



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

COURT (CHAMBER)

CASE OF DEMICOLI v. MALTA

(Application no. 13057/87)

JUDGMENT

STRASBOURG

27 August 1991

In the case of Demicoli v. Malta*,

The European Court of Human Rights, sitting, in accordance with Article 43** (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court***, as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr J. CREMONA,
Mr Thór VILHJÁLMSSON,
Mr J. PINHEIRO FARINHA,
Sir Vincent EVANS,
Mr R. BERNHARDT,
Mr A. SPIELMANN,
Mr N. VALTICOS,
Mr I. FOIGHEL,

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

Having deliberated in private on 22 February and 26 June 1991,

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") on 21 May 1990, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 13057/87) against the Republic of Malta lodged with the Commission under Article 25 (art. 25) by Mr Carmel Demicoli, a Maltese citizen, on 22 May 1987.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Malta recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by

* The case is numbered 33/1990/224/288. 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.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

*** The amendments to the Rules of Court which entered into force on 1 April 1989 are applicable to the present case.

the respondent State of its obligations under Article 6 paras. 1 and 2 (art. 6-1, art. 6-2).

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

3. The Chamber to be constituted included ex officio Mr J. Cremona, the elected judge of Maltese nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 24 May 1990 the President drew by lot, in the presence of the Registrar, the names of the seven other members, namely Mr Thór Vilhjálmsson, Sir Vincent Evans, Mr R. Bernhardt, Mr A. Spielmann, Mr N. Valticos, Mr I. Foighel and Mr R. Pekkanen (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr Pekkanen was prevented from sitting and was replaced by the first substitute judge, Mr J. Pinheiro Farinha (Rules 22 para. 1 and 24 para. 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Maltese Government ("the Government"), the Delegate of the Commission and the representative of the applicant on the need for a written procedure (Rule 37 para. 1). In accordance with the order made in consequence, the Registrar received, on 3 September 1990, the applicant's memorial and, on 4 September 1990, the Government's.

By letter of 15 October, the Secretary to the Commission informed the Registrar 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 had directed on 9 July 1990 that the oral proceedings should open on 20 February 1991 (Rule 38).

6. On different dates between 4 October 1990 and 19 February 1991 the Commission and the Government filed a number of documents the production of which had been requested by the Registrar on the President's instructions.

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

There appeared before the Court:

- for the Government

Dr A. Borg BARTHET, Attorney General,

Dr L. QUINTANA, Senior Counsel

for the Republic,

Agent,

Counsel,

- for the Commission

Mr E. BUSUTTIL,

Delegate;

- for the applicant

Dr G. BONELLO, advocate,

Counsel.

The Court heard addresses by Dr Borg Barthet for the Government, by Mr Busuttill for the Commission, and by Dr Bonello for the applicant as well as replies to questions put by the Court and by two of its members individually.

8. The Registrar received, on 26 March 1991, the observations of the Government regarding the applicant's claim under Article 50 (art. 50) of the Convention, on 15 and 23 April 1991, the comments of the applicant and the Delegate of the Commission thereon and, on 23 May 1991, the Government's reply thereto.

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

9. The applicant is the editor of the political satirical periodical "MHUX fl-Interesstal-Poplu" (NOT in the people's interest).

10. On 3 January 1986 an article entitled "Mix-Xena tax-Xandir" (From the Broadcasting Scene) appeared in the applicant's periodical commenting on a particular parliamentary debate in the Maltese House of Representatives, which had been broadcast live on television. The article included the following passages:

"SEND IN THE CLOWN

Some felt offended that I had lately written that, during the budget debates, I went berserk and started throwing tomatoes at the television set. And this happened when certain Members of Parliament had not as yet spoken in the debates. I will let your fertile imagination take its course to imagine what I did when two of them in particular were speaking.

THE PARLIAMENTARY CLOWN

I do not know if I shall be in breach of the Sedition Laws if I describe a minister as a clown. But I cannot fail to comment on Debono Grech's behaviour in Parliament. It seems that Debono Grech deliberately tried to make us laugh. If this is so, Debono Grech is ridiculing what is supposed to be the highest institution of the land.

