APPLICATION N° 25308/94

Bernard VERITER v/FRANCE

DECISION of 2 September 1996 on the admissibility of the application

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Article 6, paragraph 1 of the Convention

a) Does the imposition of a fine for abuse of process relate to civil rights and obligations? On the facts a fine aimed at ensuring the proper administration of justice has the characteristics of a procedural sanction and does not relate to the determination of civil rights and obligations

b) Examination of the question whether the imposition of a fine for abuse of process involves a determination of a criminal charge Importance of the classification of the act in domestic law the nature of the offence and that of the punishment

c) The high level of a fine for abuse of process may raise an issue of access to court if the substantive case before the relevant court falls within the scope of Article 6 para 1

THE FACTS

The applicant, a French citizen, was born in 1946 in Arlon He is a civil servant and lives in Metz

A *Particular circumstances of the case*

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

The applicant was consulted, in his capacity as a member of the Moselle Federation Education Board, about a draft Decree on the rights and obligations of local public secondary school pupils He suggested various amendments to the draft, some inspired by regional law and others by the European Convention on Human Rights, and requested the Minister of National Education to take these suggestions into account However, the Decree was adopted on 18 February 1991 without any of his proposals having been accepted

The applicant applied to the Conseil d'Etat (Litigation Division) for the Decree to be quashed on the ground, *inter alia*, that none of his amendments had been taken into account His application was registered at the court on 15 April 1991

In support of his application, the applicant argued that the Decree was not applicable in Alsace Moselle, nor in special schools, and thus undermined the principle that all schoolchildren are equal He also maintained that the Decree was contrary to Article 6 of the Convention in that it did not provide for any way of appealing against disciplinary sanctions

The Minister of National Education filed his submissions with the court on 31 July 1991 The applicant filed submissions in response on 25 January 1992 confirming his previous arguments

In a judgment of 25 April 1994, the Conseil d'Etat dismissed the application and ordered the applicant to pay a fine of 10,000 francs (FRF) for abuse of process under section 57 2 of the Decree of 30 July 1963 The court held, *inter alia*, that the grounds of the appeal were incapable of affecting the lawfulness of the Decree, and were therefore ineffective and ill founded

B *Relevant domestic law*

Section 57 2 of Decree No 63 766 of 30 July 1963 on the organisation and functioning of the Conseil d'Etat (as amended by a Decree of 15 May 1990) provides that A plaintiff who submits an application held to be vexatious shall be liable to a fine of not more than FRF 20,000

The Conseil d'Etat has held that imposing fines for abuse of process is one of its inherent powers (see the Dame Rosset judgment of 24 January 1986 and the Bertin judgment of 27 February 1987)

The following persons may be fined for abuse of process a plaintiff who produces statements which he knows to be untrue (see judgment of 17 April 1970, Rec [Collected Decisions] 260) one who acts in a dilatory manner (judgment of the Conseil d Etat of 9 December 1981, Rev jurispr fisc [Review of Tax Cases], 1982, p 78) or one who persists in pursuing an action which is manifestly ill founded (see judgment of 19 April 1982, Rev juris fisc , 1982, p 314) or inadmissible (judgment of 15 February 1980 Rec T 841)

Such a fine may be introduced by way of secondary legislation since it is neither a tax nor a criminal penalty, primary legislation is not required (Ass [full Court], judgment of 5 July 1985 in the case of the C G T and the C F D T, Rec , 217)

Since the imposition of such fines is a matter of public policy (ordre public), they may be imposed without an adversarial hearing (Ass judgment of 5 July 1985 in the case of the C G T and the C F D T, JCP [Weekly Law Reports] 1985 II 20478)

Section 628 of the New Code of Civil Procedure provides A plaintiff whose application to the Court of Cassation is dismissed may, where the application is held to have been vexatious, be ordered to pay a civil fine of not more than FRF 20 000

According to a Conseil d'Etat judgment of 5 July 1985 (JCP 1985, ed G [General edition], II, 20478), a section 628 civil fine for abuse of process constitutes neither a tax nor a criminal penalty, its purpose is to deter foolhardy applications and it is in the nature of a civil law procedural measure It is limited in amount and was introduced in the interests of the proper administration of justice It constitutes a tool of public policy which either of the supreme courts may apply of its own motion, simply on the basis of the contents of the case-file, without being obliged to deal with the matter by way of adversarial proceedings

COMPLAINTS (Extract)

