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**SUMMARY OF THE  
CASE OF EZELIN V. FRANCE  
JUDGMENT OF THE EUROPEAN COURT OF  
HUMAN RIGHTS  
ISSUED ON 18 MARCH 1991**

**June 2005**

*Legal Guide*

<<http://www.legalguide.am>>

This summary of the case of Ezelin v. France is made by Advocate Narine Gasparyan, for the Armenian Non-Governmental Organization “Legal Guide”, who is solely responsible for its content.

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## EZELIN v. FRANCE

### JUDGMENT OF 18 MARCH 1991

#### NON OFFICIAL SUMMARY OF THE FACTS OF THE CASE

##### I. Background to the case

The Applicant, Mr. Roland Ezelin is a French national, lawyer (avocat) who lives at Basse-Terre (Guadeloupe), who was Vice-Chairman of the Trade Union of the Guadeloupe Bar at that time. On 12 February 1983 a number of Guadeloupe independence movements and trade unions held a public demonstration at Basse-Terre to protest against two court decisions whereby prison sentences and fines were imposed on three militants for criminal damage to public buildings. The Applicant took part in the public demonstration and carried a placard.

The Chief Superintendent of the Basse-Terre police drew up a report on the very same day and sent it to the local public prosecutor. The report, which had eleven appendices, gave the following account:

"... The demonstration being held today by various independence movements in the Champ d'Arbaud, Basse-Terre, from 9 a.m. onwards, whose progress we were monitoring, had taken the form of a procession in town. Demonstrators had set off at 10.30 a.m. and were marching through the streets of the town chanting slogans hostile to the police and the judiciary. During the procession graffiti were daubed in paint on various buildings, in particular the Institut d'émission d'Outre-mer, known as the 'Central Treasury'. The group of 450-500 people which had left the Champ d'Arbaud had joined another group of 500 people, at the rue Schoelcher, forming a compact group of about a thousand people headed by the leaders, who announced over loudspeakers the slogans to be chanted. Some of the leaders were recognized. At this point I reported what was happening to the Chief Constable (call-sign 'Polaire'). At ten past eleven the demonstrators reached the police station and assembled in front of it. While I made the necessary arrangements for countering any attack on the building, the demonstrators took up their position in front of the police station and were addressed by two leaders from outside the district who were unknown to the police officers present. The speakers, urged the police officers to move up and join them. There followed a violent tirade against Police Officer Beaugendre, who was accused of betrayal, after which the crowd of demonstrators rhythmically chanted BEAUGENDRE-MAKO! UN JOU OU KE PAYE' (One day you will pay). Among the other demonstrators were identified also Dr. Corentin and Mr. Ezelin, a barrister. They displayed a banner with the words 'LAWYERS - DOCTORS'. The majority of demonstrators, however, including the most worked up and the most aggressive ones, were people from outside Basse-Terre, most of them from Grande-Terre island, it seemed, and consequently unknown to the police. The demonstrators left the police station at about 11.30 a.m. and headed in the direction of the Law Courts and the council building. The procession then went along the boulevard Félix-Eboué and eventually reached the Champ d'Arbaud, where it dispersed after having made two lengthy halts during which further speeches were made and slogans chanted by the crowd, firstly in front of the Law Courts in order to insult the judges and then outside the prison in order to demonstrate their solidarity with the imprisoned militants. After the demonstrators had gone past,

it was found that they had taken advantage of these stops to paint offensive and insulting graffiti in green, red and black on the walls of the administrative buildings.

The investigation that was immediately undertaken failed to identify those responsible for defacing the buildings. According to information received, most of the graffiti were the work of girls who were not from Basse-Terre, no doubt to avoid recognition as far as possible. One of them was claimed to be a teacher from Pointe-à-Pitre, but this could not be positively established. The intelligence service (Renseignements généraux) confirmed that the persons responsible for the graffiti were among the demonstrators who arrived by coach from Pointe-à-Pitre. They did not know their identities...".

## **B. THE DOMESTIC JUDICIAL INVESTIGATION**

A judicial investigation was commenced on 21 February 1983 into the commission by a person or persons unknown of offences of criminal damage to public buildings and insulting the judiciary. On 24 February, the Principal Public Prosecutor at the Basse-Terre Court of Appeal wrote to the Chairman of the Guadeloupe Bar informing that according to the police report of 21 February 1983 from which it appears that Mr. Ezelin, of the Guadeloupe Bar, took part in a public demonstration against the judiciary in circumstances likely to entail criminal liability under Article 226 of the Criminal Code." The Principal Public Prosecutor at the Basse-Terre Court of Appeal also asked that the Chairman of the Guadeloupe Bar lets him know his opinion of the case after hearing his colleague's explanations.