Let us see what Debono Grech was up to. His first sentence was meant to raise some laughs as he maintained that Lawrence Gatt, a Nationalist Member of Parliament, badly needed a pair of spectacles. This was rather a flat joke. Then he started calling names Bonello Dupuis [a Nationalist Member of Parliament] and described the latter as a man who lacked principles. Then he tried to make us laugh once again when he referred to the killing of pigs. Anyway, he tried to play the clown once, twice and even three times. And some of his jokes were rather vulgar.

I felt extremely angry that the man who is representing the people, and that includes yours truly, on agricultural matters, was using this serious and important debate to play the clown. Well, I thought, if Debono Grech has the right to speak the way he likes on the television screen, in my home, then I am also entitled to speak my mind. And I started booing him with all my might, and had I had enough tomatoes, I would have used them for other purposes.

You may ask me what I did when 'il-Prof's' Bartolo of Cospicua took the microphone. First and foremost, this man is not as yet aware that Mintoff has resigned and Bartolo still echoes him to this very day. Secondly, you stand no chance of finding anything worthwhile after analysing Bartolo's speech. At least, you may find something worthwhile in Debono Grech's speech, but you discover absolutely nothing in Bartolo's. Let me tell you what I did when this professor stood up to speak.

I booed this last one so heartily that the neighbours thought that I had had an epileptic fit. To crown it all, Mrs Grech, that nosy parker, entered my home unannounced and without permission and she found me on the floor in an ecstasy of booing. She thought I had become a lunatic. Really, the scene in front of the television was scary. Bartolo was gesticulating and talking rubbish on the Magruvision Television set while I lay sprawled on the floor gesticulating like a madman. And I did all this so that I may have enough material for 'MHUX'. To persuade Mrs Grech that nothing was really wrong with me I had to allow her to take my pulse rate, examine my tongue and take my temperature."

11. On 13 January 1986 Mr Debono Grech and Mr Bartolo, two of the Members of Parliament referred to, brought the article to the attention of the House of Representatives as an alleged breach of privilege. On 10 February, before the applicant had been heard, the Speaker announced that he had examined the matter and found a prima facie case of breach of privilege. The House, on a proposal by Mr Debono Grech, proceeded on the same day to pass a resolution which stated that the House considered the article in question as a breach of its privileges according to section 11(1)(k) of the House of Representatives (Privileges and Powers) Ordinance (Chapter 179 of the Revised Edition of the Laws of Malta; see paragraph 20 below), hereinafter referred to as "the Ordinance".

12. On 4 March 1986 the House of Representatives considered a motion, proposed by Dr Joseph Cassar and seconded by Mr Debono Grech, to direct the applicant to be summoned by notice under section 13(2) of the Ordinance to answer a charge of defamatory libel under section 11(1)(k) of the Ordinance. The terms of the motion were:

"That the House after having by its own resolution decided in the sitting of 10 February 1986 that the article bearing the title 'Mix-Xena tax-Xandir' which appeared at page 4 of the 'MHUX fl-Interesstal-Poplu' of 3 January 1986 be considered a breach of privilege according to section 11(1)(k) of the House of Representatives (Privileges and Powers) Ordinance;

The House orders Carmel Demicoli of Flat 1, Ferrini Court, University Street, Msida, as editor of the journal 'MHUX fl-Interesstal-Poplu', to appear before it in the sitting of 17 March 1986 at 6.30 pm to state why he should not be found guilty of

breach of privilege according to section 11(1)(k) of the House of Representatives (Privileges and Powers) Ordinance; and

The House also orders the subpoena of every witness that the Clerk of the House will be asked to summon."

The then Leader of the Opposition, Dr Fenech Adami, drew attention to the wording of the resolution of 10 February 1986 which he considered out of order since it did not make it clear that there was only a *prima facie* case of breach of privilege. For his part, Dr Cassar expressed the opinion that the proposed motion did not state that the applicant was guilty:

"Here we are not saying that he is guilty. We are saying: Come here so that on the 17th of March you will say why you are not guilty. And if ever you were to convince us that you are not guilty we will say that you are not guilty; if you will not convince us we will say you are guilty."

After the debate the motion was adopted as proposed by Dr Cassar.

13. On 13 March 1986 Mr Demicoli brought an application before the Civil Court of Malta in exercise of its constitutional jurisdiction challenging the proceedings instituted against him by the House of Representatives on the ground that these proceedings, which were penal in nature, violated his right under section 40 of the Constitution (see paragraph 22 below) to be given a fair hearing by an independent and impartial court.

