

APPLICATIONS N° 23868/94 and 23869/94 (joined)

**André LOERSCH and NOUVELLE ASSOCIATION DU COURRIER
v/SWITZERLAND**

DECISION of 24 February 1995 on the admissibility of the applications

Article 6, paragraph 1 of the Convention

- a) Inapplicable to proceedings concerning the refusal to accredit the applicant journalist to the Federal Court (Switzerland), allegedly in violation of Article 10 of the Convention no "genuine and serious" dispute about civil rights and obligations*
- b) The right to report on a public trial is not a civil right*

Article 10, paragraph 1 of the Convention *This provision is concerned primarily with access to general sources of information*

The fact that the Federal Court (Switzerland) makes granting accreditation to a journalist subject to certain conditions does not in itself constitute an interference with the right to receive and impart information

Article 13 of the Convention *The right recognised by this provision may only be exercised in respect of an arguable claim as defined in the case law of the Convention organs*

Article 14 of the Convention, in conjunction with Article 10 of the Convention *Allegations of discrimination based on a comparison of two factual situations which prove to be different manifestly ill founded In this case, a journalist who refuses to produce the documents necessary to obtain accreditation to a court does not appear to have been placed in a situation analogous to that of other journalists who have received accreditation The same applies to the publisher who employs the journalist in comparison with other publishers*

Article 25 of the Convention *Can an association whose sole object is to publish a newspaper claim to be the victim of a court's refusal to accredit a journalist employed by that association, where the association was not a party to the domestic proceedings and the refusal did not expressly apply to it? (Question unresolved)*

THE FACTS

The first applicant is Mr André Loersch, a Swiss citizen born in 1964 who currently lives in Geneva. He is a professional journalist on the Geneva daily newspaper "Le Courrier". The second applicant is the Nouvelle Association du Courrier, a Swiss registered association whose sole object is the publication of 'Le Courrier'. In the proceedings before the Commission, the applicants are represented by Mr Andreas Auer, Professor of Constitutional Law at the University of Geneva.

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

In April 1993 "Le Courrier" decided to cover, on a regular basis, the work of the different sections and courts making up the Federal Court and to report on it to its readers. It gave this assignment to the first applicant.

The first applicant applied, on "Le Courrier's" authority, to the Federal Court for accreditation. Accreditation would have made it easier for him to obtain access to information: the Federal Court Registry would have notified him of dates of hearings and what they were about, he would automatically have received all judgments to be published in the official collection, and if he had so requested in writing he would also have received any unpublished judgments given in open court. In support of his request, he produced a letter from the editor confirming that he had been assigned to cover the work of the Federal Court.

In a letter of 21 May 1993, the Secretary General of the Federal Court informed the first applicant that the court hearings were open to the public, so that he was completely free to follow them. He also explained that under the relevant Federal Court internal directives a journalist, in order to be accredited, had to produce a *curriculum vitae*, a certificate as to police record and proof that he or she had had legal training or equivalent professional experience.

On 7 June 1993, the first applicant refused to submit the required curriculum vitae and certificate as to police record or to supply proof of legal training.

Accordingly, on 16 June 1993 the Secretary General issued an order refusing to accredit the first applicant, since he had not complied with the requirements of Rule 31 of the Federal Court Rules of Procedure and of clauses 1 and 2 of the Federal Court internal directives on the accreditation of journalists.

"Le Courier" encouraged the first applicant to appeal against this decision to the Administrative Board of the Federal Court, which he did on 13 July 1993. He requested that the order be set aside and that he be accredited. He also argued that the order, and indeed the Federal Court internal directives, had violated the principle of freedom of information laid down in Article 10 of the Convention.

On 9 September 1993 the Administrative Board dismissed the first applicant's appeal. It stated firstly that

"Article 10 ECHR protects the right of every citizen to receive and obtain information from sources which are generally accessible to the public without official control. According to Federal Court case law, the right to express one's opinions freely and to disseminate them through the press does not include an unrestricted right to obtain information from the authorities. The case-law of the Convention organs does not establish that journalists have a right of access to sources of information which are not publicly accessible, even if it is their responsibility to impart information and ideas to the public about issues before the Court."

The Board went on to hold that

"Federal Court proceedings are held in public. Anyone may attend the hearings, the deliberations and voting sessions in the Federal Court (see Art. 17 para. 1 of the Federal Law on the Court System) [and] may obtain a copy of a judgment save where the need to protect the parties' private lives or overriding interests of state require that the content of a judgment be communicated only to the parties. A journalist may attend hearings and request a copy of a judgment in the same way as anyone else."

