

EGMR 11329/85 vom 18. Dezember 1987

Hudoc Ch, 1987-12-18, FR

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FR: CourEDH 11329/85 du 18 décembre 1987

IT: CorteEDU 11329/85 del 18 dicembre 1987

Regeste

Violation of Art. 12; Non-pecuniary damage - finding of violation sufficient; Costs and expenses award - domestic proceedings; Costs and expenses award - Convention proceedings; Violation: 12

Erwägungen

E. 18

December 1987 In the case of F v. Switzerland [■], The European Court of Human Rights, taking its decision in plenary session pursuant to Rule 50 of the Rules of Court and composed of the following judges: Mr. R. Ryssdal, President, Mr. Thór Vilhjálmsson, Mrs. D. Bindschedler-Robert, Mr. G. Lagergren, Mr. F. Gölcüklü, Mr. F. Matscher, Mr. J. Pinheiro Farinha, Mr. L.-E. Pettiti, Mr. B. Walsh, Sir Vincent Evans, Mr. R. Macdonald, Mr. C. Russo, Mr. R. Bernhardt, Mr. A. Spielmann, Mr. J. De Meyer, Mr. J.A. Carrillo Salcedo, Mr. N. Valticos, and also of Mr. M.-A. Eissen, Registrar, and Mr. H. Petzold, Deputy Registrar, Having deliberated in private on 25 June and 25 and 27 November 1987, Delivers the following judgment, which was adopted on the last-mentioned date: PROCEDURE 1. The case was referred to the Court by the Government of the Swiss Confederation ("the Government") and by the European Commission of Human Rights ("the Commission") on 22 September and 17 October 1986 respectively, within the three-month period laid down in Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). It originated in an application (no. 11329/85) against Switzerland lodged with the Commission under Article 25 (art. 25) by Mr. F on 12 December 1984. The applicant, who is a Swiss national, requested the Court not to divulge his identity. The Government's application referred to Articles 45, 47 and 48 (art. 45, art. 47, art. 48); the Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Switzerland recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). Both sought a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 12 (art. 12). 2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings pending before the Court and designated the lawyer who would represent him (Rule 30). 3. The Chamber to be constituted included ex officio Mrs. D. Bindschedler-Robert, the elected judge of Swiss nationality (Article 43 of the Convention) (art. 43), and Mr. R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 26 September 1986, in the presence of the Registrar, the President drew by lot the names of the other five members, namely Mr. G. Lagergren, Mr. Matscher, Sir Vincent Evans, Mr. C. Russo and Mr. J.A. Carrillo Salcedo (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). 4. Mr. Ryssdal, who had assumed the

office of President of the Chamber (Rule 21 para. 5), consulted those concerned, through the Registrar, on the need for a written procedure (Rule 37 para. 1). In accordance with the order made in consequence, the Registrar received: - the applicant's memorial, on 16 December 1986; and - the Government's memorial, on 28 January 1987. On 25 March 1987, the Secretary to the Commission indicated that the Delegate would submit his observations at the hearings. 5. Having consulted - through the Registrar - the Agent of the Government, the Delegate of the Commission and the lawyer for the applicant, the President of the Court directed on 1 April 1987 that the oral proceedings should commence on 22 June 1987. 6. On 22 April 1987, the Chamber decided under Rule 50 to relinquish jurisdiction forthwith in favour of the plenary Court. 7. The hearing was held in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting immediately beforehand. There appeared before the Court: - for the Government Mr. J. Voyame, Director of the Federal Department of Justice, Agent, Mr. R. Forni, Federal Judge, Mr. O. Jacot-Guillarmod, Head of the Department of International Affairs, Federal Department of Justice, Counsel; - for the Commission Mr. H. Vandenberghe, Delegate; - for the applicant Mr. J. Lob, avocat, Counsel. The Court heard addresses by Mr. Voyame and Mr. Forni for the Government, by Mr. Vandenberghe for the Commission and by Mr. Lob for the applicant, as well as their replies to its questions. AS TO THE FACTS I. THE FACTS OF THE CASE 8. The applicant, a Swiss national born in 1943, has married four times since 1963. The first three marriages were dissolved by divorce; the sole issue in the instant case is the temporary prohibition on remarriage imposed on him following the third divorce. A. Background 9. F married Miss G in 1963 and divorced her on 8 May 1964. On 12 August 1966, he was remarried to Mrs. B, a divorcee, who bore him a son on 26 November of the same year. The couple separated in December 1978, and F cohabited with another woman. Mrs. B obtained a divorce on 27 October 1981. The court prohibited the applicant from remarrying within a year, under Article 150 of the Swiss Civil Code (see paragraph 22 below). B. The second temporary prohibition on remarriage 10. The applicant advertised for a secretary. On 11 January 1983, Miss N appeared in response to his advertisement. Four days later they were living together and on 26 February the couple married.

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