14. On 17, 18 and 19 March 1986, before the delivery of the judgment of the Civil Court, the applicant appeared before the House of Representatives with his lawyer.

It was submitted as a point of order that further proceedings on the case in the House should be suspended until the court had determined the constitutional issue, but the Speaker ruled that the House should proceed with the case before it. The question was then put to the applicant, "Does the editor consider himself to be guilty or not please? Mr Demicoli, do you consider yourself guilty?" When the applicant refused to answer whether he was guilty or not, he was threatened with further proceedings for contempt. One of the members of the House, Dr Joseph Brincat, stated on a point of order that the breach of privilege proceedings were to be considered as being of a criminal nature and accordingly - an argument accepted by the Speaker - the rule of criminal procedure that he who stands mute is presumed to have answered 'not guilty' should be applied.

Dr Cassar proceeded to adduce the evidence against the applicant, reading out the impugned article and concluding that it insulted Mr Debono Grech and Mr Bartolo in connection with their conduct in the House. The latter were invited by the Speaker to comment and both made statements to the effect that they considered themselves ridiculed in their capacity as members of the House, as well as in their private lives.

Mr Debono Grech subsequently said,

"Mr Speaker, this is the last time I come here and go to Court in connection with this dirt. And if they attack me personally I will neither seek redress here nor go to court. Okay? And if trouble crops up in my family, if you [pointing to defence lawyer] defend him [the applicant], I will ['sue you' (according to the Government's translation)] ['take my revenge on you' (according to the applicant's translation)]."

On 19 March 1986 the House adopted a resolution in the following terms:

"That the House after having considered the case of breach of its privileges caused by the article published at page 4 of the journal 'MHUX fl-Interesstal-Poplu' Number 63 of 3 January 1986;

Finds the editor Carmel Demicoli guilty of breach of privilege."

The House postponed the question of punishment until another sitting, due, according to the Government, to the pending constitutional proceedings.

15. On 16 May 1986 the Civil Court delivered judgment in favour of the applicant. It began by finding that the proceedings were not criminal in nature:

"The House of Representatives is not an ordinary court, although, because of the system of checks and balances already referred to, it also has quasi-judicial functions, apart from its principal function of legislator. And the law that provides for the privileges and contempt of the House (chapter 179) is not part of the criminal law of the country. It is true, as argued by the applicant, that there is a great resemblance between the penalties provided for by the Criminal Code and those provided for by this particular law. However, the decision of the House is not the criminal conviction that emerges from a decision of the Criminal Court, and the declaration of guilt for contempt and the consequential sanctions from such a declaration, despite having the same form as criminal penalties - admonitions, payment of money, imprisonment - are nonetheless not criminal convictions."

However, the Court continued:

"The House may take proceedings for contempt where, among other things, there results:

'(k) the publication of any defamatory libel on the Speaker or any Member touching anything done or said by him as Speaker or as a Member in the House or in a Committee thereof;' (Vide sect. 11 Chapter 179).

For the House to have jurisdiction to take proceedings for contempt there must be a defamatory libel (a mixed question of fact and law) and the law did not state that this is a question that must be established by the House, but something that must exist objectively; this being so, the declaration of the existence of the defamatory libel must first be made objectively by the Court, and then there will be proceedings in the House for contempt."

The Civil Court concluded that the Ordinance in question did not authorise the House of Representatives of its own initiative to define what is a defamatory libel, and that, if and when it acts upon a contempt, it must act according to the principles of natural justice. It ordered that the applicant be

placed in the position in which he was before proceedings were instituted against him on the basis of breach of privilege and that no further proceedings be taken against him on the basis of the resolution and motion in question.

16. On 13 October 1986 the Constitutional Court, on appeal by both parties, disagreed with the conclusions of the Civil Court. It held that the Constitution authorised Parliament to enact laws establishing its privileges, immunities and powers, that accordingly the powers given to the House by virtue of Chapter 179 of the Laws of Malta did not violate the person's right to a fair hearing by an independent court as guaranteed under section 40 of the Constitution and that in those circumstances the lower court had not been entitled to look further into the matter or to afford the remedies indicated in its judgment.

