APPLICATION N° 26135/95

Jean-Marie MALIGE v/FRANCE

DECISION of 5 March 1996 (Striking out of the list of cases)

Article 30, paragraph 1 (c) of the Convention and Rule 17 of the Commission's Rules of Procedure

The parties are obliged to respect the confidentiality of Commission proceedings

Publication in newspapers of confidential information about Commission proceedings Given this serious and unjustified breach of the confidentiality of Commission proceedings, it is no longer justified to continue the examination of the application Lack of general interest Application struck out of the list of cases

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THE FACTS

The applicant is a French citizen He was born in 1942 and lives in Athis-Mons He is a company director He was represented before the Commission by Mr Yannick Rio, a lawyer practising in Rouen

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

In July 1992 the applicant was prosecuted for speeding

Before Juvisy-sur-Orge police court, the applicant submitted, first, that given the lack of precision of the speed-reading obtained by the tachometer when detecting the offence, the police and gendarmerie had used an unlawful means of detecting the speeding offence and, secondly, that as the Decree of 25 June 1992 introducing the system of docking penalty points from driving licences had been published later than the date prescribed by the Law of 10 July 1989, it was illegal, as was the Decree of 23 November 1992 amending certain sections of the Road Traffic Act relating to the points system

On 8 February 1993 Juvisy-sur-Orge police court convicted the applicant of exceeding the speed limit by at least 30 k.p.h. after finding that he had been driving at 94 k.p.h in a 50 k p h area He was fined 2,000 francs (FRF) and disqualified from driving for thirty days under sections L 14 and L 16 (2) and R 10 4, R 232 2 and R 266.4 of the Road Traffic Act.

The police court judgment stated, first, that the tachometer in question had been checked on 3 April 1992 and was found to be in normal working order It noted further that the applicant had been driving at almost twice the authorised speed and that the accepted margin of error (5 k p h) worked to his benefit, as this meant that the speed recorded was in practice reduced by 5 k p.h..

As regards the Decree of 25 June 1992 introducing the points system and the fact that it was published later than the date prescribed in the Law of 10 July 1989, the court found that there was established administrative-court case-law to the effect that this did not amount to an error of procedure such as to warrant setting the Decree aside It went on to hold that the Decree was a special policy measure issued by the administrative authorities and that the ordinary courts did not have jurisdiction to review its legality, as it was not used as the basis for bringing the prosecution but, on the contrary, took effect as a result of the conviction secured by the court The court ruled that the criminal courts did not therefore have jurisdiction to rule on the legality of the Decree of 25 June 1992.

Regarding the submission that the Decree of 23 November 1992 was illegal, the police court held that this was also a special policy measure and that the ordinary courts did not have jurisdiction to review its legality because, like the Decree of 25 June 1992, it took effect following a conviction secured by the courts

The applicant appealed to Paris Court of Appeal on the ground that these decrees were illegal and that he should therefore be acquitted.

On 12 November 1993 Paris Court of Appeal upheld the applicant's conviction and increased the fine to FRF 2,500 and the period of disqualification to three months.

The Court of Appeal held that the docking of points from a driving licence was not an ancillary penalty to a conviction, but a safety measure designed to protect society from the conduct of dangerous individuals who put others' safety at risk and

to deter such individuals from committing further road traffic offences The court examined the compatibility of the Law of 10 July 1989 and its implementing decrees with Article 6 of the Convention and found that points were docked only after a conviction by a tribunal established by law or after payment of a fixed fine The offender could always apply to a tribunal invested with the guarantees required under Article 6 of the European Convention of Human Rights and those set forth in the Code of Criminal Procedure

The applicant appealed to the Court of Cassation on the ground, *inter alia*, that the Decree of 28 August 1991 amending the provisions of the Road Traffic Act relating to speeding offences was illegal and that the tachometer was unreliable He also alleged that the Decree was incompatible with Article 6 para 1 of the Convention and that the Law of 10 July 1989 and the decrees of 25 June and 23 November 1992 were illegal on the ground that they breached the principle that only a statute can define offences and lay down penalties

The Court of Cassation dismissed the appeal in a decision of 4 May 1994, served on 25 June 1994 Regarding the submission that the provisions of the Road Traffic Act relating to speeding offences were illegal and that the tachometer was unreliable, the court held that

