APPLICATION/REQUÊTE N° 13010/87

EDICIONES TIEMPO S.A. v/SPAIN

EDICIONES TIEMPO S.A. c/ESPAGNE

DECISION of 12 July 1989 on the admissibility of the application

DÉCISION du 12 juillet 1989 sur la recevabilité de la requête

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Article 10, paragraph 1 of the Convention :

a) A court injunction ordering a magazine-owner to publish an article pursuant to the right of reply constitutes an interference with the exercise of the right to freedom of expression.

b) The right of reply guarantees pluralism of information. Freedom to receive or impart information does not require that with regard to the right of reply, which is by its nature urgent, the courts must examine the veracity of the facts asserted in the reply.

Article 10, paragraph 2 of the Convention *: Court injunction ordering a magazine-owner to publish an article pursuant to the right of reply. Interference considered to be prescribed by law and necessary in a democratic society for the protection of the reputation and the rights of others. Examination of the proportionality of the interference to the aim.*

Article 10, paragraphe 1, de la Convention :

a) Une injonction judiciaire faite au propriétaire d'un périodique de publier un article en vertu du droit de réponse, constitue une ingérence dans l'exercice du droit à la liberté d'expression.

(TRANSLATION)

THE FACTS

The applicant, Ediciones Tiempo S.A., is a public company with its head office in Madrid. It owns the general information magazine "Tiempo", published in Spain.

Before the Commission the applicant company is represented by Ms. Cristina Pena Carles, a lawyer practising in Madrid.

The facts, as submitted by the applicant company, may be summarised as follows.

Issue No. 122 of the magazine "Tiempo" (published in the week 10–16 September 1984) contained an article entitled "Mercorsa como hacerse millonario con el dinero de los españoles" (Mercorsa : how to become a millionaire at the expense of the Spanish public). On the basis of an auditors' report the article gave an account of serious irregularities in the management of a public company called Mercorsa specialising in the sale of agricultural products. Mr. L. Garcia, a former manager of the company, was presented as largely responsible for a situation characterised by risky investment, unrealistic management and a large deficit

(1,600 million pesetas, i.e. approximately 80 million French francs) hidden through the misappropriation of public subsidies.

Mr. L. Garcia, who considered himself wronged, asked to be allowed to exercise his right of reply, but the applicant company refused to publish his disclaimer. On the basis of Institutional Act No. 2/84 on the right of reply, he then applied to the Court of First Instance for an injunction. The applicant company opposed this application on the ground that the law could not make publication of an incorrect version of the facts mandatory, it being the duty of the court to examine beforehand the veracity of the proposed reply. In its judgment of 9 October 1984 the court emphasised that exercise of the right of reply was not subject to an examination of the objective veracity of the reply. However, the court dismissed Mr. L. Garcia's application, holding that the proposed reply contained value judgments, the publication of which was not guaranteed by law.

On appeal the Madrid Court of Appeal (*Audiencia Territorial*), in a judgment dated 14 May 1985, gave the same interpretation of Institutional Act No. 2/84. However, that court ordered the applicant company to publish an amended version of the reply from which the value judgments had been removed.

The applicant company then lodged an appeal (*recurso de amparo*) based on an alleged violation of Article 20 para. 1 (d) of the Constitution, which guarantees the right to impart and receive true information. It also applied for a stay of execution in respect of the judgment given by the Court of Appeal.

The Constitutional Court declared the appeal admissible in December 1985 and granted the requested stay of execution in January 1986, but in its decision on the merits of 22 December 1986 it dismissed the claim raised. It noted that the applicant company had not been obliged to amend or contradict the article published. Moreover, it had the opportunity to publish its own version of the facts alongside the reply. Consequently, the judgment complained of did not restrict the applicant company's freedom to impart information, but rather protected the pluralism of sources of information. The Constitutional Court also confirmed that judicial proceedings concerning the right of reply were summary proceedings only, limited to verification of whether the formal conditions for exercise of the right had been met, the veracity of the facts not being examined in any great detail. The object of Institutional Act No. 2/84 - according to the judgment - was merely to re-establish a measure of balance in access to public opinion between private individuals and the media, the parties having the possibility of bringing ordinary civil and criminal actions to uphold their arguments relating to the veracity of the facts advanced by either side.

The magazine "Tiempo" discharged its obligation to publish Mr. L. Garcia's reply in issue No. 262 (18-24 May 1987), while once again including, at the same time, its own version of the facts.

COMPLAINTS

The applicant company complains that it was obliged to publish information which it knew to be false. It considers that there has been an interference contrary to Article 10 para. 1 of the Convention with its freedom to impart objective information, and with its readers' freedom to receive such information, without there being any justification for such interference under Article 10 para. 2.

THE LAW

1. The applicant company complains of a court injunction ordering it to publish a reply to an article previously published in a weekly magazine belonging to it. It alleges that since the reply contained statements which it knew to be false the injunction mentioned above constituted an interference contrary to Article 10 of the Convention, which was not justified under paragraph 2 of that provision.

Article 10 para. 1 recognises the right of everyone to freedom of expression, which includes in particular "freedom to receive and impart information ... without interference by public authority ...".

The Commission considers, in the first place, that the obligation imposed on the applicant company to publish a reply can be regarded as an interference by public authority with its freedom of expression, within the meaning of that provision. Consequently, the Commission must examine whether such interference can be justified under paragraph 2 of Article 10.

The Commission notes, firstly, that in this case the interference was provided for by Institutional Act No. 2/84 on the right of reply, the principles of which are inspired by Resolution (74) 26 on the right of reply – position of the individual in relation to the press, adopted by the Committee of Ministers of the Council of Europe on 2 July 1974.

Secondly, the Commission observes that the purpose of the injunction was to protect the reputation and the rights of others. The aim of the right of reply is to afford everyone the possibility of protecting himself against certain statements or opinions disseminated by the mass media which are likely to be injurious to his private life, his honour or his dignity.

With regard to the question whether the interference was necessary, the Commission considers, in the first place, that in a democratic society the right of reply is a guarantee of the pluralism of information which must be respected.

It notes that in this case the judicial measure complained of was proportionate to the aim pursued since the applicant company was not obliged to amend the content of the article and had the opportunity to insert its own version of the facts once more when it published the reply of the person criticised. It cannot claim, therefore, that its freedom to impart information was restricted more than necessary.

Consequently, the Commission considers that the application is manifestly ill-founded in this respect and must be rejected, pursuant to Article 27 para. 2 of the Convention.

2. The applicant company also maintains that the courts, by not examining the veracity of the version of the facts contained in the reply before ordering its publication, impaired the freedom to impart objective information and the freedom of the public to receive that information, these freedoms also being protected by Article 10 of the Convention.

However, the Commission considers that the purpose of the regulations governing the right of reply is to safeguard the interest of the public in receiving information from a variety of sources and thereby to guarantee the fullest possible access to information.

Furthermore, it takes the view that Article 10 of the Convention cannot be interpreted as guaranteeing the right of communication companies to publish only information which they consider to reflect the truth, still less as conferring on such companies powers to decide what is true before discharging their obligation to publish the replies which private individuals are entitled to make. Having regard to the fact that a reply, to be effective, must be distributed immediately, the Commission considers that the veracity of the facts asserted in the reply could not be checked in any great detail at the time of publication. It notes that in this case the applicant company had the possibility of bringing other forms of civil or criminal action in order to obtain, through the ordinary judicial process, a ruling concerning the objective truth of the information.

It follows that this complaint is also manifestly ill-founded and must be rejected pursuant to Article 27 para. 2 of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.