17. On 9 December 1986 the House of Representatives summoned the applicant before it in order to decide the penalty to be imposed upon him. On being asked if he wished to comment, the applicant stated through his lawyer that he had nothing to say regarding the punishment but would comply with the House's decision. He was fined 250 Maltese liri and ordered to publish the resolution of 19 March 1986 in his paper.

18. Mr Debono Grech and Mr Bartolo participated throughout in the proceedings brought against the applicant, save that Mr Bartolo died before the sitting of 9 December 1986.

19. The applicant has not as yet paid the fine and no steps have been taken to enforce its recovery.

II. THE RELEVANT DOMESTIC LAW

20. As applicable at the relevant time, the provisions of the Ordinance concerning the privileges of the House of Representatives were as follows:

Section 9

"An oath or affirmation taken or made by a witness or by an expert before the House of Representatives or any Committee thereof shall for the purposes of the Criminal Code (Chapter 12) be comparable to an oath or affirmation taken or made before a Court in civil matters."

Section 11

"(1) The House shall have the power to punish with a reprimand or with imprisonment for a period not exceeding sixty days or with a fine not exceeding five hundred liri or with both such fine and such imprisonment, any person, whether a Member of the House or not, guilty of any of the following acts:

...

(k) the publication of any defamatory libel on the Speaker or any Member touching anything done or said by him as Speaker or as a Member in the House or in a Committee thereof;

...

(4) For the purposes of this section - 'publication' means any act whereby any printed matter is or may be communicated to or brought to the knowledge of any person or whereby any words or visual images are broadcast; ...

(5) A person shall be deemed guilty of the acts mentioned in paragraph[s] (k) ... of subsection (1) of this section if the publication referred to in paragraph[s] (k) ... consists in the publication of such defamatory libel, false or perverted report, or misrepresentation in printed form in Malta, or in the distribution in Malta of such printed matter containing such defamatory libel, false or perverted report, or misrepresentation, from whatsoever place such printed matter may originate, or in any broadcast from any place in Malta or any place outside Malta of any such defamatory libel, false or perverted report, or misrepresentation."

Subsection (6) entitles the House to order in the case of a newspaper, in addition to the punishments under subsection (1), the publication in a subsequent issue of the motion finding the accused guilty of an act mentioned in paragraph (k) of subsection (1).

Section 13

"(1) ...

(2) ... the House may direct the offender to be summoned by notice signed by the Clerk of the House, to appear before it at a specified sitting to answer the charge.

(3) If the offender fails to appear, it shall be lawful for the Speaker of the House on the direction thereof, to issue a warrant for the offender to be arrested and brought before the House.

...

(5) In all cases the offender shall be given the opportunity to speak in his own defence and, ..., he may be assisted by an advocate.

..."

Section 14

"(1) ...

(2) When the House fines a person, the fine shall be paid to the Accountant General through the Clerk of the House within two clear days of its infliction. At the next following sitting the Clerk shall report to the Speaker the payment so made or its default; in the latter case the House may decide on the commutation of the fine into a term of imprisonment or give other directions at its discretion."

21. Defamatory libel is a criminal offence under the Press Act 1974 (Act No. XL of 1974).

Section 3 of the Act provides:

"The offences mentioned in this Part of the Act are committed by means of the publication or distribution in Malta of printed matter, from whatsoever place such matter may originate, or by means of any broadcast."

Section 11 of the Act provides:

"Save as otherwise provided in this Act, whosoever shall, by any means mentioned in Section 3 of this Act, libel any person, shall be liable on conviction:

(a) if the libel contains specific imputations against such person tending to injure his character and reputation, or to expose him to public ridicule or contempt, to imprisonment for a term not exceeding three months or to a fine (multa) not exceeding two hundred liri or to both such imprisonment and fine;

(b) in any other case, to imprisonment for a term not exceeding one month or to a fine."

22. The Constitution of Malta also refers to the privileges of Parliament.

Under section 34 no person is to be deprived of his personal liberty save as may be authorised by law, inter alia, in execution of an order of the House of Representatives punishing him for contempt of itself or of its members or for breach of privilege, or directing that he be brought before it.