In a letter of 14 March 1983 the Chairman of the Bar informed the Principal Public Prosecutor of the outcome of his investigations, as follows:

"... Mr. R. Ezelin ... [had been] carrying a placard on his own which bore the words 'Trade Union of the Guadeloupe Bar against the Security and Freedom Act'. No act, gesture or words insulting to the judiciary [could] be attributed to him. His participation in a demonstration [had] therefore [been] confined to protesting at the use of the 'Security and Freedom' Act. ... ."

And he concluded:

"This being so, having regard to:

(a) the facts: even assuming the worst as regards Mr. Ezelin, the report by [the] Chief Superintendent ... does not accuse him of any insulting gesture, act or words; and

(b) the provisions of Article 226 of the Criminal Code, it does not seem to me that my colleague Mr Ezelin can have incurred any liability in exercising his right to join a demonstration which had not been prohibited, carrying a placard with the words 'Trade Union of the Guadeloupe Bar against the Security and Freedom Act'.... ."

After a postponement, the Applicant was summoned to appear before the investigating judge on 25 April 1983 in order to give evidence as a witness, and at the interview he stated that he had nothing to say on the matter. On 19 May 1983 the judicial investigation ended with a discharge order on the ground that no evidence had been obtained which would make it possible to identify

those responsible for the graffiti or for the insulting or threatening words uttered during the demonstration.

## **C. THE DISCIPLINARY PROCEEDINGS AGAINST THE APPLICANT**

### **1. The decision of the Bar Council**

On 1 June 1983 the Principal Public Prosecutor sent the Chairman of the Bar a complaint against the applicant, which read as follows:

"Further to my letter of 24 February 1983 and our conversation of 31 May last, I wish to bring to your attention, under Article 113 of the Decree of 9 June 1972, the conduct of Mr. Ezelin, whose name appears on the roll of the members of the Guadeloupe Bar. In my earlier letter I sent you a photocopy of a police report of 21 February 1983 which gave an account of Mr. Ezelin's participation in a demonstration at Basse-Terre on 12 February 1983. During the demonstration, a number of particularly offensive graffiti were daubed in paint on the walls of the Law Courts calling one of the judges who had taken part in one of the decisions a fascist and calling all the judges 'MAKO' [pimps]. The demonstrators even chanted death threats on numerous occasions against police officers who witnessed the events.

The Basse-Terre investigating judge opened an investigation into the commission by a person or persons unknown of offences of criminal damage to public buildings, insulting the judiciary and aiding and abetting. All the persons reported as having taken part in the demonstration were interviewed and they stated either that they had not seen anyone paint the graffiti or, at the very least, that they did not know who the people responsible were. Only Roland Ezelin refused to answer the questions.

As the proceedings ended with a discharge order, I am sending you attached a photocopy of the record of his examination as a witness, the date of which had been delayed for more than a month in order to suit his convenience.

... His refusal to reply to the investigating judge as a witness displays, moreover, an attitude of contempt for justice. In these circumstances I consider that there has been in this case a breach under Article 106 of the Decree of 9 June 1972 and I accordingly would ask you to kindly bring disciplinary proceedings against Mr. Ezelin before the Bar Council. ... "

At a disciplinary hearing held under Article 104 of Decree no. 72-468 of 9 June 1972 the Bar Council adopted the following decision on 25 July 1983:

"... At the request of the Principal Public Prosecutor, the Chairman of the Bar has already given an opinion dated 14 March 1983 as to the first series of charges against Mr. Ezelin. It appears both from that opinion and from further explanations obtained from Mr. Ezelin that he took part in the relevant demonstration in response to a call by the Trade Union of the Guadeloupe Bar, of which he is one of the leaders, in order to protest against the use of the direct-committal procedure" - obviating the need for a preliminary judicial investigation - "and the continuation in force of the so-called Security and Freedom Act, which has since been repealed. It does not

appear from the judicial investigation that Mr. Ezelin committed a breach of Article 106 of the Decree of 9 June 1972 in connection with taking part in the aforesaid demonstration or that any disciplinary sanction can consequently be imposed on him. The inquiries made into these events have, moreover, been brought to an end with a discharge order that has now become final.

As regards the second series of charges against Mr. Ezelin, it appears both from the judicial investigation and from Mr. Ezelin's explanations that his refusal to make a statement to the investigating judge was prompted by anxieties based on Article 105 of the Code of Criminal Procedure and a concern to comply with Article 89 of the Decree of 9 June 1972 as some of the persons summoned by the investigating judge in connection with the events on which his evidence was being sought had previously consulted him as a lawyer.

... Mr. Ezelin was relying on the provisions of Article 105 of the Code of Criminal Procedure, while it may seem regrettable that Mr. Ezelin did not make clearer to the judge his reasons for refusing to make a statement, it does not appear to the board that this refusal may be regarded as contempt for justice and the judiciary....

Consequently, having regard to the evidence, to Mr. Ezelin's explanations and to his usual excellent professional conduct, the board considers that there is no occasion to impose any disciplinary sanction on Mr. Ezelin.

For these reasons, The Bar Council decided that there was no occasion to impose any disciplinary sanction on Mr. Roland Ezelin on account of the matters of which it was seised by the Principal Public Prosecutor on 1 June 1983. In addition the board recommended the Chairman of the Bar to remind both Mr. Ezelin and the whole of the Bar of the traditional rules of good behaviour and sound judgment in all activities in which their status as avocats may be involved.

## **2. The Basse-Terre Court of Appeal's judgment of 12 December 1983**

The Principal Public Prosecutor appealed to the Basse-Terre Court of Appeal against this decision and asked the Court to impose on the applicant the disciplinary penalty of a warning. On 12 December 1983 the Court of Appeal reversed the Bar Council's decision and imposed the disciplinary penalty of a reprimand on Mr. Ezelin, a heavier penalty than a warning:

"... It is established that on 12 February 1983 Mr. Ezelin took part in a demonstration in the streets of Basse-Terre.

The police report and appended documents make it clear beyond contradiction that the acknowledged purpose of the demonstration, which was organised by the independence movements in the département, was to protest noisily against the recent sentences of three militants to 15 days' imprisonment and a FRF 10,000 fine for damage to administrative buildings."

"It is not alleged that Mr. Ezelin took part in this demonstration any more actively than by his constant presence and by carrying a placard.

Following those events a judicial investigation was opened into the commission by a person or persons unknown of offences of damage to public buildings, insulting the judiciary and aiding and abetting. Mr. Ezelin was summoned as a witness by the investigating judge, together with a number of other persons recognised by the police officers. After he had taken the oath, during the examination he answered all the questions with "I have nothing to say on the matter".

It appears from the foregoing that Mr. Ezelin, avocat at the Court of Appeal and member of the Bar Council, participated in the whole of the demonstration which took place in the aforementioned, undisputed circumstances.

It is beyond doubt that Mr. Ezelin, who formed part of the procession, could not have failed to see these insulting and offensive graffiti being painted in very large letters on all the walls of the Law Courts-the place of work of judges and barristers alike - and of the council building, and that he could not have failed to hear the threats and insults that were unceasingly directed against a police constable and insults uttered against various other persons, including a judge of the Court of Appeal, a well-known regional figure and the judiciary as a whole.

He was there in his capacity as an avocat, since he carried a placard announcing his profession, and at no time did he dissociate himself from the demonstrators' offensive and insulting acts or leave the procession.

Such misconduct on the part of a member of the Bar publicly proclaiming his profession cannot be justified ..., and it amounts to a breach of discretion under Article 106 of the Decree of 9 June 1972.

Furthermore, Mr. Ezelin, when examined as a witness by the investigating judge, refused to give evidence about matters of which he had knowledge, without giving any reason.

He thus contravened the provisions of Article 109, third paragraph, of the Code of Criminal Procedure, which are binding on all citizens and of whose requirements he could not, as a lawyer, be unaware.

Seeing that Mr. Ezelin contravened a statutory provision and showed a lack of discretion, he rendered himself liable to the disciplinary sanctions listed in Article 107 of the Decree of 9 June 1972."

"Having regard to the unanimously favorable opinion of his professional conduct, the Court considers that the penalty should be a reprimand.

For these reasons,

Having regard to sections 22 et seq. of Act no. 71-1130 of 31 December 1971 and Articles 104 et seq. of Decree no. 72-468,

Sitting in public as a full court,

Sets aside the decision taken on 25 July 1983 by the Council of the Bar of the département of Guadeloupe at the Basse-Terre Court of Appeal, sitting as a disciplinary board,

Sentences Mr. Ezelin, of that Bar, to the disciplinary penalty of a reprimand; and Awards costs against him.

### **3. The Court of Cassation's judgment of 19 June 1985**

The applicant appealed on points of law. He argued in particular that the disciplinary sanction imposed on him infringed Articles 10 and 11 (art. 10, art. 11) of the Convention.

On 19 June 1985 the Court of Cassation delivered a judgment dismissing the appeal. It said, *inter alia*:

"... The Court of Appeal ... did not hold [Mr. Ezelin] liable in virtue of a collective responsibility for criminal offences committed by other demonstrators but stated that during the demonstration, whose purpose was to protest noisily against recent criminal sentences, insults had been uttered and offensive graffiti daubed on all the walls of the Law Courts, directed against the judiciary as a whole and against a judge of the Court of Appeal by name and a well-known figure in the département who practiced as a barrister. The Court of Appeal added that Mr. Ezelin, who was at the demonstration as an *avocat* and had heard the threats and insults and seen the offensive graffiti daubed on the walls of the Law Courts, the place of work of judges and barristers alike, did not at any time express his disapproval of these excesses or leave the procession in order to dissociate himself from these criminal acts. It was entitled to infer from this that the behaviour was a breach of discretion amounting to a disciplinary offence. ...

... Article 109 of the Code of Criminal Procedure lays a duty on any person heard as a witness to give evidence; and by Article 106 of the Decree of 9 June 1972, any infringement of statutes or regulations constitutes a disciplinary offence, irrespective of the investigating judge's power to fine a witness who refuses to give evidence. ... It added that Mr. Ezelin gave no reason to explain this attitude. It was entitled to infer from this that Mr. Ezelin, who had thus refused to give evidence without justifying his refusal on the basis of Article 105 of the Code of Criminal Procedure or of professional confidentiality, had committed a breach of the law and of discretion *vis-à-vis* the investigating judge and that these amounted to a disciplinary offence. The Court of Appeal thus justified its decision in law, and none of the limbs of the ground of appeal is well-founded ...."

## **II. Relevant domestic law and practice**

The following provisions of French law need to be set out:

### **A. General provisions**

#### **1. The Criminal Code**

Article 226, first paragraph

"Anyone who by his acts or by means of the written or spoken word has publicly attempted to bring discredit on any action or decision taken by a court, in a manner likely to impair the authority or independence of the judiciary, shall be liable to imprisonment for not less than one month and not more than six months and a fine of not less than 500 francs and not more than 90,000 francs or to only one of these two penalties."

## **2. The Code of Criminal Procedure**

### Article 105

"An investigating judge in charge of an investigation and judges and senior police officers (officiers de police judiciaire) acting on judicial warrants shall not, with the intention of preventing the exercise of the rights of the defence, examine as witnesses persons against whom there is substantial, consistent evidence of guilt."

### Article 109

"Anyone summoned to be examined as a witness shall be required to appear, to take the oath and to give evidence, subject to the provisions of Article 378 of the Criminal Code [duty of professional confidentiality].

If a witness fails to appear, the investigating judge may, on an application by the public prosecutor, have the witness brought before him by the police and impose on him a fine of not less than 2,500 francs and not more than 5,000 francs.

If the witness subsequently appears, however, he may, if he apologises and provides an explanation, be excused this penalty by the investigating judge, after the public prosecutor has made submissions.

The same penalty may, on an application by the prosecutor, be imposed on a witness who, although he has appeared, refuses to take the oath and to give evidence. ... ."

## **B. Provisions relating specifically to avocats**

### **1. The Decree of 9 June 1972.**

#### Article 89

"An avocat must not, in any matter, make any disclosure in breach of professional confidentiality. He must, in particular, respect the confidentiality of judicial investigations in criminal matters by refraining from communicating any information from the file and from publishing letters or other documents concerning a current investigation."

#### Article 104

"The Bar Council sitting as a disciplinary board shall proceed against and punish offences and misconduct by an avocat or a former avocat where at the material time he was entered on a Bar roll, list of trainees or list of honorary avocats."

## Article 106

"Any contravention of statutes or regulations, infringement of professional rules or breach of integrity, honour or discretion, even relating to non-professional matters, shall render the avocat responsible liable to the disciplinary sanctions listed in Article 107."

## Article 107

"The disciplinary penalties shall be:

A warning;

A reprimand;

Suspension for a period not exceeding three years;

Striking off the roll of avocats or list of trainees or

Withdrawal of honorary status.

A warning, a reprimand and suspension may, if so provided in the decision in which the disciplinary penalty is imposed, entail loss of membership of the Bar Council for a period not exceeding ten years.

The Bar Council may further order, as an ancillary penalty, that any disciplinary penalty shall be publicly displayed on the Bar's premises."

## Article 113

"The Chairman of the Bar, either on his own initiative or on an application from the Principal Public Prosecutor or on a complaint by any party affected, shall inquire into the conduct of the avocat concerned. He shall then either discontinue the proceedings or refer the matter to the Bar Council.

If he has received a complaint, he shall inform the complainant. If the facts were reported to him by the Principal Public Prosecutor, he shall notify the latter.

... ."

## **2. The Act of 15 June 1982 "on the procedure applicable in the event of professional misconduct by an avocat at a court hearing"**

Avocats are bound by the oath they take when entering upon their duties. The wording of the oath is given in section 1 of the Act of 15 June 1982:

"I swear, as an avocat, to defend and counsel in a dignified, conscientious, independent and humane manner."

Before that Act came into force, the oath was worded as follows:

"I swear, as an avocat, to defend and counsel in a dignified, conscientious, independent and humane manner, with respect for the courts, the public authorities and the rules of the Bar, and

neither to say nor to publish anything contrary to statute, regulations, morals, the security of the State, or public order." (Article 23 of the Decree of 9 June 1972)

An avocat who took the oath before the Act of 15 June 1982 came into force is deemed to have taken it in its current form.

In a judgment of 9 June 1964 the Court of Cassation (First Civil Division) held that the avocat's oath "also [bound] him in all circumstances not to deviate from the respect due to the courts and to the public authorities; ...". (Juris-Classeur périodique 1964, II, no. 13797, note by J.A.).

Moreover, in a judgment of 30 June 1965 the Court of Cassation held that an avocat, while being entitled to protest at any infringement of the rights of the defence, must refrain from any expression which would reflect on the honour or discretion of a judge.

### **PROCEEDINGS BEFORE THE COMMISSION**

28. In his application of 16 October 1985 to the Commission (no. 11800/85), Mr. Ezelin relied on Articles 10 and 11 (art. 10, art. 11) of the Convention. He submitted that the disciplinary sanction imposed on him seriously interfered with his freedom of expression and of peaceful assembly.

29. The Commission declared the application admissible on 13 March 1989. In its report of 14 December 1989 (made under Article 31) (art. 31) it expressed the opinion that there had been a breach of Article 11 (art. 11) (by fifteen votes to six) and that no separate issue arose under Article 10 (art. 10) (unanimously). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment.

### **FINAL SUBMISSIONS TO THE COURT**

30. At the hearing on 20 November 1990 the Agent of the Government maintained the submissions made in his memorial. In those the Court was asked to hold that there had been no violation of Article 11 (art. 11) and to endorse the Commission's view that no separate issue arose under Article 10 (art. 10).

Counsel for the applicant asked the Court to find that there had been a breach of freedom of expression and of freedom of peaceful assembly guaranteed in Articles 10 and 11 (art. 10, art. 11) and to award his client the compensation sought.

### **AS TO THE LAW**

31. The applicant considered that the disciplinary sanction imposed on him by the Basse-Terre Court of Appeal was incompatible with his freedom of expression and his freedom of peaceful assembly, which were protected by Articles 10 and 11 (art. 10, art. 11) of the Convention.

32. The Government pointed out that this sanction was also designed to punish Mr. Ezelin for his refusal to give evidence to the investigating judge. They criticised the Commission for suggesting that the only matter in issue was the applicant's participation in the demonstration.

33. The applicant was in fact punished for having neither shown his disapproval of the "demonstrators' offensive and insulting acts" nor left the procession in order to dissociate himself from them and also for having refused to give evidence although he had not invoked Article 105 of the Code of Criminal Procedure or professional confidentiality (see paragraphs 20 and 21 above). Nevertheless, he was summoned before the investigating judge as a result of having taken part in the demonstration. That being so, the question of the refusal to give evidence - an issue which in itself does not come within the ambit of Articles 10 and 11 (art. 10, art. 11) - is a secondary one. It may be noted, moreover, that Mr. Ezelin did not remain totally silent in the presence of the investigating judge: he stated that he had nothing to say on the matter, and the judge did not see fit to use his power under Article 109, third paragraph, of the Code of Criminal Procedure (see paragraphs 15, 20 and 21 above).

## **I. ALLEGED VIOLATION OF ARTICLE 10 (art. 10)**

34. The applicant based one of his submissions on Article 10 (art. 10), which provides:

"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."

35. In the circumstances of the case, this provision is to be regarded as a *lex generalis* in relation to Article 11 (art. 11), a *lex specialis*, so that it is unnecessary to take it into consideration separately. On this point the Court agrees with the Commission.

## **II. ALLEGED VIOLATION OF ARTICLE 11 (art. 11)**

36. The main question in issue concerns Article 11 (art. 11), which provides:

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others...."

37. Notwithstanding its autonomous role and particular sphere of application, Article 11 (art. 11) must, in the present case, also be considered in the light of Article 10 (art. 10) (see the Young, James and Webster judgment of 13 August 1981, Series A no. 44, p. 23, § 57). The protection of personal opinions, secured by Article 10 (art. 10), is one of the objectives of freedom of peaceful assembly as enshrined in Article 11 (art. 11).

**A. Whether there was an interference with the exercise of the freedom of peaceful assembly**

38. In the Government's submission, Mr. Ezelin had not suffered any interference with the exercise of his freedom of peaceful assembly and freedom of expression: he had been able to take part in the procession unhindered and to express his convictions publicly, in his professional capacity and as he wished; he was reprimanded only after the event and on account of personal conduct deemed to be inconsistent with the obligations of his profession.

39. The Court does not accept this submission. The term "restrictions" in paragraph 2 of Article 11 (art. 11-2) - and of Article 10 (art. 10-2) - cannot be interpreted as not including measures - such as punitive measures - taken not before or during but after a meeting (cf. in particular, as regards Article 10 (art. 10), the Handyside judgment of 7 December 1976, Series A no. 24, p. 21, § 43, and the Müller and Others judgment of 24 May 1988, Series A no. 133, p. 19, § 28).

40. In the second place, the Government maintained that despite the peaceful nature of Mr. Ezelin's own intentions and behaviour, the sanction of which he complained had in no way infringed his freedom of peaceful assembly seeing that the demonstration had got out of hand.

In the Commission's opinion, no intentions that were not peaceful could be imputed to the applicant.

41. The Court points out that prior notice had been given of the demonstration in question and that it was not prohibited. In joining it, the applicant availed himself of his freedom of peaceful assembly. Moreover, neither the report made by the Chief Superintendent of the Basse-Terre police nor any other evidence shows that Mr Ezelin himself made threats or daubed graffiti.

The Court of Appeal found the charge of not having "dissociate[d] himself from the demonstrators' offensive and insulting acts or [left] the procession" (see paragraph 20 above) proven. The Court of Cassation noted that at no time did he "express his disapproval of these excesses or leave the procession in order to dissociate himself from these criminal acts" (see paragraph 21 above).

The Court accordingly finds that there was in this instance an interference with the exercise of the applicant's freedom of peaceful assembly.

## **B. Whether the interference was justified**

42. It must therefore be determined whether the sanction complained of was "prescribed by law", prompted by one or more of the legitimate aims set out in paragraph 2 and "necessary in a democratic society" for achieving them.

### **1. "Prescribed by law"**

43. The applicant submitted that Article 106 of the Decree of 9 June 1972 was in no way intended to restrict the right of assembly of avocats; moreover, the general nature of the words "breach of ... discretion" made it impossible to define a breach in advance and allowed of any sanction after the event.

44. The Government considered, on the contrary, that this provision required avocats, who were "officers of the court" (auxiliaires de la justice), to respect a number of professional principles of a legal and ethical nature. The provision was sufficiently precise where, as in the instant case, the conduct being punished was contrary to the rules of the profession.

45. According to the Court's case-law, a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen - if need be, with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see, among other authorities, the Müller and Others judgment previously cited, Series A no. 133, p. 20, § 29). Experience shows, however, that it is impossible to attain absolute precision in the framing of laws, particularly in fields in which the situation changes according to the prevailing views of society (ibid.).

In the instant case the legal basis of the sanction complained of lay solely in the special rules governing the profession of avocat. Article 106 of the relevant Decree of 9 June 1972 provides unequivocally that any avocat, even in his non-professional activities, has special obligations (see paragraph 25 above); and the Court of Cassation has held that these include the respect due to the judicial authorities (see paragraph 27 above). That being so the interference was "prescribed by law".

