMISSIONS TO THE COURT

42. At the hearing the Government confirmed their submissions in their memorial. They requested the Court to hold:

"That Article 10 (art. 10) of the Convention is not applicable to the case at issue; In the alternative, that since, by the terms of Article 10 § 1, third sentence (art. 10-1), of the Convention, even broadcasting enterprises may be subject to licensing both to receive and to retransmit television broadcasts sent via a telecommunications satellite, there is all the more reason why a private commercial enterprise should be required to apply for a receiving licence in a given case; In the further alternative, that the State interference relating to this licensing system was "prescribed by law" (including international law) and was necessary, in a democratic society, for the purpose of maintaining international order in telecommunications and to prevent the disclosure of confidential information transmitted by a telecommunications satellite from one fixed point to another."

## AS TO THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 10 (art. 10)

43. Autronic AG complained that the Swiss Post and Telecommunications Authority had made reception of television

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\* Note by the Registrar. For practical reasons this annex will appear only with the printed version of the judgment (volume 178 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.



programmes from a Soviet telecommunications satellite by means of a dish aerial subject to the consent of the broadcasting State (see paragraphs 13-16 above). It regarded this as a violation of Article 10 (art. 10) of the Convention, which provides:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article 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."

Having regard to the arguments of the parties, the first issue to be settled is whether this provision is applicable.

#### **A. Applicability of Article 10 (art. 10)**

44. In the Government's submission, the right to freedom of expression was not relevant to the applicant company's complaint in the present case.

In the first place, the company had not attached any importance to the content of the transmission (programmes in Russian), since it was pursuing purely economic and technical interests. The company was a corporate body whose activities were commercial and its sole object had been to give a demonstration at a fair of the capabilities of a dish aerial in order to promote sales of it. Freedom of expression that was exercised, as in the present case, exclusively for pecuniary gain came under the head of economic freedom, which was outside the scope of the Convention. The "information" in question was therefore not protected by Article 10 (art. 10).

In the second place, the Government emphasised that the television programmes in issue had not been intended for or made accessible to the public at the time Autronic AG could have received them. At that time they were in process of transmission between two fixed points of the distribution network on Soviet territory by means of the telecommunications satellite G-Horizont (see paragraphs 11 and 12 above) and were accordingly covered by the secrecy of such telecommunications under international law, that is to say Article 22 of the International Telecommunication Convention and numbers 1992-1994 of the Radio Regulations.

45. The applicant company argued on the contrary that the right to freedom of expression included the right to receive information from accessible sources and consequently to receive television programmes

intended for the general public which were retransmitted by a telecommunications satellite. Moreover, Article 10 (art. 10) protected not only the substance but also the process of communication. The company could not see why the fundamental rights which corporate bodies undoubtedly enjoyed under Article 10 (art. 10) should be subject to restrictions merely because they were pursuing economic or technical objectives.

46. In its report of 8 March 1989 the Commission noted that "at present" only telecommunications satellites were in operation over Europe. Their programmes were undoubtedly picked up primarily by receiving stations for retransmission but they were also received direct by private aerials or community antennas. The practice of several Council of Europe member States, including France and the United Kingdom, suggested that the International Telecommunication Convention and the Radio Regulations did not preclude direct reception of signals retransmitted by telecommunications satellite where they were intended for the general public.

At the material time - in 1982 - only G-Horizont was concerned, but that was of little importance as Autronic AG's application of 1 November 1982 to the Swiss authorities for a declaratory ruling (see paragraph 17 above) was not limited to transmissions from the Soviet satellite; and in any case, on the Government's own admission, the Swiss PTT would adopt the same attitude today if faced with a similar application. The Commission considered that the distinction between signals according to their means of transmission - direct-broadcasting satellite or, where uncoded, telecommunications satellite - was purely formal. Since no question of secrecy arose and technological progress meant that anyone could receive broadcasts by means of his own equipment, the corresponding right to do so was included in the freedom to receive information.

