APPLICATION N° 32218/96

Paul BARRIL v/FRANCE

DECISION of 30 June 1997 on the admissibility of the application

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Article 6, paragraph 1 of the Convention

a) The right to enjoy a good reputation and to have determined before a tribunal the justification of attacks on such reputation is a civil right

b) The impartiality of a tribunal is tested on both a subjective and an objective basis and appearances may be of importance The personal impartiality of a judge must be presumed until there is proof to the contrary

In the instant case, the fact that a judge who had sat on the bench in criminal proceedings against persons other than the applicant during which he had heard the applicant's name mentioned, subsequently sits on the bench in criminal proceedings brought by the applicant does not in itself justify fears as to his impartiality

c) Allegation of a violation of the principle of equality of arms in criminal libel proceedings due to the fact that the applicant, who was the plaintiff in those proceedings, was given only five days in which to apply to adduce his refuting evidence, whereas the defendants had ten days in which to apply to adduce their proof of the truth of the defamatory allegations

In concluding in the instant case that the applicant was given the benefit of a fair trial, the Commission notes that it is in the applicant's interests to allow judgment to be delivered quickly and that, since it was he who had commenced the libel action, he had had ample opportunity to gather all the evidence to support his contention that the imputations in question were false The applicant was able to submit his arguments in conditions which did not place him at a substantial disadvantage vis à vis *his opponent*

d) Article 6 para. 1 does not lay down rules on admissibility of evidence which is primarily a matter for regulation under national law. The Commission must assess fairness on the basis of an examination of the proceedings as a whole.

Article 6, paragraph 2 of the Convention:

a) A judicial decision which, before a defendant has been convicted, reflects an opinion that he is guilty violates this provision. Even in the absence of any formal finding, some reasoning suggesting that the court regards the accused as guilty may suffice to violate this provision.

It is also contrary to the principle of the presumption of innocence for a public authority to express an opinion publicly as to the guilt of a person remanded in police custody and not yet charged.

In the instant case, the applicant was never in the position of a defendant or person charged in criminal proceedings and the "accusations" about which he complains emanated from a press organ, the State not being in any way liable.

b) The "proof of truth", as a special defence given to the accused in a defamation case, is not contrary to the principle of the presumption of innocence.

c) Recognition by a court that defamatory allegations are true does not mean that it considers the plaintiff in the libel action to be "guilty" of the actions in question.

In concluding that, on the facts, there was no infringement of the principle of the presumption of innocence, importance is attached to the right of the press to freedom of expression.

THE FACTS

The applicant, born in 1946, is a French citizen. He is now a managing director, having retired from the gendarmerie, and lives in Paris. Before the Commission, he was represented by Mr Daniel Baudin, a lawyer practising in Paris.

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

The applicant, in his capacity as captain of the gendarmerie, was second-in-command, under Supreme Commander Prouteau, of the President of the Republic's anti-terrorist cell, set up in August 1982 and composed of officers of the GIGN (the elite National Gendarmerie Task Force).

This cell requested the arrest, on 28 August 1982, under the *flagrante delicto* procedure, of three persons linked to the Irish nationalist movement in a flat in Vincennes in which arms and explosives were found. These individuals were suspected of being closely involved in the wave of terrorist attacks then being perpetrated in France, in particular that committed on 9 August 1982 in rue des Rosiers in Paris

1. The criminal proceedings brought following the "Vincennes Irishmen case"

The three Irishmen, who were charged on 30 August 1982, consistently claimed, from the very first interviews and throughout the investigation, that they had not been present during the search and denied possessing the arms and explosives seized in the flat belonging to one of them in Vincennes. They maintained that the gendarmes themselves had planted the items in question in the flat.

