

APPLICATION/REQUÊTE N° 19890/92

Jean ZIEGLER v/SWITZERLAND

Jean ZIEGLER c/SUISSE

DECISION of 3 May 1993 on the admissibility of the application

DÉCISION du 3 mai 1993 sur la recevabilité de la requête

Article 6, paragraph 1 of the Convention *Not applicable to proceedings in which a parliament decides whether or not to lift the parliamentary immunity of one of its members*

Article 10, paragraph 1 of the Convention *Neither the institution of criminal proceedings for defamation nor the lifting of parliamentary immunity to allow such proceedings to be brought constitutes an interference with the right to freedom of expression*

Article 19 of the Convention *The Commission is not competent to examine alleged errors of fact or law committed by national courts, except where it considers that such errors might have involved a possible violation of the rights and freedoms set forth in the Convention*

(TRANSLATION)

THE FACTS

The applicant is a Swiss national born in 1934. He is an author and a member of the National Council.

The facts of the case, as submitted by the applicant, may be summarised as follows

On 12 December 1989 Mr G lodged a complaint against the applicant alleging criminal defamation, an offence under Article 173 of the Federal Criminal Code. The complainant maintained that his honour had been sullied by certain passages in the book published by the applicant in 1989, "La terre qu'on a" (This earth of ours). The complainant is described in the book as a "trafficker in African oil and cotton" and as a "business partner" of Marshal Mobutu. The book also states that the complainant asked the police to take action against certain Zairese asylum-seekers who were demonstrating in front of the hotel where Marshal Mobutu was staying. The complaint also concerned certain remarks made by the applicant during an interview he gave, as a member of the National Council, to the news programme of Swiss French-language television on 12 September 1989. The applicant was alleged to have stated that the complainant had been involved in "property speculation" which had "ravaged the city". The complainant also had an order served on the applicant requiring him to pay CHF 50,000 in damages.

On 13 December 1989 the Geneva principal public prosecutor wrote to the Federal Assembly (Swiss parliament) requesting its ruling on the question whether leave to bring proceedings was necessary in this case, and if that was so, for leave to proceed.

On 20 June 1991 both Houses of Parliament (the Federal Chambers) ruled that the applicant's alleged conduct was not covered by parliamentary privilege, and the investigating judge charged him with defamation.

On 3 December 1991 the Geneva principal public prosecutor gave a decision (ordonnance) declaring the applicant guilty of defamation for describing the complainant as a "trafficker". This decision acquitted the applicant on the other counts and reserved the complainant's right to bring a civil action. The applicant was fined CHF 1,000. The applicant appealed against this decision to the Geneva Police Court, which upheld his conviction on 10 April 1992. On 2 September 1992 the Geneva Court of Justice dismissed the applicant's appeal. The case is at present pending in the Federal Court, to which the applicant has appealed pleading nullity.

COMPLAINTS

The applicant complains of the Federal Chambers' decision of 20 June 1991.

He maintains in the first place that this decision was based on arbitrary interpretation and application of the Federal Law of 14 March 1958 on the liability of the Confederation, the members of its authorities and its officials. He considers that the decision in question infringed to his detriment the principle of fair proceedings guaranteed by Article 6 of the Convention.

The applicant further maintains that the impugned decision constituted unjustified interference with the exercise of his right to freedom of expression guaranteed by Article 10 of the Convention.

THE LAW

1. The applicant complains of the Federal Chambers' decision of 20 June 1991. He maintains that this decision was based on arbitrary interpretation and application of the relevant Swiss law. He relies on Article 6 of the Convention.

The Commission recalls that under Article 19 of the Convention its sole task is to ensure observance of the engagements undertaken by the High Contracting Parties in the Convention. It is not competent to examine applications concerning errors of law or fact allegedly committed by the competent national authorities, to whom it falls, in the first place, to interpret and apply domestic law. The Commission is not competent to look into allegations concerning such errors except where, and to the extent that, they seem likely to have entailed a violation of the rights and freedoms guaranteed by the Convention.

In this case the applicant maintains that the decision complained of infringed his right to a fair trial, guaranteed by Article 6 of the Convention. However, the provision relied on applies to proceedings concerning the determination of civil rights and obligations, or of a criminal charge. But in the impugned decision the Federal Chambers determined the question whether the conduct the applicant was accused of was covered by parliamentary privilege, and by no means determined the applicant's civil rights and obligations or the criminal charge against him. Accordingly, Article 6 is not applicable to the matter under consideration.

It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 27 para. 2.

2. The applicant further complains that the decision concerned infringed his right to freedom of expression guaranteed by Article 10 of the Convention, which reads as follows:

"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."

The applicant maintains, in particular, that because of the impugned decision depriving him of parliamentary immunity he has been prevented from carrying out his normal duties as an elected member of the National Council. He asserts that in October 1991 seven sets of proceedings for defamation were brought against him together with claims for libel damages amounting to more than CHF 6 million.

The Commission recalls that under the very terms of Article 10 of the Convention exercise of the right to freedom of expression carries with it duties and responsibilities. The risk of prosecution on account of remarks in speech or writing and the institution of criminal proceedings as a result of complaints by individuals cannot, as such, constitute interference with a person's exercise of his right to freedom of expression.

Similarly, in this case, the decision in which the Federal Chambers ruled that the conduct the applicant was accused of was not covered by parliamentary privilege cannot be held to be a measure imposing conditions, restrictions or penalties on exercise by the applicant of his right to freedom of expression. Accordingly, the Commission considers that the impugned decision did not in any way constitute interference by a public authority with the applicant's exercise of that right.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE