European Court of Human Rights: Case of Mamère v. France

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On 11 October 2000, the Paris Criminal Court found Mr. Noël Mamère, a leading member of the ecologist party *Les Verts* and Member of Parliament, guilty of having publicly defamed Mr. Pellerin, the director of the Central Service for Protection against Ionising Radiation (SCPRI). Mr. Mamère was ordered to pay a fine of FRF 10,000 (app. EUR 1,525). The Paris Court of Appeal upheld the conviction considering that Mr. Mamère's comments during a television programme were defamatory as they had compromised Mr. Pellerin's "honour and reputation" by accusing him of repeatedly having "knowingly provided, in his capacity as a specialist on radioactivity issues, erroneous or simply untrue information about such a serious problem as the Chernobyl disaster, which could potentially have had an impact on the health of the French population". The Court found that Mr. Mamère had not acted in good faith, as he had not adopted a moderate tone in insisting forcefully and peremptorily that Mr. Pellerin had repeatedly sought to lie and to distort the truth about the consequences of the Chernobyl nuclear accident (the latter occurred in the spring of 1986). Mr. Mamère had also attributed "pejorative characteristics" to Mr. Pellerin by using the adjective "sinister" and by saying that he suffered from "the Asterix complex". In May 2006, following a complaint by certain individuals suffering from thyroid cancer, the Commission for Research and Independent Information on Radioactivity (CRIIRAD) and the French Association of Thyroid Disease Sufferers (AFMT) recognised that the official services at the time had lied and had underestimated the contamination of soil, air and foodstuffs following the Chernobyl disaster.

In its judgment of 7 November 2006, the Strasbourg Court observed that the conviction of Mr. Mamère for aiding and abetting public defamation of a civil servant had constituted an interference with his right to freedom of expression as guaranteed in the Freedom of the Press Act of 29 July 1881. It also considered that it had pursued one of the legitimate aims listed in Article 10 § 2, namely the protection of the reputation of others (in this case the reputation of Mr Pellerin). The Court, however, considered the interference as not necessary in a democratic society, as the case obviously was one in which Article 10 required a high level of protection of the right to freedom of expression. The Court underlined that the applicant's comments concerned topics of general concern, namely the protection of the environment and of public health. Mr. Mamère had also been speaking in his capacity as an elected representative committed to ecological issues, so that

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his comments were to be regarded as being a political or “militant” expression. The Court reiterated that those who have been prosecuted on account of their comments on a matter of general concern should have the opportunity to absolve themselves of liability by establishing that they have acted in good faith and, in the case of factual allegations, by proving that they were true. In the applicant’s case, the comments made were value judgments as well as factual allegations, so the applicant should have been offered both those opportunities. As regards the factual allegations, since the acts criticised by the applicant had occurred more than ten years earlier, the 1881 Freedom of the Press Act barred him from proving that his comments were true. While in general the Court could see the logic of such a prescription, it considered that where historical or scientific events were concerned, it might on the contrary be expected that over the course of time the debate would be enriched by new information that could improve people’s understanding of reality. Furthermore, the Court was not persuaded by the reasoning of the French Court as to Mr. Mamère’s lack of good faith and the insulting character of some of his statements. According to the Strasbourg Court, Mr. Mamère’s comments could be considered sarcastic but they remained within the limits of acceptable exaggeration or provocation. Furthermore, the question of Mr. Pellerin’s personal and “institutional” liability was an integral part of the debate on a matter of general concern: as director of the SCPRI he had had access to the measures being taken and had on several occasions made use of the media to inform the public of the level of contamination, or rather, one might say, the lack of it, within the territory of France. In those circumstances, and considering the extreme importance of the public debate in which the comments had been made, Mr. Mamère’s conviction for defamation could not be said to have been proportionate and hence “necessary in a democratic society”. The Court therefore held that there had been a violation of Article 10.

Arrêt de la Cour européenne des Droits de l’Homme (deuxième section), affaire Mamère c. France, requête n° 12697/03, du 7 novembre 2006

Judgment by the European Court of Human Rights (Second Section), case of Mamère v. France, Application no. 12697/03 of 7 November 2006

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