After a number of gendarmes had been questioned by the investigating judge and a top-level internal inquiry had been carried out by a gendarmerie general it emerged that the records certifying that the search and seizures had been carried out in accordance with the proper procedure, that is, in the presence of the arrestees and by a duly empowered senior police officer, had been fabricated and drawn up in violation of section 57 of the Code of Criminal Procedure. This resulted in the entire proceedings against the three Irishmen being annulled in a judgment of Paris Indictments Division of 5 October 1983

Criminal proceedings were brought against a number of the main actors in this case, including, in June 1983, Mr Beau, a gendarmerie commanding officer, for exerting pressure on witnesses (i e his subordinates) to commit perjury and, in October 1987, against Mr Prouteau, the Supreme Commander, for aiding and abetting the subornation of perjury The applicant was neither charged, nor prosecuted, nor questioned by the investigating judge

On 31 October 1985, the newspaper *Le Monde* published an article entitled "Captain Barril himself allegedly supplied the incriminating evidence", based, *inter alia*, on revelations by a certain Mr Jegat who, of his own free will, had stated on the record in January 1985, after six days' questioning by officers of the DST (French Intelligence Service), that he had supplied the applicant with the arms and explosives which were subsequently seized in the Vincennes flat.

After making his statements, Mr Jegat was charged in November 1985 with unlawful possession of arms and explosives and subsequently convicted of that offence in a judgment of Paris Criminal Court of 24 September 1991 (not produced) The applicant was neither charged, nor prosecuted, nor questioned as a witness by the investigating judge

In a further judgment of 24 September 1991, Paris Criminal Court sentenced both Commanding Officer Beau and Supreme Commander Prouteau to fifteen months' imprisonment, suspended, for subornation of perjury Commanding Officer Beau's sentence was reduced on appeal, in a judgment of 15 January 1992, to twelve months' imprisonment, suspended, and Supreme Commander Prouteau was acquitted

The applicant's name was mentioned only once in the Court of Appeal's judgment, in the passage stating that "Christian Prouteau stated that Captain Barril was the person in effective charge of the operation (in which, moreover, he took part) and was therefore the one in contact with the men Consequently, according to him, there was no definite proof, other than a theoretical and remote hierarchical link, that he (Prouteau) had in any way pressurised the GIGN officers into lying about the conduct of the operations carried out in Vincennes against the three Irishmen"

2 The libel action brought by the applicant

Before MM Beau and Prouteau's trial at first instance began (see above), the daily *Le Monde* published a long article on 21 March 1991, entitled 'The Vincennes Irishmen an Elysee cover-up , and sub-titled 'Two confidential documents confirm that the truth about this case, known to those in high places, was concealed from the courts" The article referred to the statements which MM Beau and Prouteau would be making at the hearing before the criminal court in June 1991, to a Presidential Office internal memorandum drafted by an adviser, Mr Regis Debray, giving an account of a visit from Mr Jegat and, lastly, to the records of interview with Mr Jegat, drawn up by the DST officers in January 1985

On 26 April 1991 the applicant brought proceedings against *Le Monde*, its editor in chief and the author of the article, Edwy Plenel, before Paris Criminal Court for publicly libelling a public official

Le Monde applied on 6 May 1991, under section 35 of the Law of 29 July 1881 (see *Relevant domestic law*, below), to prove the truth of the defamatory allegations by producing documents and naming witnesses The applicant chose not to submit refuting evidence, which he was entitled to do under section 56 of the 1881 Law within the next five days and at least three clear days prior to the hearing He merely filed a request for the application to adduce proof to be dismissed

In a judgment of 22 November 1991, the criminal court noted that the defendants had partially withdrawn their application to adduce proof, particularly their proposal to call Supreme Commander Prouteau as a witness, but that the remainder of the application was in the proper form and admissible The court stayed the proceedings pending a final decision in the criminal proceedings against MM Beau and Jegat, which prevented them from giving evidence in the libel proceedings The applicant did not appeal against that judgment

In a judgment of 17 September 1992, the criminal court acquitted *l e Monde* and dismissed the applicant's request to join the proceedings as a civil party seeking damages

The court noted that "Mr Plenel's assertion that the Irishmen's arrest was nothing but a set up from start to finish, concocted by Captain Barril who deceived the political and judicial authorities and the public and caused three innocent people to be charged and imprisoned, totally discredited the person in charge of that operation and permanently destroyed both his professional and personal reputation' and that it was "undeniably one of the most serious accusations imaginable to level at a public official, who was, moreover, a member of the armed forces