### **2. Legitimate aim**

46. The applicant claimed that the sanction was not in pursuit of a legitimate aim; it resulted in his being prevented from expressing his ideas and his trade-union demands. The Government, on the other hand, submitted that its purpose was the "prevention of disorder".

47. It is apparent from the evidence that Mr Ezelin incurred the punishment because he had not dissociated himself from the unruly incidents which occurred during the demonstration. As the Commission noted, the authorities took the view that such an attitude was a reflection of the fact that the applicant, as an avocat, endorsed and actively supported such excesses. The interference was therefore in pursuit of a legitimate aim, the "prevention of disorder".

### 3. Necessity in a democratic society

48. In the applicant's submission, the interference of which he was complaining was not "necessary in a democratic society". To claim that he should have left the procession in order to express his disapproval of acts committed by other demonstrators was, he said, to deny his right to freedom of peaceful assembly.

49. The Government, on the other hand, submitted that the disputed measure did indeed answer a "pressing social need", having regard in particular to Mr. Ezelin's position as an avocat and to the local background. By not disavowing the unruly incidents that had occurred during the demonstration, the applicant had ipso facto approved them. Furthermore, they claimed, it was essential for judicial institutions to react to behaviour which, on the part of an "officer of the court" (auxiliaire de la justice), seriously impaired the authority of the judiciary and respect for court decisions. Lastly, the gravity of the two breaches of professional duty of which the applicant was accused justified the sanction imposed on him, which was a light, token sentence that did not offend against the proportionality principle laid down in the Court's case-law.

50. The Commission contended that a disciplinary penalty based on an impression to which Mr. Ezelin's behaviour might give rise was not compatible with the strict requirement of a "pressing social need" and therefore could not be regarded as "necessary in a democratic society".

51. The Court has examined the disciplinary sanction in question in the light of the case as a whole in order to determine in particular whether it was proportionate to the legitimate aim pursued, having regard to the special importance of freedom of peaceful assembly and freedom of expression, which are closely linked in this instance.

52. The proportionality principle demands that a balance be struck between the requirements of the purposes listed in Article 11 § 2 (art. 11-2) and those of the free expression of opinions by word, gesture or even silence by persons assembled on the streets or in other public places. The pursuit of a just balance must not result in avocats being discouraged, for fear of disciplinary sanctions, from making clear their beliefs on such occasions.

53. Admittedly, the penalty imposed on Mr. Ezelin was at the lower end of the scale of disciplinary penalties given in Article 107 of the Decree of 9 June 1972 (see paragraph 25 above); it had mainly moral force, since it did not entail any ban, even a temporary one, on practising the profession or on sitting as a member of the Bar Council. The Court considers, however, that the freedom to take part in a peaceful assembly in this instance a demonstration that had not been prohibited - is of such importance that it cannot be restricted in any way, even for an avocat, so long as the person concerned does not himself commit any reprehensible act on such an occasion.

In short, the sanction complained of, however minimal, does not appear to have been "necessary in a democratic society". It accordingly contravened Article 11 (art. 11).

### **III. APPLICATION OF ARTICLE 50 (art. 50)**

54. Article 50 (art. 50) provides:

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

The applicant sought compensation for damage and reimbursement of expenses under this provision.

#### **A. Damage**

55. Mr. Ezelin claimed compensation in the amount of 25,000 French francs (FRF) for non-pecuniary damage, on the ground that publication of the sanction complained of in legal journals and the local publicity which ensued had harmed his reputation and interests.

56. The Government left the matter to the Court's discretion in the event of the Court's finding that damage had indeed been sustained.

The Delegate of the Commission submitted that compensation should be awarded, but did not suggest any figure.

57. In the circumstances of the case the finding that there has been a breach of Article 11 (art. 11) affords Mr. Ezelin sufficient just satisfaction for the damage alleged.

#### **B. Costs and expenses**

58. The applicant also claimed reimbursement of FRF 40,000 in respect of fees, costs and expenses incurred in the Court of Cassation (FRF 15,000) and in the proceedings before the Convention institutions (Commission: FRF 10,000; Court: FRF 15,000).

No observations were made by the Government or the Delegate of the Commission.

59. On the basis of the information in its possession and its case-law on the subject, the Court, making an assessment on an equitable basis, allows the applicant's claim in full.