Section 40 provides for any person charged with a criminal offence to be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

Section 41(1) guarantees freedom of expression with the following proviso under subsection (2):

"Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that the law in question makes provision -

(a) that is reasonably required -

(i) in the interests of defence, public order, public morality or decency, or public health; or

(ii) for the purpose of [...] protecting the privileges of Parliament [...]

... ."

PROCEEDINGS BEFORE THE COMMISSION

23. In his application (no. 13057/87) lodged with the Commission on 22 May 1987, Mr Demicoli submitted that the proceedings against him in the House of Representatives involved the determination of a "criminal charge", within the meaning of Article 6 para. 1 (art. 6-1) of the Convention, and that, in breach of that provision, he had not received a "fair and public hearing ... by an independent and impartial tribunal". He also alleged a failure to observe the presumption of innocence, guaranteed by Article 6 para. 2 (art. 6-2).

24. The Commission declared the application admissible on 15 March 1989. In its report of 15 March 1990 (drawn up in accordance with Article 31) (art. 31), it expressed the unanimous opinion that there had been a breach of Article 6 para. 1 (art. 6-1) and that no separate issue arose under Article 6 para. 2 (art. 6-2).

The full text of the Commission's opinion and of the concurring opinion contained in the report is reproduced as an annex to this judgment*.

AS TO THE LAW

I. PRELIMINARY OBJECTION

25. By way of preliminary objection, the Government pleaded, as they had already done before the Commission, that Mr Demicoli, in lodging his complaint on 22 May 1987, had failed to comply with the rule, in Article 26 (art. 26) of the Convention, that applications to the Commission must be lodged "after all domestic remedies have been exhausted ... and within a period of six months from the date on which the final decision was taken".

26. The Government, relying in particular on the wording and grammatical construction of Article 26 (art. 26), as well as on the travaux préparatoires, argued that the date of the "final decision" was 13 October 1986, the date of the judgment of the Constitutional Court (see paragraph 16 above), that being the final court from which the applicant could have sought a remedy. They submitted that the sentencing of Mr Demicoli by the House of Representatives - which was postponed until 9 December 1986 pending the outcome of the domestic constitutional proceedings (see paragraph 17 above) - was merely the culmination of the breach of privilege proceedings against the accused and could not be considered to be the final

* Note by the registry: For practical reasons this annex will appear only with the printed version of the judgment (volume 210 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

decision in regard to the exhaustion of domestic remedies within the terms of Article 26 (art. 26).

27. The proceedings against the applicant culminated in the decision of 9 December 1986 as to his sentence. That was the date on which his position was finally determined. The Court agrees with the Commission that this date must be regarded as the date of the final decision for the purposes of Article 26 (art. 26) of the Convention.

28. The Government's preliminary objection must therefore be rejected.

II. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1)

29. The applicant submitted that the charge of breach of privilege of which he was found guilty by the House of Representatives, was a "criminal charge" falling within the ambit of Article 6 (art. 6) of the Convention, which in paragraph 1 (art. 6-1) provides:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law ..."

He alleged that he had not been given a hearing by a tribunal complying with these requirements.

A. Applicability of Article 6 PARA. 1 (art. 6-1)

30. The Government submitted that in Maltese law the breach of privilege proceedings taken against the applicant for defamatory libel were not "criminal" but disciplinary in character.

This view, contested by the applicant, was not supported by the Commission. It considered that the proceedings in question involved the determination of a "criminal charge" and that Article 6 para. 1 (art. 6-1) was therefore applicable.

31. The Court has already had to determine similar issues in other cases (see the Weber judgment of 22 May 1990, Series A no. 177, p. 17, para. 30, and the other judgments referred to therein). While it is recognized that States have the right to distinguish between criminal offences and disciplinary offences in domestic law, it does not follow that the classification thus made is decisive from the viewpoint of the Convention. The notion of "criminal charge" in Article 6 (art. 6) has an autonomous meaning and the Court must satisfy itself that the line drawn in domestic law does not prejudice the object and purpose of Article 6 (art. 6).

In order to determine whether the breach of privilege of which Mr Demicoli was found guilty is to be regarded as "criminal" within the meaning of Article 6 (art. 6), the Court will apply the three criteria which were first laid down in the Engel and Others judgment of 8 June 1976

(Series A no. 22, pp. 34-35, para. 82) and have been consistently applied in the Court's subsequent case-law (see, apart from the judgments referred to above, the Öztürk judgment of 21 February 1984, Series A no. 73, and the Campbell and Fell judgment of 28 June 1984, Series A no. 80).