The applicant argued that his final conviction for the misconduct imputed to him by the article in question should be a precondition for admitting the proof of the truth of the defamatory allegation The court rejected that argument in the following terms

> Certain legal impediments, such as the difficulty of applying an appropriate criminal definition to the facts of the case or factual impediments, such as inactivity on the part of the prosecuting authorities or inertia on the part of the investigating judge, may result in a failure to prosecute and try a person who has, nonetheless, been guilty of reprehensible conduct and should not therefore be certified innocent on account of his impunity The fact that Mr Barril has not been prosecuted does not therefore bring him into one of the categories listed in section 35 of the Press Law in which evidence of defamatory allegations is inadmissible and does not in any way mean that Mr Barril never behaved in the manner attributed to him

Next after examining in detail the defendants' applications to adduce proof of the truth of the defamatory allegations and hearing evidence from MM Beau and Jegat and another journalist called by the defence, the court held that, on the basis of the evidence called in the proceedings the defendants should be deemed to have proved that the defamatory allegations were true and should therefore be acquitted and the civil case against the limited liability company *Le Monde* dismissed

The applicant appealed Relying on Article 6 paras 1 and 3 (d) of the Convention, he sought leave to call six witnesses, including MM Beau and Jegat who had already given evidence at first instance

Paris Court of Appeal (composed, *inter alia*, of Judge Chanut who had previously sat on the appellate court which gave judgment on 15 January 1992 in the criminal proceedings against, among others, Mr Beau) gave an interlocutory judgment on 4 March 1993 in which it applied the restrictive rules of procedure prescribed in the 1881 Law and refused the applicant leave to call witnesses The case was referred back to the Court of Appeal for a hearing on the merits

The applicant filed an immediate appeal on points of law, which was dismissed in an order of the President of the Criminal Division of the Court of Cassation dated 11 May 1993, on the ground that "neither the interests of public policy nor those of the proper administration of justice require the appeal to be heard immediately"

Paris Court of Appeal, on which Judge Chanut sat again, examined the merits and gave judgment, dated 8 July 1993, upholding the lower court's judgment.

In respect of the ground of appeal based on a violation of the presumption of innocence guaranteed under Article 6 para. 2 of the Convention and criticising the lower court's decision (see above), the Court of Appeal held

> "The court of first instance thus addressed the argument submitted in the summons [initiating proceedings], which was formulated in no less peremptory a fashion, that it is 'an undeniable fact' that no charge has been brought against former Captain Barril, which in itself suffices to prohibit anyone from implicating Mr Barril in this case in any way whatsoever';
>
> The lower court did not, however, 'sentence' Mr Barril or even find him guilty of any offence. It confined its reasoning to the provisions of the Press Law Moreover, Mr Barril had not been 'charged' within the meaning of Article 6 para 2 of the Convention,
>
> The fact that no criminal proceedings are brought in respect of acts imputed to a person who has been libelled cannot impede the application and enforcement of the Law of 29 July 1881; the fact remains that the truth of defamatory allegations can always be proved, subject to compliance with the rules laid down in section 55 of that Law, and save in the cases listed exhaustively in section 35(3), which are irrelevant to the instant case;
>
> The ground of appeal based on an alleged violation of the principle of the presumption of innocence must therefore be rejected."

The Court of Cassation dismissed the applicant's appeal in a judgment of 28 November 1995 It held that the Court of Appeal had justified its decision regarding the alleged violation of Article 6 para 2 of the Convention by finding that "the first-instance court had neither sentenced the appellant, nor even found him guilty of any offence, but had confined its reasoning to the provisions of the Law on the Freedom of the Press". As regards Judge Chanut's alleged lack of impartiality, the Court of Cassation held that "it is not contrary to the requirement of impartiality set forth in Article 6 para. 1 of the Convention for the same Criminal Appeals Division judge to sit in two different sets of proceedings, concerning different parties and regarding facts which are equally distinct, even if linked "

Relevant domestic law

Law of 29 July 1881 on the Freedom of the Press

Section 29

"Any allegation or imputation which damages the honour or reputation of the person or body to whom it refers is a defamation."