Journalists accredited to the Federal Court receive the same information as the public or the general press. The only difference is that these latter have to ask for it. Therefore, their only advantage is easier access to the information. The aim of accreditation is to ensure that accredited journalists are in a position to inform the public accurately about the activities of the Federal Court. One cannot overlook the fact that the Supreme Court of a country is in a prominent position and that its decisions excite the interest, not only of the general public, but also of lawyers in the widest sense, who frequently learn of developments in case-law through the daily press. Therefore it is in the public interest to restrict the category of accredited journalists to those who are capable of informing the public with the high degree of precision which the special importance of Supreme Court decisions demands. Legal experts agree that the public interest in accurate reporting justifies the Federal Court's specific requirements as to the personal qualities of accredited journalists."

As regards the principle of equal treatment, which the applicant had also invoked, the Board noted that :

" .. the appellant, who refuses to provide the Secretary General with the documents which would enable his ability to report on the judgments of the Federal Court to be assessed, does not claim that a journalist in an identical position would have been accredited in the same circumstances ... It is the Secretary General's duty to ensure that accredited journalists are capable of reporting the deliberations accurately. It is all the more important for this to be scrutinised in a case where the appellant does not claim to have legal training and where, therefore, he could have acquired the knowledge required of an accredited journalist .. only through his previous professional activities . "

COMPLAINTS

1 Firstly, the applicants complain that the refusal to grant accreditation to the first applicant infringed their right to seek, receive and publish information as guaranteed by Article 10 of the Convention. They affirm that the conditions for granting accreditation amount to a form of advance censorship by influencing their work

2 Secondly, they complain of discrimination contrary to Article 14 read in conjunction with Article 10 of the Convention in that, unlike other journalists working for other newspapers, the first applicant was not granted accreditation to the Federal Court. They argue that imposing particular conditions on the grant of accreditation - such as that the journalist must have had legal training and must provide a certificate as to police record and a *curriculum vitae* - amounts to a requirement contrary to the above-mentioned Articles

3 Thirdly, the applicants complain that the Administrative Board did not judge their case independently and impartially, in that the Secretary General, whose decision was the subject of the appeal before the Board, took part in its deliberations. In this regard, they rely on Article 6 para 1 of the Convention

4 Finally, they claim that the appeal to the Administrative Board did not constitute an effective remedy within the meaning of Article 13 of the Convention

THE LAW

1. The Commission considers that the cases should be joined

2. The Commission notes firstly that the application was submitted, on the one hand by a journalist who was refused accreditation, and on the other hand by his employer, an association whose sole object is the publication of the daily newspaper "Le Courier"

The Commission recalls that under Article 25 para 1 of the Convention it may receive petitions from any person, non governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention

With regard to the journalist, the Commission notes that since he was refused accreditation, he can claim to be a victim within the meaning of Article 25 para 1 of the Convention

As for the association, the Commission notes that it was not a party to the domestic proceedings concerned and that the Federal Court's refusal to accredit the applicant did not apply expressly to it. It is therefore necessary to decide whether the association can claim to be a victim within the meaning of Article 25 para 1 of the Convention (see No 6538/74, *Times Newspapers Ltd and Others v United Kingdom*, Dec 21 3 75, Yearbook 18 pp 203, 229-233)

However, the Commission considers that it is unnecessary to examine this question, since the application is in any event inadmissible for the following reasons:

3 The applicants complain that the refusal to grant the first applicant accreditation infringed their right to seek, receive and publish information as guaranteed by Article 10 of the Convention. They also maintain that the conditions for the grant of accreditation amount to advance censorship.

Article 10 para 1 provides that

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.

The Commission recalls that the right to receive information is principally concerned with access to general sources of information and basically aims to prohibit a State from restricting a person from receiving information that others wish or may be willing to impart to him (see *Eur. Court H.R., Leander judgment of 26 March 1987, Series A no 116, p 29, para 74*).

The Commission observes that hearings, deliberations and voting sessions in the Federal Court are generally held in public. Therefore anyone may attend a hearing and also obtain a copy of a Federal Court judgment, save where the need to protect the private lives of the parties or overriding interests of state require that the content of a judgment should be communicated only to the parties.

The Commission further notes that journalists accredited to the Federal Court receive the same information as the public or the press in general, therefore the only

advantage which they enjoy is easier access to the information. Specifically, the Federal Court Registry notifies them of the date and subject-matter of hearings, they automatically receive all judgments to be published in the official collection and if they so request in writing they can receive any other judgments given in open court.

The Commission finds that the applicants have not shown that they were denied access to a source of information which was available to the public, namely attending Supreme Court hearings or obtaining a Supreme Court judgment with a view to publishing it. The fact that accreditation of journalists to the Federal Court, which makes it easier for them to obtain information from the Federal Court, is subject to particular conditions - including a requirement that the journalists must have had legal training - does not amount to an infringement of the applicants' right to seek, receive and publish information as guaranteed by Article 10 para 1 of the Convention.

