

**APPLICATIONS N° 24971/94 and 24972/94
(joined)**

Roberto MARRA and Paola GABRIELLI v/SAN MARINO

DECISION of 21 May 1997 on the admissibility of the applications

Article 6, paragraph 1 of the Convention *This provision is not applicable to proceedings to have judges debarred from hearing a case, as such a procedure does not determine a criminal charge against an applicant*

Summary of the relevant facts

After being found in possession of drugs, the applicants were arrested and remanded in custody. Their applications for bail were dismissed, as were their appeals against the decisions refusing them bail. At first instance, Mr Marra was sentenced to seven months' imprisonment and Ms Gabrielli acquitted for want of evidence. They both lodged appeals. They filed an application with the Council of Twelve for two judges to be debarred from hearing their appeal on the ground that they had already examined the case since they had heard (and dismissed) their applications for bail on appeal. The Council of Twelve dismissed their application. One of the two judges challenged by the applicants was subsequently appointed to hear the appeal. Mr Marra was sentenced to one year and two months' imprisonment and Ms Gabrielli to seven months' imprisonment.

COMPLAINTS (Extract)

1 The applicants complain under Article 6 para 1 of the Convention

that their challenge to the judges was examined by the Council of Twelve, which is a political, and not a judicial, body,

THE LAW (Extract)

2 The applicants complain that the procedure followed by the Council of Twelve in examining their application to have MN and PG debarred from hearing their appeal failed to comply with the guarantees laid down by Article 6 para 1 of the Convention concerning independence and impartiality, since the Council of Twelve is a political, and not a judicial, body

The Commission recalls that Article 6 of the Convention applies only to disputes (*contentious*) over civil rights and obligations" or proceedings relating to the determination of any criminal charge. The proceedings in the instant case concerned only the challenge to judges MN and PG and were not therefore brought to determine criminal charges against the applicants. Article 6 cannot therefore apply (see No 24179/94 Dec 16 10 96, unpublished and, *mutatis mutandis* No 19231/91 Dec 9 1 95, unpublished)

The Commission notes further that the applicants do not complain about a lack of impartiality in the substantive proceedings

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention provided for in Article 27 para 2