Section 31

"Anyone who defames, by the same means, on account of their duties or official capacity, one or more members of a Ministry, a public official, a person exercising public authority or an agent of the public authorities shall be liable to the same penalty [one year's imprisonment and/or a fine of 300,000 French francs] ."

Section 35

"In the case of imputations against any of the persons listed in section 31, proof of the truth of a defamatory allegation which relates to the defamed person's official capacity (and only where it does so) may be adduced according to the normal rules of evidence

Proof of the truth of defamatory allegations can always be adduced, save:

a where the imputation concerns a person's private life,

b where the imputation refers to events which took place more than ten years previously, or

c where the imputation refers to an offence which is covered by an amnesty or is statute-barred or for which the sentence has been spent following rehabilitation or a retrial

Where the defendant, in the cases referred to in sub-sections 1 and 2, adduces proof of the truth, the plaintiff may adduce his refuting evidence. If the defamatory allegation is proved to be true, the defendant shall be acquitted

In all other circumstances, and in respect of a defamed person who does not fall into any category listed in section 31, where the defamatory allegation is the subject of criminal proceedings brought at the request of the public prosecutor or following a complaint by the defendant, the proceedings and trial in the defamation case shall be stayed during the criminal investigation "

Section 55

A defendant who applies, under section 35 of this Law, to adduce proof of the truth of the defamatory allegations shall, within ten days of service of the summons, arrange for service on the public prosecutor or the plaintiff (at the latter's choice of address for service), depending on which party has applied for him to be summoned

1 of the allegations set out or defined in the summons, the truth of which he intends to prove,

2 a copy of the documents, and

3 the names, occupations and addresses of the witnesses he intends to call in order to prove the allegations "

Section 56

' Within the following five days, and in any event at least three clear days before the hearing, the plaintiff or, if applicable, the public prosecutor, shall serve on the defendant (at the latter's choice of address for service) copies of the documents and details of the names, occupations and addresses of the witnesses he intends to call in order to disprove the allegations Failure to comply shall result in the loss of his right to adduce refuting evidence "

COMPLAINTS

1 Relying on Article 6 para 2 of the Convention, the applicant complains that, in rejecting his libel action on the ground that the defamatory allegations against him were true, the domestic courts determined the issue of his guilt, whereas he had not been proved guilty according to law since he had never been prosecuted or convicted There was therefore, he alleges, an infringement of the principle of the presumption of innocence

2 The applicant further complains that Paris Court of Appeal lacked impartiality as one of the judges who sat on that court when it rejected his libel action on 8 July 1993 had previously sat on the appellate court which examined the criminal proceedings for subornation of perjury brought against other main actors in the same case He invokes Article 5 para 1 of the Convention

3 He also complains, still under Article 6 para 1 of the Convention, about an infringement of the principle of equality of arms, as a result of the over stringent conditions provided for in section 56 of the Law of 1881 on the Freedom of the Press, which require him to submit refuting evidence (or risk losing the right to do so), within only five days of receiving notice of the defendants' application to adduce proof, whereas the defendants have ten days from service of the summons originating the action in which to apply to adduce their proof

4 The applicant complains, lastly, under Article 6 para 1 of the Convention, that on 4 March 1993 the Court of Appeal refused him leave to call witnesses to testify that the defamatory imputations were untrue

THE LAW

1 The applicant complains that the French courts, in admitting the proof of the truth of the defamatory allegations on the basis of which they dismissed his libel action against *Le Monde* despite his never having been prosecuted for the offence attributed to him in the article in question, violated the presumption of innocence on which he was entitled to rely He invokes Article 6 para 2 of the Convention which provides

> Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law"

The Commission recalls at the outset that 'the presumption of innocence will be violated if, without the accused's having previously been proved guilty according to law and, notably, without his having had the opportunity of exercising his rights of defence, a judicial decision concerning him reflects an opinion that he is guilty This may be so even in the absence of any formal finding, it suffices that there is some reasoning suggesting that the court regards the accused as guilty (Eur Court HR, Minelli v Switzerland judgment of 25 March 1983, Series A no 62, p 18, para 37) The presumption of innocence may be infringed not only by a judge or a court, but also by a public authority which expresses itself publicly regarding the guilt of a person who has not yet been charged, but has already been remanded in police custody (Eur Court HR, Allenet de Ribemont v France judgment of 10 February 1995, Series A no 308, p 16, paras 36 37)