47. In the Court's view, neither Autronic AG's legal status as a limited company nor the fact that its activities were commercial nor the intrinsic nature of freedom of expression can deprive Autronic AG of the protection of Article 10 (art. 10). The Article (art. 10) applies to "everyone", whether natural or legal persons. The Court has, moreover, already held on three occasions that it is applicable to profit-making corporate bodies (see the *Sunday Times* judgment of 26 April 1979, Series A no. 30, the *Markt Intern Verlag GmbH* and *Klaus Beermann* judgment of 20 November 1989, Series A no. 165, and the *Groppera Radio AG and Others* judgment of 28 March 1990, Series A no. 173). Furthermore, Article 10 (art. 10) applies not only to the content of information but also to the means of transmission or reception since any restriction imposed on the means necessarily interferes with the right to receive and impart information. Indeed the Article (art. 10) expressly mentions in the last sentence of its first paragraph (art. 10-1) certain enterprises essentially concerned with the means of transmission.

Before the Convention institutions the applicant company complained of an interference with its freedom to receive information and ideas regardless of frontiers, and not with its freedom to impart them. Like the Commission, the Court is of the view that the reception of television programmes by means of a dish or other aerial comes within the right laid down in the first two sentences of Article 10 § 1 (art. 10-1), without it being necessary to ascertain the reason and purpose for which the right is to be exercised. As the administrative and judicial decisions complained of (see paragraphs 16, 19 and 27 above) prevented Autronic AG from lawfully receiving G-Horizont's transmissions, they therefore amounted to "interference by public authority" with the exercise of freedom of expression.

The Government's submission based on the concern to protect the secrecy of telecommunications relates only to justification for the interference and accordingly needs to be considered, if at all, in regard to paragraph 1 in fine or paragraph 2 of Article 10 (art. 10-1, art. 10-2).

48. In conclusion, Article 10 (art. 10) was applicable.

## **B. Compliance with Article 10 (art. 10)**

49. The Government submitted in the alternative that the interference was compatible with paragraph 1 in fine, whereby Article 10 (art. 10) is not to "prevent States from requiring the licensing of broadcasting [or] television ... enterprises"; in the further alternative, they argued that the interference satisfied the requirements of paragraph 2.

### *1. Paragraph 1, third sentence, of Article 10 (art. 10-1)*

50. On the first point Autronic AG maintained that the International Telecommunication Convention and the Radio Regulations did not make reception for private use of uncoded programmes broadcast by satellite subject to the consent of the authorities of the broadcasting State and that the third sentence of Article 10 § 1 (art. 10-1) was therefore of no relevance.

The Commission likewise thought that this provision could not justify the impugned interference. Since the rights recognised in paragraph 1 (art. 10-1) applied "regardless of frontiers", the Contracting States could only, in its view, "restrict information received from abroad" on the basis of paragraph 2 (art. 10-2). Furthermore, the third sentence covered only broadcasting, television and the cinema, not the use of receiving equipment.

51. The Government submitted, on the contrary, that international law required that any transmission from a telecommunications satellite should be kept secret and laid a duty upon States to ensure this. Article 10 § 1 (art. 10-1) in fine, they said, empowered States to establish a system whereby broadcasting enterprises had to obtain a licence both to receive such transmissions and to rebroadcast them. This applied all the more in the case of a private commercial company such as Autronic AG.

52. It is unnecessary to consider this submission and, therefore, to rule on the applicability of the third sentence of Article 10 § 1 (art. 10-1) in the instant case; at all events, that sentence "does not ... provide that licensing measures shall not otherwise be subject to the requirements of paragraph 2 (art. 10-2), for that would lead to a result contrary to the object and purpose of Article 10 (art. 10) taken as a whole", as the Court pointed out in its *Groppera Radio AG and Others* judgment of 28 March 1990 (Series A no. 173, p. 24, § 61).

*2. Paragraph 2 of Article 10 (art. 10-2)*

53. It must be determined whether the interference complained of was "prescribed by law", was in pursuance of one or more of the legitimate aims listed in paragraph 2 (art. 10-2) and was "necessary in a democratic society" in order to achieve them.