It follows that this part of the application must be rejected as manifestly ill-founded pursuant to Article 27 para 2 of the Convention.

4 The applicants complain of discrimination contrary to Article 14 read in conjunction with Article 10 of the Convention, in that, unlike other journalists working for other newspapers, the first applicant was not granted accreditation to the Federal Court. They argue that making accreditation subject to particular conditions constitutes a requirement which is contrary to the Articles mentioned above.

The Commission recalls that Article 14 of the Convention has no independent existence since it has effect solely in relation to the rights and freedoms safeguarded by the other substantive provisions of the Convention and the Protocols. Furthermore, the safeguard it affords against discriminatory differences of treatment extends only to individuals who are placed in analogous or comparable situations (see Eur. Court H.R., Rasmussen judgment of 28 November 1984, Series A no. 87, pp. 12, 13, paras. 29, 35).

The Commission notes that the first applicant refused to provide the Secretary General of the Federal Court with the documents necessary to obtain the accreditation applied for. It also notes that the applicant does not claim that another journalist employed on another newspaper, who had also refused to produce the requisite documents, would have obtained accreditation. Accordingly, the Commission notes that it does not appear that the first applicant was placed in a situation analogous or comparable to that of other, accredited, journalists. The same applies to the association which publishes the newspaper for which the first applicant works, in that it is not in a situation analogous or comparable to that of other newspaper publishers.

Therefore, the Commission considers that the applicants have not been subject to any discrimination within the meaning of Article 14 of the Convention.

It follows that this part of the application must be rejected as manifestly ill-founded pursuant to Article 27 para 2 of the Convention

5 The applicants also complain that the Administrative Board did not try their case independently and impartially, in that the Secretary General, whose decision was the subject of the appeal before the Board, took part in its deliberations. In this context, they rely on Article 6 para 1 of the Convention

Article 6 para 1 of the Convention provides, *inter alia*, that in the determination of his civil rights and obligations, everyone is entitled to a hearing by an independent and impartial tribunal

The Commission recalls that Article 6 para 1 extends only to 'contestations' (disputes) over (civil) "rights and obligations" which can be said, at least on arguable grounds, to be recognised under domestic law, it does not in itself guarantee any particular content for (civil) "rights and obligations" in the substantive law of the Contracting States (see Eur Court HR, *W v United Kingdom* judgment of 8 July 1987, Series A no 121-A, p 32, para 73) In particular, the dispute "contestation" must be "genuine and serious" (see Eur Court HR, *Allan Jacobsson* judgment of 25 October 1989, Series A no 163, p 19, para 67)

In the instant case, the Commission notes that Swiss law does not contain an absolute right for a journalist to be accredited but makes such a right subject to the production of certain documents. The Commission considers that the applicant's allegation that the relevant domestic law requirements are contrary to Article 10 of the Convention does not amount to a "genuine and serious" dispute within the meaning of Article 6 para 1 of the Convention

Further, according to the Commission's case-law, the right to report matters stated in open court cannot be described as a right which is "civil" in nature (see Nos 11553/85 and 11658/85 (joined), Dec 9387, DR 51 pp 136, 158) The Commission observes that this case was about an application for accreditation to the Federal Court for the purposes of obtaining privileged access to information and in order to practise the applicant's profession as a journalist, that is, to report matters stated in open court

Therefore, the Commission considers that the case before the Federal Court Administrative Board did not involve a dispute "contestation" about one of the first applicant's - nor, *a fortiori*, the second applicant's - civil rights. It concludes that Article 6 para 1 of the Convention is therefore not applicable in this case

It follows that this part of the application must be rejected as incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 27 para 2 of the Convention

6 Finally, the applicants claim that the appeal proceedings before the Administrative Board did not constitute an effective remedy within the meaning of Article 13 of the Convention

Article 13 of the Convention grants everyone whose rights and freedoms as set forth in the Convention are violated the right to an effective remedy before a national authority.

The Commission recalls that the complaint in question must be arguable in its eyes (see Eur Court HR, Leander judgment of 26 March 1987, Series A no. 116, p 29, para. 77).

The Commission points out that it has rejected the applicants' principal claim, based on Article 10 of the Convention, as manifestly ill-founded. The Commission considers that this complaint cannot be described as "arguable" for the purposes of Article 13 of the Convention.

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

For these reasons, the Commission, by a majority,

- 1 DECIDES TO JOIN THE APPLICATIONS,
- 2 DECLARES THE APPLICATIONS INADMISSIBLE