It should be pointed out that, in this case, the applicant was not at any time in the position of a defendant or a person charged in criminal proceedings within the meaning of Article 6 para 1 of the Convention In his libel action against the newspaper *Le Monde* he was aiming, as the plaintiff, to secure a criminal conviction and a civil penalty for the damage done to his honour and reputation by the publication in the press of an article which he deemed to be defamatory

The Commission observes, additionally, that the publication of the article was not in any way subject to the French authorities' control, so that the respondent State was not in any way liable for the contents of that article, and that the accusations contained in the article in question emanated from a press organ exercising the right to freedom of expression to which it is expressly entitled under Article 10 of the Convention

The real subject of the applicant's complaint is that the domestic courts, in admitting the defendants' proof of the truth of their defamatory allegations, effectively adopted and sanctioned as judicial truth the serious accusations of fabrication of evidence levelled at the applicant in the relevant article The Commission is not convinced by this argument

The possibility available to the defendant in a libel action to adduce proof of the truth of a defamatory allegation proof which if established, results in the defendant's acquittal is a special defence provided for in the legislation of most of the States signatories to the Convention Such legislation is designed to oblige the author of defamatory comments to ensure beforehand that he can prove what he says, thereby imposing a particular duty of care on anyone who makes defamatory statements in the press

In defamation cases the possibility available to the accused to establish the truth of his statements requires the judge to pay particular attention to the evidence submitted by the accused for that purpose and, as the Commission has already had occasion to underline the proof of truth , as a special defence given to the accused in a defamation case, is not contrary to the principle of the presumption of innocence (see No 8803/79, Dec 11 12 81, D R 26, p 171)

The Commission recalls in this respect that it is precisely in cases in which domestic law did not authorise the accused to adduce proof of the truth of defamatory allegations that the Convention organs concluded that there had been a violation of the right to freedom of expression recognised by Article 10 notwithstanding the need provided for in paragraph 2 of Article 10 to protect the reputation or rights of others and irrespective of the seriousness of the defamatory imputations (see, among many other authorities Eur Court HR Castells v Spain judgment Series A no 236, pp 23 24, paras 43 47)

The Commission considers that the possibility available to the defendant in a defamation case to prove the truth of his allegations cannot be deemed, as such, to infringe the presumption of the plaintiff s innocence since the plaintiff has not been defamed if the truth of the defamatory imputation is established The finding by a court that defamatory allegations are true does not in any way imply that it considers the plaintiff to be guilty of the acts or conduct criticised by the press organ or journalist in question In this regard even if the conduct which is the subject of defamatory imputations is a punishable offence, it is irrelevant that the plaintiff has never been prosecuted, particularly if the legal system in force provides for the principle of discretionary prosecution

Although the exercise of the right to freedom of expression carries with it duties and responsibilities and although the press must not overstep various bounds set, *inter alia* for the prevention of disorder and the protection of the reputation of others, it is nevertheless incumbent on it to impart information on matters of public interest since freedom of the press affords the public one of the best means of discovering and forming an opinion of the attitudes of their leaders (see the Castells judgment, op cit para 43)

In the instant case the Commission notes that the article complained of, which, moreover reiterated imputations that had previously appeared in another article published in 1985 concerned the arrest of three Irishmen allegedly while in possession of arms and explosives suspected of preparing a terrorist attack, following

which it emerged that public officials had framed the individuals in question in order to claim - unjustly - a success in the fight against terrorism. In a democratic State which respects the rights of the individual, this is one of the most serious travesties of justice of which public authorities responsible for protecting their fellow citizens can be accused.