> "Whereas, in dismissing the appellant's submission that the Decree of 28 August 1991 (which, *inter alia*, amended the section of the Road Traffic Act applied in this case (section R 232)), was unlawful, the Court of Appeal ruled as follows 'first, the principle laid down by the legislature that offences shall be defined and penalties established according to the gravity of the offence is not void for illegality because it is not contrary to French law, to the Constitution or to Community case-law to establish proportionality between the penalty and the offence, neither is it contrary to the principle that all citizens are equal before the law',
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> Whereas, further, the use of a speed-measuring instrument, which has been approved by the administrative authority regulating its use, does not make for arbitrary results, as these may be contested by the parties and are subject to the unfettered discretion of the criminal courts, which may order any investigative measures they consider necessary,
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> In ruling as it did, the Appeal Court has neither gone against the spirit nor exceeded the scope of the principle referred to in the ground of appeal The appeal cannot therefore be allowed,"

As regards the compatibility with Article 6 para 1 of the Law and implementing decrees introducing the points system, the Court of Cassation held that

> "The Court of Appeal acted correctly in dismissing the grounds of appeal duly submitted to it concerning the incompatibility with Article 6 para 1 of the

European Convention for the Protection of Human Rights and Fundamental Freedoms of the Law of 10 July 1989 introducing the points system and the illegality of the decrees of 25 June and 23 November 1992 instituting the administrative measure of docking points;

It is clear from section L. 11-4 of the Road Traffic Act, which provides that sections 55-1 of the Criminal Code and 799 of the Code of Criminal Procedure, as then in force, shall not apply to the docking of points from driving licences, that this measure is not an ancillary penalty to a conviction and that consequently the criminal courts do not have jurisdiction either to review the compatibility of the above-mentioned measure with the provision of the Convention or its legal basis, ."

COMPLAINTS

The applicant complains that Decree No. 91-825 of 28 August 1991 amending the provisions of the Road Traffic Act relating to speeding offences violates the principle that only a statute can define offences and lay down penalties. He argues in this respect that the use of a measuring instrument (tachometer) to detect an offence is not commensurate with the degree of precision required by the criminal legislation, which requires the speed to be determined within a kilometre He invokes Article 7 of the Convention

The applicant complains further that the French points system precludes any possibility of applying to a tribunal offering the guarantees required by Article 6 of the Convention in order to contest this system of partially and progressively disqualifying motorists. He argues in particular that the current system prevents the courts from exercising their full and proper discretion during an *inter partes* hearing in open court and therefore violates the principles of proportionality of the penalty to the offence, of the rights of the defence and of the right to a fair trial

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 23 December 1994 and registered on 6 January 1995

On 5 July 1995 the Commission decided, in accordance with Rule 48 para 2 (b) of its Rules of Procedure, to give notice of the application to the French Government and to invite them to submit their written observations on the admissibility and the merits of the complaint that the system of docking points from driving licences did not comply with the guarantees necessary for a fair hearing. It declared the remainder of the application inadmissible

At the end of July 1995, the attention of the Secretary to the Commission was drawn to an article printed in *Le Figaro* newspaper on 26 July 1995 reproducing information which, judging from its contents, had been disclosed to the newspaper by

Mr Rio, the applicant's lawyer, and concerned the present application The Secretary to the Commission wrote to Mr Rio on 31 July 1995 informing him that in addition to certain errors, the article contained details of the questions put to the Government and of the time limit for them to reply The Secretary to the Commission reminded Mr Rio, "in the firmest possible terms", that in introducing the application he had undertaken to respect the confidentiality of Commission proceedings

In a letter of 9 August 1995 the French Government drew the attention of the Secretary to the Commission to an article which had appeared in the law review, *La Gazette du Palais*, signed by Mr Rio and reproducing the Commission's questions almost word for word The Government also drew the Secretary's attention to the aforementioned article in *Le Figaro* The Government complained that both these articles contained blatant inaccuracies which could mislead readers into thinking that the application had already been declared admissible and that the French Government would inevitably be found to have violated the Convention The Government asked the Commission to take all necessary measures to remind Mr Rio that the proceedings were confidential

The Secretariat of the Commission wrote to Mr Rio on 28 August 1995 drawing his attention once again to the fact that the proceedings were confidential

Mr Rio did not reply to either of these letters

Mr Rio took part in a very popular television programme on TF1 (Mr Dechavane's programme) during which he allegedly reiterated the views expressed in his articles

The Government submitted their observations on 15 December 1995 after an extension of the time limit The applicant's observations in reply were submitted on 8 February 1996

The French Government wrote to the Secretary to the Commission on 15 January 1996 enclosing a further article by Mr Rio which had been published in *La vie judiciaire* on 7 January 1996 and concerned the application The Government stated that the lawyer was continuing to snap his fingers at the confidentiality of the proceedings and to disclose erroneous and tendentious information about the contents of the case file and the conduct of the proceedings

On 30 January 1996 the Secretary to the Commission informed the French Government and the applicant that the Commission would be examining the question of failure to respect the confidentiality of the proceedings at the session beginning on 26 February 1996

In a letter of 5 February 1996 Mr Rio provided an explanation for publishing the articles in question He specified, *inter alia*, that they were "intended merely to fuel the legal debate which had been sparked off in France by the coming into force of the

points system", and that this debate was being widely fuelled by the French public authorities themselves He also referred to a dispatch released by the Strasbourg office of *Agence France Presse* dated 26 July 1995 which, he alleged, revealed much more specific information about the case and brought that information well into the public arena

On 21 February 1996 the Government submitted further observations These were communicated to the applicant on 1 March 1996.

