

BGE 20020221_53146_99 vom 21. Februar 2002

Bundesgericht (BGE), 2002-02-21, FR

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Regeste

Regeste Diese Zusammenfassung existiert nur auf Französisch. DÉCISION D'IRRECEVABILITÉ de la CourEDH: SUISSE: Art. 6 par. 1 CEDH. Équité d'une procédure disciplinaire dirigée contre un avocat. L'interdiction de facturer des honoraires excessifs fait partie des devoirs professionnels de base d'un avocat au sens de l'art. 12 de la loi sur le barreau; en outre, le rapport disciplinaire détaillé de la Commission de justice et la longue réponse du requérant montrent qu'il était pleinement capable de comprendre l'étendue des accusations portées contre lui et de préparer sa défense. Enfin, la Commission de surveillance du barreau et le Tribunal fédéral ont soigneusement examiné les accusations portées contre le requérant et rien n'indique qu'il n'ait pas pu, étant lui-même avocat, faire valoir les moyens qu'il jugeait adéquats. Conclusion: requête déclarée irrecevable.

DÉCISION D'IRRECEVABILITÉ de la CourEDH: SUISSE: Art. 10 CEDH. Amende disciplinaire infligée à un avocat suite aux critiques formulées à l'égard de la cour d'appel. Cette ingérence était prévue par la loi et poursuivait le but légitime de garantie de l'autorité et de l'impartialité du pouvoir judiciaire. On peut attendre des avocats, vu leur statut spécifique et la situation centrale qu'ils occupent dans l'administration de la justice, qu'ils contribuent à son bon fonctionnement et à la confiance du public en celle-ci. En l'espèce, le Tribunal fédéral a souligné que la critique était admissible, mais tant qu'un verdict de culpabilité n'avait pas été prononcé, il fallait dire clairement qu'il n'y avait qu'un soupçon. Le caractère grave et général des accusations portées contre les juges de la Cour d'appel du Canton de Lucerne était peu compatible avec le rôle des avocats visant à maintenir la confiance du public en la justice. En outre, l'amende de 500 fr. était au bas de l'échelle des peines prévues par la loi sur le barreau. Vu la marge d'appréciation des autorités nationales et le soin avec lequel le Tribunal fédéral a pesé les intérêts en présence, l'ingérence était proportionnée. Conclusion: requête déclarée irrecevable.

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Erwägungen

E. 1

The applicant complains under Article 6 § 1 of the Convention that in these proceedings he did not have a public hearing.

E. 2

Under Article 6 § 1 of the Convention the applicant complains of the criminal immunity of the Court of Appeal judges, thus preventing their criminal prosecution and any concomitant civil claim for damages against them.

E. 3

The applicant also complains under Article 6 § 1 of the Convention that the Bar Act of the Canton of Lucerne was insufficiently precise in that it did not specify the disciplinary

offence of excessive fees levelled against him.

E. 4

Also under Article 6 § 1 of the Convention the applicant complains of the arbitrary and incorrect decision of the Federal Court of 26 February 1999, *inter alia*, in the manner in which it dealt with his various fees in the divorce proceedings, and that that court did not permit him to submit relevant evidence. He complains in particular that there was no evidence confirming the Federal Court's statement in its decision of 26 February 1999 in which it was found that a lawyer would be undermining the relationship of trust between himself and his client if he was representing the latter in proceedings and at the same time executing his fees towards that client.

E. 5

Under Article 10 of the Convention the applicant complains of a breach of his freedom of opinion in that he was fined for having criticised the Court of Appeal. Erwägungen THE LAW 1. The applicant raises various complaints under Article 6 § 1 of the Convention about the unfairness of the proceedings and the lack of a public hearing. This provision states, insofar as relevant: "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 [a] tribunal ..." (a) Under this provision the applicant complains that in the proceedings at issue he did not have a public hearing. The Court considers that it cannot, on the basis of the case-file, determine the admissibility of this complaint, and that it is therefore necessary, in accordance with Rule 54 § 3 of the Rules of Court, to give notice of this part of the application to the respondent Government. (b) The applicant further complains under Article 6 § 1 of the Convention of the criminal immunity of the Court of Appeal judges which prevents their criminal prosecution. He also complains that the Bar Act of the Canton of Lucerne was insufficiently precise in that it did not specify the disciplinary offence of excessive fees levelled against him. Finally, he complains of the arbitrary and incorrect decision of the Federal Court of 26 February 1999. The Court finds it unnecessary to examine whether or not Article 6 § 1 of the Convention is applicable in respect of these complaints, since they are in any event inadmissible for the following reasons: In so far as the applicant complains of a lack of access to court because of the immunity of the judges of the Court of Appeal of the Canton of Lucerne, the Court recalls that the right of access to court within the meaning of Article 6 § 1 of the Convention may be subject to limitations which may nevertheless not restrict or reduce the access left to the individual to such an extent that the very essence of the right is impaired (see the *Philis v. Greece* judgment of 27 August 1991, Series A no. 209, pp. 20-21, § 59). In the present case, the limitation complained of, serving the authority and the independence of the judiciary, was not insurmountable in that, according to Section 4 of the Code of Criminal Procedure of the Canton of Lucerne, Parliament may at any time authorise the criminal prosecution of judges of the Court of Appeal. The applicant complains further that the Bar Act was insufficiently precise in that it did not specify the disciplinary offence of excessive fees levelled against him. The Court notes the judgment of the Federal Court of 26 February 1999 according to which the prohibition to charge excessive fees, and the requirement to maintain propriety when dealing with the authorities were among the basic professional duties of a practising lawyer within the meaning of Section 12 § 1 of the Bar Act. The Court has moreover had regard to the detailed disciplinary report of the Commission of Justice of the Canton of Lucerne of 18 February 1997 and to the lengthy statement which the applicant filed in reply