The Commission notes further that one of these public officials had admitted, at the investigation stage, committing subornation of perjury by pressurising his subordinates into lying to the courts, which, as early as 1983, resulted in the entire proceedings against the three Irishmen being annulled. Similarly, the person who had really been in possession of the arms and explosives, which he claimed to have given to the applicant who was directly responsible for the operation, gave himself up in 1985, first to the DST and then to the investigating judge. The Commission notes, lastly, that both Mr Beau and Mr Jegat confirmed in the defamation proceedings, after their respective convictions for these offences, the truth of the facts reported in the article in *Le Monde*.

The Commission concludes that the applicant, a public official in whom, at the material time, the highest authorities of the State had placed their trust, cannot rely on the fact that he was personally neither prosecuted nor convicted since, as the criminal court rightly found, that does not certify his innocence and give him a licence to oppose any publication concerning his role in so serious a case.

Lastly, the Commission notes that both the first-instance and second instance courts carefully examined and considered the probative value of all the evidence before concluding that the defamatory imputations in the article were true.

There cannot therefore have been, in this case, an infringement of the presumption of the applicant's innocence and it follows that this part of the application must be rejected as manifestly ill founded, in accordance with Article 27 para. 2 of the Convention.

2. The applicant complains that one of the Paris Court of Appeal judges was not impartial. He refers to the judge who sat both on the bench which, on 15 January 1992, convicted Mr Beau and acquitted Mr Prouteau of subornation of perjury and on the bench which delivered the judgment of 8 July 1993 dismissing his libel action. He invokes Article 6 para. 1 of the Convention, the relevant part of which provides:

> "everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal ..."

The Commission recalls, in the first place, that the right to enjoy a good reputation and the right to have determined before a tribunal the justification of attacks on such reputation must be considered to be civil rights within the meaning of Article 6 para 1 of the Convention, which is therefore applicable to this case (No 11826/85, Dec 9 5 89, D R 61, p 152)

The Commission then recalls that the existence of impartiality for the purpose of Article 6 para 1 of the Convention must be determined according to a subjective test, that is, on the basis of the personal conviction of a particular judge in a given case, and also according to an objective test, that is, ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect (see Eur Court HR, Fey v Austria judgment of 24 February 1993, Series A no 255-A, p 12, para 28)

The Commission also recalls that, as to the subjective test, the personal impartiality of a judge must be presumed until there is proof to the contrary (see No 17722/91, Dec 8 4 91, D R 69, p 345) The applicant has in no way shown that Mr Chanut was motivated by a personal prejudice

Under the objective test, it must be determined whether, apart from the judge's personal conduct, there are ascertainable facts which may raise doubts as to his impartiality In this respect, even appearances may be of a certain importance This implies that in deciding whether in a given case there is a legitimate reason to fear that a particular judge lacks impartiality, the view of the complaining party is important but not decisive What is decisive is whether this fear can be said to be objectively justified (see the above mentioned decision)

The Commission considers that the mere fact that Judge Chanut sat on the Court of Appeal which gave judgment in criminal proceedings against third parties in which the applicant's name had been mentioned cannot, in itself, justify fears that he would not be impartial when subsequently called upon to rule on the libel action brought by the applicant

The Commission observes, moreover, that the judgment of Paris Court of Appeal of 15 January 1992 concerned only the criminal proceedings brought against MM Beau and Prouteau for subornation of perjury and did not therefore deal in any way with the issue as to where the arms and explosives seized in the Irishmen's flat came from, that issue having been the subject of separate criminal proceedings in which Mr Jegat was charged with unlawful possession of the arms and explosives in question

The main defamatory imputation, the veracity of which was examined by the Court of Appeal in its judgment of 8 July 1993, concerned the assertion, based on Mr Jegat s statements that the arms and explosives had been given to the applicant who himself subsequently planted them in the flat where they were later to be seized It is therefore difficult to see how Judge Chanut's presence on the bench which ruled in the case against MM Beau and Prouteau could objectively give the applicant reason to fear that he would not be impartial in assessing the truthfulness of the defamatory imputations based on Mr Jegat's allegations