**(a) "Prescribed by law"**

54. The applicant company submitted that Swiss law did not contain any rule that would provide a legal basis for the decision in issue or that referred to provisions of international telecommunications law. The International Telecommunication Union's reply to the Swiss Government's questions afforded proof of this (see paragraphs 7 and 37 above), as it showed that it was for each member State to take the measures it considered necessary in order to achieve the treaty objectives and honour its own corresponding commitments.

55. The Government considered that the national and international rules satisfied the requirements of precision and accessibility that had been established in the Convention institutions' case-law.

As to the first of these requirements, they pointed out that the decisions taken on 13 January 1983 by the Radio and Television Division and on 26 July 1983 by the Head Office of the PTT were founded on the Federal Council's Ordinance no. 1 of 10 December 1973 and several specific provisions of international telecommunications law (the International Telecommunication Convention and the Radio Regulations).

As to the requirement of accessibility, the Government recognised that only the International Telecommunication Convention had been published in full in the Official Collection of Federal Statutes and in the Compendium of Federal Law. While the Radio Regulations had not been so published - except for numbers 422 and 725 -, the Official Collection indicated how they could be consulted or obtained (see paragraph 36 above). This practice was, the Government said, justified by the length of the text, which ran to more than a thousand pages. Moreover, the practice had been approved by the Federal Court (judgment of 12 July 1982 in the case of *Radio 24 Radiowerbung Zürich AG gegen Generaldirektion PTT*, Judgments of the Swiss Federal Court, vol. 108, Part Ib, p. 264) and could be found in at least

ten other member States of the Council of Europe. Lastly, it was consonant with the European Court's case-law on individuals' access to legal norms in common-law systems.

56. The Commission did not share this opinion. The Federal Council's Ordinance no. 1 did not provide a sufficient legal basis as it did not make any mention of the need for the broadcasting State's consent in order to receive television programmes intended for the general public. As to the Radio Regulations, the provisions relied on by the Government lacked precision.

57. In the Court's view, the legal basis for the interference is to be found in the Federal Act of 1922 and Article 66 of Ordinance no. 1 relating to that Act (see paragraph 31 above), taken together with Article 22 of the International Telecommunication Convention and the provisions of the Radio Regulations cited in paragraph 36 above.

Having regard to the particular public for which they are intended, these enactments are sufficiently accessible (see paragraphs 34 and 36 above and the *Groppera Radio AG and Others* judgment previously cited, Series A no. 173, p. 26, § 68). Their status as "law" within the meaning of Article 10 § 2 (art. 10-2), however, remains doubtful, because it may be asked whether they do not lack the required clarity and precision. The national provisions do not indicate exactly what criteria are to be used by the authorities in determining applications for one of the licences referred to in Article 66, while the international provisions seem to leave a substantial margin of appreciation to the national authorities.

But it does not appear necessary to decide the question, since even supposing that the "prescribed by law" condition is satisfied, the Court comes to the conclusion that the interference was not justified (see paragraphs 60-63 below).

**(b) Legitimate aim**

58. The Government contended that the impugned interference was in pursuance of two aims recognised in the Convention.

The first of these was the "prevention of disorder" in telecommunications. It was important to have regard to the limited number of frequencies available, to prevent the anarchy that might be caused by unlimited international circulation of information and to ensure cultural and political pluralism.

Secondly, the interference was, the Government maintained, aimed at "preventing the disclosure of information received in confidence": the secrecy of telecommunications, which covered the television transmissions in question and was guaranteed in Article 22 of the International Telecommunication Convention, had to be protected.

The applicant company, on the other hand, observed that the material broadcasts were intended for the general public and that other Contracting States had more liberal rules on the subject.

The Commission acknowledged the legitimacy of the first objective mentioned by the Government, the only one on which they had relied in the proceedings before the Commission.

59. The Court finds that the interference was in pursuance of the two aims cited by the Government, which were fully compatible with the Convention - the prevention of disorder in telecommunications and the need to prevent the disclosure of confidential information.