on 21 April 1997. As a result, the Court considers that the applicant was able fully to understand the extent of the accusations levelled against him with a view to preparing an adequate defence, as required by Article 6 of the Convention (see *Mattoccia v. Italy*, no. 23969/94, § 60, ECHR 2000-IX). The applicant moreover complains of the arbitrary and incorrect decision of the Federal Court. The Court recalls that its function is not to deal with errors of fact or of law allegedly committed by a national court unless and insofar as they may have infringed rights and freedoms protected by the Convention (see the *Schenk v. Switzerland* judgment of 12 July 1988, Series A no. 140, p. 29, § 45). Moreover, insofar as the applicant may be understood as complaining of the assessment of evidence, it is, as a rule, for the national courts to assess the evidence before them, the Court's task being to ascertain whether the proceedings considered as a whole, including the way in which evidence was taken, were fair (see the *Asch v. Austria* judgment of 26 April 1991, Series A no. 203, p. 10, § 26). In the present case, the Bar Supervisory Commission and the Federal Court carefully examined the accusations levelled against the applicant. There is no indication that the applicant, who was himself a lawyer, could not duly present in his submissions to the Bar Supervisory Commission and later to the Federal Court his point of view or any evidence which he considered relevant. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected under Article 35 § 4 of the Convention.

2. Under Article 10 of the Convention the applicant complains of a breach of his freedom of opinion in that he was fined for having criticised the Court of Appeal. Article 10 states: "1. 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. ... 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary." In the Court's opinion, the disciplinary fine amounted to an "interference" with the applicant's exercise of his freedom of expression within the meaning of Article 10 § 1 of the Convention. In examining the justification for this interference, the Court notes that the fine was based on Section 12 § 1 of the Bar Act of the Canton of Lucerne, which lists the sanctions for breaches of professional duties by practising lawyers. The interference was, therefore, "prescribed by law" within the meaning of Article 10 § 2 of the Convention. Moreover, the interference pursued a legitimate aim for the purposes of Article 10 § 2 of the Convention, namely, "maintaining the authority and impartiality of the judiciary". In assessing whether the interference was "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention, the Court recalls that the special status of lawyers gives them a central position in the administration of justice as intermediaries between the public and the courts. Such a position explains the usual restrictions on the conduct of members of the Bar (see the *Casado Coca v. Spain* judgment of 24 February 1994, Series A no. 285-A, p. 21, § 54). Regard being had to the key role of lawyers in this field, it is furthermore legitimate to expect them to contribute to the proper administration of justice, and thus to maintain public confidence in them (see the *Schöpfer v. Switzerland* judgment of 20 May 1998, Reports 1998-III, p. 1053, § 29). In the present case, the applicant had not in principle been prohibited from making the statements

at issue. Thus, the Federal Court pointed out in its judgment of 26 February 1999, criticism, even if it shocked third persons, was admissible, though as long as no criminal conviction had been pronounced, it had to be made clear that for the time being there was only a suspicion. Moreover, the Court notes the seriousness and general nature of the charges levelled by the applicant against the judges of the Court of Appeal of the Canton of Lucerne, which was hardly compatible with the contribution which lawyers are expected to make to maintaining public confidence in the judiciary (see the Schöpfer judgment, cited above, p. 1053, § 31). Finally, the fine of CHF 500 imposed on the applicant was at the lower end of the scale of penalties provided for in the Bar Act of the Canton of Lucerne. Having regard to the margin of appreciation left to States in such matters and to the care with which the domestic authorities balanced the various interests, the Court finds that the interference with the applicant's rights under Article 10 of the Convention could reasonably be considered "necessary in a democratic society ... for maintaining the authority and impartiality of the judiciary". It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected under Article 35 § 4 of the Convention. *Entscheid* For these reasons, the Court Decides unanimously to adjourn the examination of the applicant's complaint under Article 6 § 1 of the Convention about the lack of a public hearing; Declares by a majority the remainder of the application inadmissible. Vincent Berger Registrar Ireneu Cabral Barreto President

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