32. It must first be ascertained whether the provisions defining the offence in issue belong, according to the legal system of the respondent State, to criminal law, disciplinary law or both concurrently.

The legal basis of the proceedings taken against Mr Demicoli was provided by section 11 of the Ordinance (see paragraph 20 above). The applicant argued that the origin of the Maltese law of Parliamentary privilege is to be found in United Kingdom law and that breaches of privilege are referred to as crimes in certain textbooks on English law. As noted by the Commission and the Government, breach of Parliamentary privilege is not formally classified as a crime in Maltese law. In its judgment of 16 May 1986 (see paragraph 15 above), the Civil Court ruled that "the law that provides for the privileges and contempt of the House (chapter 179) is not part of the criminal law of the country". The Constitutional Court, in its judgment of 13 October 1986, did not find it necessary to decide whether "the act constituting the contempt or breach of privilege amounts to a criminal act or not."

33. However, as already noted above, the indication afforded by national law is not decisive for the purpose of Article 6 (art. 6). A factor of greater importance is "the very nature of the offence" in question (see, *inter alia*, the above-mentioned Campbell and Fell judgment, Series A no. 80, p. 36, para. 71, and the above-mentioned Weber judgment, Series A no. 177, p. 18, para. 32).

In this context the applicant quoted from the records of the Parliamentary sittings of 4, 17, 18 and 19 March 1986 to highlight the fact that certain Members of the House equated the proceedings taken against him with criminal proceedings. He pointed out that defamatory libel is a criminal offence under the Press Act 1974 (see paragraph 21 above).

The Government, on the other hand, submitted that, although some breaches of privilege may also constitute criminal offences, Parliamentary privilege, being concerned with respect for the dignity of the House, pursued a different aim from that of the criminal law. Moreover, defamatory libel may not only constitute an offence under the criminal law, but may also give rise to a civil claim for damages, which may include punitive damages. Furthermore, the non-criminal nature of breaches of privilege was illustrated by the fact that the Ordinance treats perjury before the House as equivalent to perjury before a court in civil and not in criminal matters.

Mr Demicoli was not a Member of the House. In the Court's view, the proceedings taken against him in the present case for an act of this sort done outside the House are to be distinguished from other types of breach of privilege proceedings which may be said to be disciplinary in nature in that

they relate to the internal regulation and orderly functioning of the House. Section 11(1)(k) potentially affects the whole population since it applies whether the alleged offender is a Member of the House or not and irrespective of where in Malta the publication of the defamatory libel takes place. For the offence thereby defined the Ordinance provides for the imposition of a penal sanction and not a civil claim for damages. From this point of view, therefore, the particular breach of privilege in question is akin to a criminal offence under the Press Act 1974 (see, *mutatis mutandis*, the above-mentioned Weber judgment, Series A no. 177, p. 18 para. 33 in fine).

34. The third criterion is the degree of severity of the penalty that the person concerned risks incurring. The Court notes that in the present case, whilst the House imposed a fine of 250 Maltese liri on the applicant which has not yet been paid or enforced, the maximum penalty he risked was imprisonment for a period not exceeding sixty days or a fine not exceeding 500 Maltese liri or both. What was at stake was thus sufficiently important to warrant classifying the offence with which the applicant was charged as a criminal one under the Convention (see the same judgment, *ibid.*, p. 18, para. 34).

35. In conclusion, Article 6 applied in the present case.

B. Compliance with Article 6 para. 1 (art. 6-1)

36. The applicant submitted that in the proceedings before the House of Representatives he did not receive a fair hearing by an independent and impartial tribunal. The political context in which the proceedings against him were conducted "made a mockery of the whole concept of the independence and the impartiality of the judiciary". This, he claimed, was evident from statements made by Members of the House in relation to his case in the official record of the Parliamentary sittings (see paragraph 14 above). He maintained that in breach of privilege proceedings Members of Parliament sit as victims, accusers, witnesses and judges. In his case it was the privilege of the individual Members concerned that was in issue and not, as the Government suggested, that of the whole House. Even if the Government's view on this point were accepted, that would mean, in his view, that "each and every Member of the House of Representatives is a *judex in causa sua*".