Furthermore, the Commission notes that the applicant was aware from as early as the Court of Appeal's judgment of 4 March 1993 rejecting his requests to call witnesses that Judge Chanut, who had sat on the bench at that time, was one of those dealing with his case, but did not complain about this in his appeal on points of law against that interlocutory judgment Lastly, the Commission observes that the applicant did not attempt to challenge Judge Chanut at the hearing of 8 July 1993 but raised the complaint about an alleged lack of impartiality for the first time before the Court of Cassation

It follows that this part of the application must also be rejected as manifestly ill founded, in accordance with Article 27 para 2 of the Convention

3 The applicant complains about an infringement of the principle of the equality of arms on the ground that, under section 56 of the 1881 Law, he was allowed only five days in which to apply to adduce his refuting evidence, whereas the defendants, under section 55 of that Law had ten days from the date of the summons in which to apply to adduce proof of the truth of the defamatory allegations He invokes Article 6 para 1 of the Convention

The Commission considers that, having regard to the special nature of defamation proceedings, in which the burden is on the defendant to prove the truth of the defamatory imputations, it is not contrary to the requirements of a fair trial, in view, *inter alia* of the duties and responsibilities inherent in the exercise of freedom of expression to provide that the defendant must apply within a relatively short time to adduce proof of the truth of the defamatory allegations The Commission observes, moreover, that as regards attacks in the press on a person's honour and reputation, that ten day period is in the interests of the person who considers that he has been libelled, since it is designed to ensure that libel actions are dealt with quickly

Neither is it contrary to the requirements of a fair trial to require the plaintiff to apply to adduce his refuting evidence within a short time, particularly as, having commenced the libel action in the light of imputations which he considers to be defamatory he has had ample opportunity, before bringing proceedings, as in the instant case, against the authors of the defamatory allegations, to gather all the evidence capable of disproving the imputations in question The Commission therefore considers that the applicant, the plaintiff in the libel action, cannot claim that he had to submit his arguments in conditions which placed him at a substantial disadvantage *vis à vis* his opponent (see No 13249/87 Dec 2 7 90, D R 66 p 148)

This part of the application must therefore be rejected as manifestly ill-founded, in accordance with Article 27 para 2 of the Convention

4 The applicant complains, lastly, still under Article 6 para 1 of the Convention, about the Court of Appeal's refusal, in its interlocutory judgment of 4 March 1993, to grant him leave to call a number of witnesses to testify at the Court of Appeal hearing on the ground that contrary proof could be adduced only on the conditions and within the time limit provided for in section 56 of the Law of 29 July 1881, that is within five days following an application to adduce proof of the truth and, in any case, at least three clear days prior to the hearing

The Commission observes first of all that in the proceedings in question the applicant was not in the position of a person 'charged' within the meaning of Article 6 paras 1 to 3 of the Convention, but that of a plaintiff It observes next that the applicant, having summoned *Le Monde* before the criminal court and having had his objection to the defendants' application to adduce proof dismissed by that court, did not exercise his right to adduce refuting evidence within the time period expressly provided for on pain of loss of that right, under section 56 of the 1881 Law Neither did he appeal against the criminal court's decision of 22 November 1991 that the application to submit proof of the truth had been made in the proper form and was admissible

Lastly, the Commission recalls that Article 6 para 1 does not lay down rules on admissibility of evidence, which is primarily a matter for regulation under national law (see No 13800/88, Dec 1 7 91 D R 71, p 94) The Commission's task is confined to deciding whether proceedings in a particular case were fair, on the basis of an examination of the proceedings as a whole In the instant case the Commission notes that of the six witnesses whom the applicant sought leave to call on appeal, two, namely Mr Beau and Mr Jegat, had already given evidence at the hearing at first instance at which the applicant had had ample opportunity to cross examine them on matters which he deemed relevant to defending his interests as a civil party There is nothing in the file to suggest that the court's refusal to hear evidence from the four other persons requested as witnesses by the applicant was such as to deprive him of a fair trial within the meaning of Article 6 para 1 of the Convention

It follows that this part of the application must also be rejected as manifestly ill founded in accordance with Article 27 para 2 of the Convention

For these reasons, the Commission, by a majority

DECLARES THE APPLICATION INADMISSIBLE