**(c) "Necessary in a democratic society"**

60. The applicant company submitted that the refusal to give it permission did not correspond to any pressing social need; it was not necessary in order to prevent the disclosure of confidential information, since broadcasters anxious to restrict their broadcasts to a particular audience would encode them.

The Government emphasised the distinction between direct-broadcasting satellites and telecommunications satellites; they claimed that international telecommunications law was designed to afford the same legal protection to broadcasts from the latter as to telephonic communications.

In the Commission's view, the case raised no problem with regard to the protection of confidential information; merely receiving G-Horizont's signals could not upset the international telecommunications order, and the distinction between direct-broadcasting satellites and telecommunications satellites was purely formal. In short, the interference appeared to be unnecessary.

61. The Court has consistently held that the Contracting States enjoy a certain margin of appreciation in assessing the need for an interference, but this margin goes hand in hand with European supervision, whose extent will vary according to the case. Where, as in the instant case, there has been an interference with the exercise of the rights and freedoms guaranteed in paragraph 1 of Article 10 (art. 10-1), the supervision must be strict, because of the importance of the rights in question; the importance of these rights has been stressed by the Court many times. The necessity for restricting them must be convincingly established (see the *Barthold* judgment of 25 March 1985, Series A no. 90, p. 26, § 58).

62. The Government maintained that the Court, in carrying out its review, should look at matters as they stood at the material time and, in particular, should ignore the legal and technical developments that had taken place since. On the other hand, the Government held the view that Article 22 of the International Telecommunication Convention and the aforementioned provisions of the Radio Regulations would still leave the PTT no choice but to refuse applications such as those from the applicant

company, if permission had not first been obtained from the authorities of the country in which the station transmitting to the satellite was situated.

The Court observes that later developments can be taken into account in so far as they contribute to a proper understanding and interpretation of the relevant rules.

In the technical field, several other telecommunications satellites broadcasting television programmes have come into service. In the legal field, developments have included, at international level, the signature within the Council of Europe on 5 May 1989 of the European Convention on Transfrontier Television and, at national level, the fact that several member States allow reception of uncoded television broadcasts from telecommunications satellites without requiring the consent of the authorities of the country in which the station transmitting to the satellite is situated.

The latter circumstance is not without relevance, since the other States signatories to the International Telecommunication Convention and the international authorities do not appear to have protested at the interpretation of Article 22 of this Convention and the provisions of the Radio Regulations that it implies. The contrary interpretation of these provisions, which was relied on by the Swiss Government in support of the interference, is consequently not convincing. This is also apparent from paragraphs 19 and 20 of the International Telecommunication Union's reply to the Government's questions (see paragraph 37 above).

63. That being so, the Government's submission based on the special characteristics of telecommunications satellites cannot justify the interference. The nature of the broadcasts in issue, that is to say uncoded broadcasts intended for television viewers in the Soviet Union, in itself precludes describing them as "not intended for the general use of the public" within the meaning of numbers 1992-1994 of the Radio Regulations. Leaving aside the international rules discussed above, there was therefore no need to prohibit reception of these broadcasts.

Before the Court the Swiss Government also argued that a total ban on unauthorised reception of transmissions from telecommunications satellites was the only way of ensuring "the secrecy of international correspondence", because there was no means of distinguishing signals conveying such correspondence from signals intended for the general use of the public. That submission is unpersuasive, since the Government had already conceded before the Commission that there was no risk of obtaining secret information by means of dish aerials receiving broadcasts from telecommunications satellites.

The Court concludes that the interference in question was not "necessary in a democratic society" and that there has accordingly been a breach of Article 10 (art. 10).

## II. APPLICATION OF ARTICLE 50 (art. 50)

### 64. By Article 50 (art. 50) of the Convention,

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

Autronic AG did not seek compensation for damage. On the other hand, the company did claim reimbursement of its costs and expenses in the domestic proceedings and in those before the Convention institutions. It said that these amounted to 42,245 Swiss francs, namely 380 in costs paid to the Swiss authorities for the decision taken by the Head Office of the PTT on 26 July 1983, 40,000 for lawyer's fees (representing 235 hours' work) and 1,865 for sundry expenses.