1 The applicant complains of the fact that the Conseil d'Etat has ordered him to pay a fine of FRF 10,000 for abuse of process Under this heading, he raises various complaints based on Article 6 of the Convention

a) He complains that the judgment of the Conseil d'Etat does not give any specific reasons for holding that his application was "vexatious He claims that there has been a violation of the right to a fair trial within the meaning of paragraph 1 of Article 6 of the Convention

b) He complains that the adversarial principle has not been complied with In particular, he states that he was not informed that a penalty might be imposed, that he did not have adequate time and facilities for the preparation of his defence and was not able to defend himself in person or through legal assistance of his own choosing, in breach of paragraphs 3(b) and (c) of Article 6 of the Convention

c) He claims that he was not given a public hearing, in violation of paragraph 1 of Article 6 of the Convention Further, he states that he was not given the opportunity to take part in the hearing before the Conseil d'Etat despite having requested to be notified of the hearing date

d) He considers that, if he was guilty of any offence, the fine at issue constituted a disproportionate penalty and, in view of his low income, restricted his right of access to a court He concludes from this that the fine imposed on him for

abuse of process constituted a wrongful restriction on his right of access to court and claims that this violated Articles 6 and 17 of the Convention, taken together

e) Lastly, he claims that there were no grounds for imposing the penalty and that it was too severe He submits that his application did not fall into any of the categories allowing the administrative courts to penalize a litigant for abuse of process

THE LAW (Extract)

1 The applicant complains of the fact that the Conseil d'Etat has ordered him to pay a fine of FRF 10,000 for abuse of process Under this heading, he raises various complaints based on Article 6 of the Convention, of which paragraph 1 provides, *inter alia*

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing by an independent and impartial tribunal

The respondent Government raise the preliminary objection that Article 6 of the Convention is inapplicable to the present case

They submit, first, that the substantive dispute before the Conseil d'Etat did not relate to a civil right Instead, the application involved a dispute about a question of law and sought a review, in the abstract, of a general and impersonal measure (see No 11543/85, Dec 5 3 90, D R 65 p 51) Moreover, the dispute did not relate to a pecuniary right (cf Eur Court H R , Procola v Luxembourg judgment of 28 September 1995, Series A no 326, where the facts led to the opposite conclusion)

Secondly the Government maintain that, in imposing the fine in question, the Conseil d'Etat was not determining a criminal charge' within the meaning of Article 6 of the Convention, as the Commission has already affirmed in the Simonnet case (No 23037/95, Dec 19 10 95, unpublished)

They go on to specify that, although the fine for abuse of process in the administrative courts has never been classified in French law (unlike the fine for abuse of process in the ordinary courts which is categorised as a "civil fine), it could be classified as a procedural sanction administered by the judge The Government emphasise the fact that such a fine does not appear on a criminal record, cannot be increased for a repeat offence and cannot be imposed in conjunction with a custodial sentence

Further, the Government deny that abuse of process has any of the characteristics of a criminal offence (see Eur Court H R , Ravnsborg v Sweden judgment of 23 March 1994, Series A no 283 B) They argue that, like the Swedish fine for improper conduct, a fine for abuse of process is imposed by the administrative courts in the interests of the proper administration of justice, to punish misconduct on the part of litigants which undermines the role of the courts and constitutes an abuse of the public service which they provide Therefore, such a fine constitutes a procedural sanction falling within the inherent powers of the courts to impose

Lastly, the Government submit that fines for abuse of process are not sufficiently severe to qualify as criminal penalties They point out that the maximum fine is FRF 20,000 and that in the present case the amount was lower, namely FRF 10 000

In reply, the applicant submits that Article 6 is applicable to the present case He argues that fines for abuse of process do amount to criminal penalties within the meaning of Article 6 of the Convention

In his submission the fine for abuse of process imposed on him relates to a criminal charge within the meaning of the Convention

He maintains first that the fine can be compared to the penalty for a minor offence (contravention) pointing out that it was twice as high as the annual average amount, per individual in France, of fines for major offences (delits) Secondly he argues that the fine was deterrent and punitive in character, as defined in the case law of the Convention organs

He emphasises that on the facts, the fine imposed on him was punitive since it amounted to three times his income tax for 1994

The respondent Government affirm, in the alternative that this part of the application is manifestly ill founded in that the applicant had a fair trial, in which the rights of the defence were fully respected within the meaning of Article 6 of the Convention

The applicant disputes this He complains that he was not informed in detail of the nature and cause of the accusation against him, that the proceedings were not adversarial in nature that the penalty was disproportionate to the alleged misconduct (which the Conseil d Etat in any event, failed to specify) and that the proceedings were not held in public

The Commission recalls that Article 6 of the Convention applies only to proceedings in which a civil right or obligation or a criminal charge is determined

First, it has examined whether the fine for abuse of process imposed on the applicant by the Conseil d'Etat amounted to a determination of any of the applicant's civil rights or obligations

The Commission finds that such fines, which are intended to punish and therefore to prevent, abuse of the court system, aim to preserve the proper administration of justice Therefore, they are a kind of procedural sanction not involving the determination of a civil right or obligation

Another issue is whether the high level of a fine for abuse of process can be considered as constituting an impediment to access to the courts contrary to Article 6 para 1 of the Convention (see No 12275/86, Dec 2 7 91, D R 70 p 47) Such an issue may arise where the substantive case before the relevant court falls within the scope of Article 6 para 1 of the Convention However, that is not so in the present case

