(October 29, 1976 p.452, RDP 1977 p.212, concl. Massot), the Conseil d'Etat ordered the Ministry of Foreign Affairs to compensate the owner of a flat who had been unable to obtain a court order expelling his tenant or ordering him to pay his rent because he had diplomatic immunity arising from the same agreement concerning UNESCO.

In *Almayrac*, December 29, 2004 p.465, compensation was awarded in a case where an exchange of letters between France and a foreign country had the effect of depriving the staff of a Franco-African air company engaged in a dispute with it of a real and serious opportunity to receive compensation before the French labour courts. For a comment see R. Errera [2005] P.L.460.

The Administrative Court of Appeal had rejected Miss S's appeal on two grounds. It first held that when she signed her contract she could not have ignored that Mr M had, as a diplomat, immunity of jurisdiction and of execution. She had thus knowingly accepted a risk. A very strange doctrine indeed, given the situation. This, the *Conseil d'Etat*, held, was an error in law. French labour law applied, including its provisions allowing employees to obtain, through a court order, the payment of wages. The court also held that her loss was not a special one in view of the number of international conventions and the number of persons to whom they applied, even if the number of diplomats invoking them was limited. This was also another error in law. The court should have evaluated, to affirm the absence of special character of the loss, the number of other victims of the same kind of loss.

The judgment was quashed and the *Conseil d'Etat* decided on substance. The two conventions mentioned above and the statutes authorising their ratification had not intended to exclude compensation. The loss was a serious one, given the victim's situation. It was also a special one, in view of both the wording of international conventions and the small number of victims of such behaviour of foreign diplomats in France, and a certain one.

The decision orders the State to pay Miss S the sum of €33,380 mentioned above, together with interest from the date of the Labour Court's judgment (February 1, 1999). From 2005 on this interest shall in turn bear interest. The same applied at the end of every following year. The State was ordered to reimburse Miss S lawyer's costs. After five judgments and 12 years Miss S won her legal battle.

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Italy—Italian Constitutional Court adjusts criminal procedure in light of Strasbourg jurisprudence, judgment 113 of April 7, 2011, and judgment 164 of May 12, 2011

Constitutionality; Italy; Murder; Remand; Retrials; Right to fair trial

In two recent judgments concerning law on Italian criminal procedures (the CPP), the Constitutional Court adopted certain Strasbourg approaches as a point of reference in interpreting and annulling domestic law. According to previous constitutional jurisprudence (inter alia, judgments October 22, 2007, 348 and 349), Strasbourg case-law holds an "interpretative relevance" for Italian judges, and the Constitutional Court can annul the domestic law which contravenes the Convention.

As to the first case—judgment 113 of April 7, 2011—the court ruled partially unconstitutional art.630 of the CPP. This article does not allow for the reopening of a criminal trial following a Strasbourg finding that the trial in question had suffered from an art.6 ECHR breach. The court considered the article partially unconstitutional on the basis that it was incompatible with art.46(1) of the ECHR ("The High Contracting Parties undertake to abide by the final judgment of the court in any case to which they are parties") and also that it was in conflict with the duty to respect international obligations under art.117(1) of the Italian Constitution. The court also referred to ECtHR case law, according to which if a trial has been conducted without respecting the due process rules: "in principle, the most appropriate form of redress would be for the applicant to be given a retrial without delay if he or she so requests." (*Öcalan v Turkey*, 46221/99 (2005) 41 E.H.R.R. 45 at [210]. Grand Chamber, judgment of May 12, 2005).

In the most recent judgment, the court declared art.275 of the CPP unconstitutional insofar as it imposes pre-trial detention in cases of murder. Judges had already declared such a provision unconstitutional with regard to sexual crimes (July 21, 2010 265), reasoning that pre-trial detention is not always justified and that alternative measures are possible (e.g. the imposition of certain living requirements).

In contrast, in the case of mafia trials the close connection between suspects and the mafia's active organisation requires the detention awaiting trial. Similarly, in judgment 164/2011 the court affirmed that pre-trial detention is not always required for murder, because such a crime can be occasional and the emotional factors triggering criminal conduct are different from those functionally linked with mafia crimes. With regard to pre-trial detention for the latter, the judges expressly recalled what the Strasbourg Court had said in 2003:

> "In Italy, the remand in custody of individuals accused of crime under art.416, bis, tends to cut the links between them and the 'milieu', their criminal network of origin. It minimises the risk that they maintain personal contact with structures of criminal organisations and do not commit similar offences in the mean time. (*Pantano v Italy*, November 6, 2003 at [70]; translation by David Marrani, Essex University)"

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New Zealand—proportional voting system confirmed in referendum

New Zealand; Proportional representation; Referendums