REASONS FOR THE DECISION

This application was communicated to the respondent Government, who submitted their observations on 15 December 1995 The applicant's lawyer was invited to submit a reply by 16 February 1996.

However, in the light of information supplied by the Government in their letters of 9 August 1995 and 15 January 1996 concerning Mr. Rio's conduct and of other information in its possession, the Commission considers that it is now necessary to examine whether there are grounds justifying discontinuing its examination of the application under Article 30 para 1 of the Convention.

The relevant part of Article 30 para 1 of the Convention reads as follows.

"1. The Commission may at any stage of the proceedings decide to strike a petition out of its list of cases where the circumstances lead to the conclusion that:

(.)

c for any other reason established by the Commission, it is no longer justified to continue the examination of the petition.

However, the Commission shall continue the examination of a petition if respect for Human Rights as defined in this Convention so requires "

The Commission notes that the applicant has made public through his representative before the Commission, Mr. Rio, confidential information about the conduct of the proceedings before the Commission and misleading information as to the substantive outcome of those proceedings The Commission notes in particular that the questions put to the Government are reproduced virtually word for word in the article in the *Gazette du Palais*, signed by Mr. Rio and by an assistant working in his chambers, and that the article even specifies the time limit for the Government to reply The Commission notes that in the same article the applicant's lawyer states that the Commission "has declared our application admissible", an assertion which does not tally with the facts, as the proceedings are still at the stage in which the parties submit their observations Furthermore, in the same article, the applicant's lawyer takes the

liberty, without any justification whatsoever, of predicting how the Government will reply. Finally, and more boldly still, the applicant's lawyer implies that the Commission has already reached a decision as to the substantive outcome of the application.

The Commission notes that regardless of the letters sent by the Secretariat to Mr. Rio on 31 July and 28 August 1995, Mr. Rio wrote another article, which appeared in the 7 January 1996 edition of *La vie judiciaire*, in which he continued to disclose confidential information about the proceedings and reiterated his comments as to its likely outcome.

The Commission stresses that the parties are obliged to respect the confidentiality of Commission proceedings. It refers in this respect to Article 33 of the Convention which provides that "the Commission shall meet *in camera*" and to Rule 17 of its Rules of Procedure which provides, *inter alia*, that "all deliberations of the Commission shall be and shall remain confidential" and that "the contents of all case-files ... shall be confidential". It recalls that the rules regarding the confidentiality of the proceedings have existed for a long time and serve, first, to protect the parties and in particular the applicants and, secondly, to protect the Commission from any attempt to exert political or any other form of pressure.

The Commission considers that the conduct of the applicant's lawyer is a clear breach of the confidentiality of Commission proceedings. It considers that the explanation given by the applicant's lawyer in his letter of 5 February 1996 and, in particular, his argument that the publication of his standpoint was intended merely to "fuel the legal debate which had been sparked off in France on the coming into force of the points system", can be interpreted as an attempt to influence the Commission's decision on the admissibility of the application It considers that Mr. Rio could have contributed to the legal debate by providing and commenting on non-confidential information regarding the application rather than by disclosing confidential information or giving misleading information as to the conduct of the proceedings. The Commission considers that the explanations given by the applicant's lawyer following a number of letters from the Secretariat reminding him of his undertaking to respect the confidentiality of the proceedings, given at the time of filing the application, do not disclose any justification for his conduct (see No 20915/92, Comm. Report 3.3 95, D.R. 80-A, pp. 74-77)

In the circumstances, the Commission considers that, in accordance with Article 30 para 1 (c) of the Convention, it is no longer justified to continue the examination of the application.

Moreover, the Commission considers that there is no special circumstance concerning respect for human rights, as defined in the Convention, which requires the further examination of the application by virtue of Article 30 para. 1 *in fine* of the Convention in so far as other applications raising, in substance, the issue of the compatibility of the French points system with the Convention are currently being examined by the Commission.

For these reasons, the Commission, by a majority,

DECIDES TO STRIKE THE APPLICATION OUT OF ITS LIST OF CASES.