On the contrary, the Commission finds that the application for judicial review before the Conseil d'Etat was decisive neither for one of the applicant's private law nor pecuniary rights within the meaning of the Convention (see Eur Court H R , Procola judgment, *op cit* , p 15, para 39, Editions Periscope v France judgment of 26 March 1992, Series A no 234, p 66, para 40 and Zander v Sweden judgment of 25 November 1993, Series A no 279 B, p 40, para 27, in all of which the facts led to the opposite conclusion) Hence, the Commission considers that the substantive case before the Conseil d'Etat did not involve a dispute over a 'civil right' within the meaning of Article 6 para 1 of the Convention Therefore, it is not obliged to examine whether the fine imposed raises an issue of access to the courts under Article 6 para 1 of the Convention

The next question is whether the fine for abuse of process imposed on the applicant by the Conseil d'Etat constituted the determination of a criminal charge against him within the meaning of Article 6 para 1 of the Convention

In order to decide whether Article 6 para 1 of the Convention was applicable under its 'criminal' head, the Commission will have regard to the three alternative criteria laid down by the European Court, that is, the legal classification of the offence under domestic law, the nature of the offence and the nature and degree of severity of the penalty (see Eur Court H R , Ravnsborg judgment, *op cit* , p 28, para 30, Schmautzer v Austria judgment of 23 October 1995, Series A no 328 A p 13, para 27 and Putz v Austria judgment of 22 February 1996, to be published in the Reports of Judgments and Decisions, 1996-I, para 31 *et seq*)

As regards the legal classification of the offence under French law, the Commission notes that the fine was imposed under the Decree of 30 July 1963 on the organisation and functioning of the Conseil d'Etat This provision of the Administrative Code appears in the chapter on procedure in the Conseil d'Etat It transpires from the case-law that the ability to impose such a fine is one of the Conseil d'Etat's inherent

powers and that the court does not treat it as a criminal penalty (see Dame Rosset judgment of 24 January 1986, Bertin judgment of 27 February 1987, and Ass., 5 July 1985, case of the C G T and the C F D T., Rec. 217). Moreover a fine for abuse of process does not appear on a criminal record (see Eur. Court H.R. Ravnsborg judgment, *op. cit.*, p. 30, para. 33 and Putz judgment, *op. cit.*, para. 32).

In the light of these matters the Commission considers that there is no indication that under the French legal system the provisions relating to fines for abuse of process are part of the criminal law.

However, the Commission recalls that the indications culled from the domestic law are not decisive; the true nature of the offence at issue being a weightier criterion (see Eur. Court H.R., Weber v. Switzerland judgment of 22 May 1990, Series A no. 177, p. 18, para. 32).

As regards the nature of the offence, the Commission notes that, according to the relevant French case law, those liable to a fine for abuse of process include plaintiffs who produce statements which they know to be untrue, those who act in a dilatory manner and those who persist in a manifestly ill-founded or inadmissible suit. It is for the Conseil d'Etat, where it is trying such a suit, to decide whether such a fine should be imposed. In the Commission's view, such rules and sanctions are more akin to the exercise of disciplinary powers by the courts than to the imposition of a punishment for commission of a criminal offence (see No. 23037/93, Dec. 19.10.95, Simonnet v. France, *op. cit.* and, *mutatis mutandis*, Eur. Court H.R. Ravnsborg judgment, *op. cit.*, p. 30, para. 34 and Putz judgment, *op. cit.* para. 33).

Notwithstanding the non-criminal character of the proscribed offence, the nature and degree of severity of the penalty that the person concerned risked incurring may bring the matter into the criminal sphere.

As regards this last point, the Commission observes that the maximum possible fine under section 57-2 of the Decree of 30 July 1963 was FRF 20,000. While it is true that the maximum fine is high, this should be set against the fact that the fine does not form part of a criminal record and cannot be converted into a custodial sentence. Accordingly, the Commission considers that what was at stake for the applicant was not sufficiently important to warrant classifying the sanction as criminal (see, *inter alia*, Eur. Court H.R., Putz judgment, *op. cit.*, para. 37 and, *mutatis mutandis*, Eur. Court H.R., Ravnsborg judgment, *op. cit.* p. 31, para. 35).

The above factors, taken as a whole, combined with the Court's reasoning in the above-mentioned Ravnsborg and Putz cases, mean that the sanction at issue cannot be described as criminal (see, in particular, No. 23037/93, Dec. 19.10.95, Simonnet v. France, *op. cit.*).

The Commission therefore concludes that the relevant proceedings concerned neither civil rights or obligations nor a "criminal charge" within the meaning of Article 6 para 1 of the Convention

Accordingly, this part of the application must be rejected as incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 27 para 2 thereof In consequence, the Commission must also hold that Article 17 of the Convention is inapplicable