37. The Government argued that the House of Representatives was "an independent and impartial tribunal established by law" for the purpose of hearing the disciplinary charge against Mr Demicoli. The Maltese House of Representatives was an independent authority "*par excellence*". The House was independent of the executive and of the parties, its Members were elected for a term of five years and its proceedings afforded the necessary guarantees. Accordingly it fulfilled all the requirements of a tribunal set out in the Ringeisen judgment of 16 July 1971 (Series A no. 13, p. 39, para. 95).

The independence of the House was sufficient to exclude any legitimate doubt as to its impartiality. Moreover, the Members directly satirised by the article intervened to defend the dignity of the House and not just their own reputations.

38. The Commission took the view that the House of Representatives could not be considered to be a court and did not fulfil the requirements of the Convention as to independence or impartiality.

39. The Court, like the Commission, notes that the power of the Maltese Parliament to impose disciplinary measures and to govern its own internal affairs is not in issue. Moreover, the Court's task is not to review the relevant law and practice in abstracto, but to determine whether the manner in which the proceedings against Mr Demicoli were conducted gave rise to a violation of Article 6 para. 1 (art. 6-1).

According to its case-law, "a 'tribunal' is characterised in the substantive sense of the term by its judicial function, that is to say determining matters within its competence on the basis of rules of law and after proceedings conducted in a prescribed manner ... It must also satisfy a series of further requirements - independence, in particular of the executive; impartiality; duration of its members' terms of office; guarantees afforded by its procedure - several of which appear in the text of Article 6 para. 1 (art. 6-1) itself" (see the Belilos judgment of 29 April 1988, Series A no. 132, p. 29, para. 64).

40. In the circumstances of the present case the House of Representatives undoubtedly exercised a judicial function in determining the applicant's guilt. The central issue raised in this case is whether the requirement of impartiality was duly respected. For the purposes of Article 6 para. 1 (art. 6-1) this must be determined according to a subjective test, that is on the basis of the personal conviction or interest of a particular judge in a given case, and according to an objective test, namely ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect. In this context even appearances may be of a certain importance, particularly as far as criminal proceedings are concerned (see, amongst other authorities, the Hauschildt judgment of 24 May 1989, Series A no. 154, p. 21, paras. 46-48).

41. The two Members of the House whose behaviour in Parliament was criticised in the impugned article and who raised the breach of privilege in the House (see paragraph 11 above) participated throughout in the proceedings against the accused, including the finding of guilt and (except for one of them who had meanwhile died) the sentencing.

Already for this reason, the impartiality of the adjudicating body in these proceedings would appear to be open to doubt and the applicant's fears in this connection were justified (see the above-mentioned Hauschildt judgment, Series A no. 154, p. 23, para. 52).

42. Accordingly, there has been a breach of Article 6 para. 1 (art. 6-1) of the Convention on the point considered. It is therefore not necessary to go into other aspects of this provision.

III. ALLEGED VIOLATION OF ARTICLE 6 PARA. 2 (art. 6-2)

43. The applicant submitted that the resolution of 10 February 1986 and the motion of 4 March 1986 (see paragraphs 11 and 12 above) placed the burden of proving innocence on the accused and accordingly violated Article 6 para. 2 (art. 6-2) of the Convention.

The Government denied that the wording of the resolution and the motion had this effect.

In view of the above finding of a violation of Article 6 para. 1 (art. 6-1), the Court does not consider it necessary to examine this issue.

IV. APPLICATION OF ARTICLE 50 (art. 50)

44. Article 50 (art. 50) provides:

"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."

Mr Demicoli claimed under this provision compensation for both pecuniary and non-pecuniary damage, together with reimbursement of legal costs and expenses referable to the domestic proceedings as well as those before the Convention institutions. He further requested that the Court direct the taking of certain legal measures.

A. Legal measures

45. The applicant requested the Court to bring about, with the Government's concurrence, the passing of a Parliamentary resolution revoking the two resolutions by which he was found guilty and fined, the amendment of the Ordinance to repeal section 11(1)(k) and the repeal of all references to breach of privilege proceedings in the Constitution of Malta. These measures were opposed by the Government.