The Government did not contest the first or third heads, but found the second head "frankly excessive" - the applicant company had not provided a breakdown of the fees and had committed "a procedural error" by submitting an abstract question to the Federal Court, which would in any case not have awarded more than 4,000 Swiss francs in costs if the administrative-law appeal had been allowed.

The Delegate of the Commission did not express any view.

65. Taking its decision on an equitable basis as required by Article 50 (art. 50), the Court considers that Autronic AG is entitled to be reimbursed for costs and expenses in the amount of 25,000 Swiss francs.

## FOR THESE REASONS, THE COURT

1. Holds by sixteen votes to two that Article 10 (art. 10) applied and that there has been a breach of it;
2. Holds unanimously that Switzerland is to pay the applicant company costs and expenses in the amount of 25,000 (twenty-five thousand) Swiss francs;
3. Dismisses unanimously the remainder of the claim for just satisfaction.



Done in English and in French and delivered at a public hearing in the Human Rights Building, Strasbourg, on 22 May 1990.

Rolv RYSSDAL  
President

Marc-André EISSEN  
Registrar

In accordance with Article 51 § 2 (art. 51-2) of the Convention and Rule 53 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) dissenting opinion of Mrs Bindschedler-Robert and Mr Matscher;
- (b) concurring opinion of Mr De Meyer.

R.R.  
M.-A.E.

DISSENTING OPINION OF JUDGES BINDSCHEDLER-  
ROBERT AND MATSCHER*(Translation)*

We regret that we cannot share the majority's opinion as to the applicability of Article 10 (art. 10) or as to the breach if Article 10 (art. 10) is held to be applicable.

1. We do not dispute that a commercial company can in principle rely on Article 10 (art. 10), even in connection with its commercial activities. But we note that in the instances mentioned in the judgment (The Sunday Times, Series A no. 30; Markt Intern Verlag GmbH and Klaus Beermann, Series A no. 165, and Groppera Radio AG and Others, Series A no. 173) the content of the information which the company wished to disseminate was of some significance to it or to the intended recipients. In our opinion, Article 10 (art. 10) presupposes a minimum of identification between the person claiming to rely on the right protected by that Article (art. 10) and the "information" transmitted or received. In the instant case, however, the content of the information - by pure chance Soviet programmes in Russian - was a matter of complete indifference to the company and to the visitors to the trade fair who were likely to see the programmes; the sole purpose was to give a demonstration of the technical characteristics of the dish aerial in order to promote sales of it. That being so, we consider it unreasonable on the part of the company to invoke freedom of information, and Article 10 (art. 10) is accordingly not, in our opinion, applicable in the instant case.

2. Even supposing that Article 10 (art. 10) was applicable, we cannot see that there has been any breach of that provision in the restriction of freedom of reception imposed on the applicant company.

We would point out at the outset that the sale of dish aerials was not itself made subject to any restriction. It is therefore not possible in the instant case to derive a restriction of freedom of information from an alleged restriction of trade in technical equipment for radiocommunication.

As the majority accepted, the restriction that was imposed was in pursuit of a legitimate aim: order in international telecommunications. The majority leave a lingering doubt, however, as to the "law" status of the statutory provisions on which the interference was based. In our opinion, both the International Telecommunication Convention and the international Radio Regulations had, as was recognised in the Groppera Radio AG and Others case (judgment of 28 March 1990, § 68), the necessary clarity and precision in respect of the vital points: the fundamental distinction between direct-broadcasting satellites, whose broadcasts are intended for direct reception by the general public; and telecommunications satellites (broadcasting from point to point), whose broadcasts are not directly intended for the general use of the public, and the obligation to take the necessary measures to

prohibit and prevent the unauthorised interception of radiocommunications not intended for the general use of the public, that is to say broadcasts from telecommunications satellites (RR nos. 22, 37, 1992-1994). It should be remembered that the G-Horizont satellite was precisely a satellite of this latter type.