The Court notes that the Convention does not empower it to act on this request. It recalls that it is for the State to choose the means to be used in its domestic legal system to redress the situation that has given rise to the violation of the Convention (see, *mutatis mutandis*, the Zanghì judgment of 19 February 1991, Series A no. 194-C, p. 48, para. 26).

B. Damage

46. By way of compensation for pecuniary damage the applicant sought an indemnity for the Lm 250 (Maltese liri) fine which, though still unpaid, remains due. Since this fine has not been paid and no measures have been taken to enforce payment, the Court sees no need to make any order.

47. The applicant also sought "a token contribution of Lm 10,000" by way of compensation for non-pecuniary damage, not only for the fear and anguish resulting from the "illegitimate trial to which he was subjected" in what he described as an intimidatory atmosphere, but also for the loss of future employment prospects in the public service because he had been found guilty by Parliament.

48. Although it cannot be excluded that the applicant did suffer some degree of distress, the Court, having regard to the circumstances of the case, is of the opinion that the finding of a violation in the present judgment constitutes in itself adequate just satisfaction under this head.

C. Costs and expenses

49. Mr Demicoli sought, in addition, reimbursement of costs and expenses incurred in the proceedings in the Maltese courts and before the Convention institutions.

The Court has consistently held that reimbursement may be ordered in respect of costs and expenses that (a) were actually and necessarily incurred by the injured party in order to seek, through the domestic legal system, prevention or rectification of a violation, to have the same established by the Commission and later by the Court and to obtain redress therefor, and (b) are reasonable as to quantum (see, among other authorities, the Bricmont judgment of 7 July 1989, Series A no. 158, p. 33, para. 101).

50. As regards the breach of privilege proceedings before the House of Representatives, Mr Demicoli sought Lm 600 by way of "attendance" and "extrajudicial" fees.

As regards the constitutional action challenging the validity of the breach of privilege proceedings, he sought Lm 901.90 (the amount of the official taxed bill of costs) as well as a further Lm 300 by way of "extrajudicial" fees.

51. For the proceedings before the Commission, the applicant sought Lm 1,828 for travel and subsistence expenses for the appearance of himself, his lawyer and his legal procurator at its hearing, in addition to Lm 3,000 by way of "judicial and extrajudicial" fees.

As to the proceedings before the Court, he sought Lm 995 by way of travel and subsistence expenses for himself and his lawyer and also Lm 1,500 by way of fees.

52. Most of the amounts claimed were contested by the Government on various grounds, notably as being excessive.

The Delegate of the Commission considered that the applicant should receive a sum to cover his reasonable legal costs, but made no proposal as to quantum, leaving the matter to the Court's discretion.

53. Taking its decision on an equitable basis, as required by Article 50 (art. 50), and applying the criteria laid down in its case-law, the Court considers that legal costs and travel and subsistence expenses may be assessed at Lm 5,000 for both the national and the Strasbourg proceedings.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Rejects the Government's preliminary objection;
2. Holds that Article 6 para. 1 (art. 6-1) of the Convention applied in the instant case and that there has been a breach of it;
3. Holds that it is not necessary to examine the case under Article 6 para. 2 (art. 6-2);
4. Holds that the respondent State is to pay to the applicant the sum of Lm 5,000 (five thousand Maltese liri) in respect of all costs and expenses;
5. Dismisses 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 27 August 1991.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of the Rules of Court, the concurring opinion of Mr Pinheiro Farinha, approved by Mr Thór Vilhjálmsson and Mr Spielmann, is annexed to this judgment.

R.R.
M.-A. E.

CONCURRING OPINION OF JUDGE PINHEIRO FARINHA,
APPROVED BY JUDGES THÓR VILHJÁLMSSON AND
SPIELMANN

(Translation)

I believe we should have added the following to paragraph 27:

"In these circumstances it is unnecessary to examine whether the six-month period began to run only on the date - 1 May 1987 - when Malta's declaration under Article 25 (art. 25) gave the applicant access to the Commission."

The question remains open and the Court does not propose to decide it for the time being (see, *mutatis mutandis*, the Bozano judgment of 18 December 1986, Series A no. 111, p. 22, para. 50 in fine). It will be decided at the proper time.

The text as worded could give the impression that the question has now been decided.