As the ITU pointed out in its reply of 2 November 1989, it follows from these provisions that the interception of the broadcasts via telecommunications satellite was subject to authorisation by the Swiss PTT, which was empowered to lay down the terms and conditions of such authorisation and which, in so doing, had to have regard to the undertaking it had entered into under the Radio Regulations. The disputed interference - the Swiss authorities' refusal of permission - therefore had a sufficient legal basis.

3. Switzerland's opinion that this undertaking obliged it to make permission for reception subject to the consent of the broadcasting State - in this instance the Soviet Union - was in keeping with the interpretation generally accepted at the time (and even until quite recently), as appears from the replies of the foreign authorities from which Switzerland requested information (the USSR, 7 February 1984; the Netherlands, 1 July 1985; Finland, 8 July 1985; and the Federal Republic of Germany, 29 August 1989); it was also in keeping with the recommendation adopted in 1982 by the European Conference of Postal and Telecommunications Administrations (see the judgment, § 38).

It was therefore legitimate for Switzerland to believe itself to be not only entitled but obliged to make the permission sought by Autronic AG subject to the consent of the appropriate Soviet authorities, in order to discharge the international obligations it had undertaken, by complying with them as they were understood by the relevant international bodies and by the other States, in particular by the State concerned in this instance, the Soviet Union. In other words, since the Soviet authorities' consent had not been secured, the refusal of permission complained of by Autronic AG could be regarded at the time as a measure necessary for ensuring order in international telecommunications.

Even if, in recent years, some national authorities seem to have dispensed with the condition of first securing the consent of the broadcasting State, it nonetheless emerges from the replies received as late as 1989 that this approach is not yet a general one. The inter-State agreements concluded in order to set up Eutelsat and Intelsat, which allow only specially authorised earth stations to pick up broadcasts from satellites, prove this. But even if that were not the case and if views have changed, this cannot be taken as a basis for determining the issue of whether or not there has been a violation of the Convention in this case and therefore of the State's responsibility, which is an issue that has to be assessed in the light of the legal rules in force (and as understood) at the material time.

The fact that the ITU considers that it is for the authorities of each member of the Union themselves to take the "necessary measures to prohibit and prevent the unauthorised interception of radiocommunications not intended for the general use of the public" and that any national administration is empowered to "lay down the terms and conditions on which it grants such authorisation" means only that, under the International Telecommunication Convention and the Radio Regulations, the States enjoy some discretion in deciding on suitable measures for the purposes laid down in the aforesaid international rules; it cannot be argued from this discretion that a measure taken in this context which appears perfectly suitable and proportionate to the legitimate aim pursued, that is to say in the instant case to the prevention of international disorder in telecommunications, is unnecessary. Moreover, the measure complained of was not an absolute, indiscriminate prohibition but a reasonable response to the international undertakings entered into by the State in question, a response which had regard to the legal interests of the broadcasting State.

That being so, we consider that there has been no breach of Article 10 (art. 10).

## CONCURRING OPINION OF JUDGE DE MEYER

*(Translation)*

The reasons which led me to hold that there had been a breach of the right to freedom of expression in the case of Groppera Radio AG and Others<sup>1</sup> could not but prompt me to reach the same decision in the instant case, especially as what was in issue here was measures preventing public demonstration of equipment for receiving television broadcasts.

In this connection I think it useful to say that the licensing power of States in respect of radio and television does not extend to the reception of broadcasts<sup>2</sup> and that, for the rest, such reception can only be interfered with by States as regards methods or circumstances and only to the extent that one or other of those is giving rise to harmful effects which there is a pressing social need to prevent or eliminate<sup>3</sup>. The freedom to see and watch and to hear and listen is not, as such, subject to States' authority.

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<sup>1</sup> Series A no. 173, pp. 39-41.

<sup>2</sup> See § 61 of the Commission's report.

<sup>3</sup> Such as the disturbances mentioned in §§ 79 and 82 of the Commission's report.