### **FOR THESE REASONS, THE COURT**

1. Holds unanimously that it is unnecessary to make a separate examination of the case under Article 10 (art. 10);
2. Holds by six votes to three that there has been a violation of Article 11 (art. 11);

3. Holds unanimously that this judgment in itself constitutes sufficient just satisfaction as to the alleged non-pecuniary damage;

4. Holds unanimously that the respondent State is to reimburse the applicant FRF 40,000 (forty thousand French francs) for costs and expenses.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 26 April 1991.

Signed: Rolv RYSSDAL  
President

Signed: Marc-André EISSEN  
Registrar

In accordance with Article 51 § 2 (art. 51-2) of the Convention and Rule 53 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) Partly dissenting opinion of Mr. Ryssdal;
- (b) Dissenting opinion of Mr. Matscher;
- (c) Dissenting opinion of Mr. Pettiti;
- (d) Concurring opinion of Mr. De Meyer.

## **PARTLY DISSENTING OPINION OF JUDGE RYSSDAL**

I agree that it is not necessary to examine the case separately under Article 10 (art. 10) and that there was an interference with Mr. Ezelin's right to peaceful assembly under Article 11 (art. 11). I also consider that it was prescribed by law and pursued a legitimate aim under paragraph 2 of Article 11 (art. 11-2), namely the prevention of disorder. The central question, however, is whether this interference was necessary in a democratic society. It is in this respect that my views differ from those of the majority of the Court.

The French disciplinary code for lawyers may be different from that of other countries, especially as regards an avocat's liability to disciplinary sanctions for "breach of integrity, honour or discretion" as provided for in Article 106 of the Decree of 9 June 1972. However, States must be considered to enjoy a margin of appreciation in determining the necessity in a democratic society of the rules that govern professional behaviour and whether they have been infringed in particular cases.

Although opinions may differ as to whether the Court of Appeal's reaction - confirmed by the Court of Cassation - was appropriate, I cannot say that the disciplinary sanction of a reprimand for the two professional shortcomings found in Mr. Ezelin's conduct went beyond the margin of appreciation left to the national authorities. It cannot be overlooked that in the applicable scale of penalties a reprimand is one of the lightest disciplinary sanctions which, in the present case, involved no restrictions on the applicant's continued freedom to practice law.

I therefore conclude that there has been no violation of Article 11 (art. 11) in the present case.

## **DISSENTING OPINION OF JUDGE MATSCHER**

(Translation)

The European Convention does not include any rules directly applicable to professional ethics; it leaves these to the Contracting States. Obviously, the relevant national rules must be compatible with the Convention, but the Contracting States have a substantial discretion in this sphere.

Attitudes towards the conduct of members of the Bar differ from country to country. Under French rules, members of the Bar are required to observe "discretion" (*délicatesse*). Although worded differently, the same idea can be found in the legislation or professional rules of several European countries.

In my opinion, there is not the slightest doubt - in view of the facts of the case as they appear from the file (open participation in a demonstration, in which hotheads shouted or daubed on the walls of buildings insults or threats against judges and against the police, whereby he associated himself with the demonstrators; behaviour offensive to the judge who had summoned him) - that the applicant was in serious breach of the duty of "discretion" which the professional ethical rules laid on him as an avocat.

It remains to be determined whether, in the permissive society of today, a member of the Bar can still be required to behave with "discretion", as I understand it, or, to use the terms of the Convention (or of the Court's case-law), whether the sanction (which was in any case a minimal

one and therefore proportionate in the circumstances) imposed for behaviour contrary to the requirements of "discretion" was "necessary in a democratic society".

The majority of the Court appeared to think not; for the reasons just given, I cannot share their view.

**DISSENTING OPINION OF JUDGE PETTITI**  
**(Translation)**

I have not voted with the majority for the following reasons.

I consider that the majority has confined itself, as the Commission did, to the issue of Article 11 (art. 11). There was a second aspect, however.

1. As regards freedom to demonstrate, and interpreting Article 11 § 2 (art. 11-2), it is not clear that the minimal sanction imposed after the event, a purely moral sanction, had an effect such as to place an obstacle in the way of freedom to demonstrate.

For the rest, the majority has not, in my opinion, given sufficient consideration to the margin-of-appreciation/proportionality ratio in the case (see, inter alia, the Handyside, Müller and Others and Markt Intern cases).

2. The second aspect was the one raised by the Agent of the French Government in the memorial and at the hearing: can the State organise the relations between the judiciary and the Bar as regards professional ethics so as to be able to judge the behaviour of officers of the court from the point of view of the discretion required of members of the Bar and of the judiciary, whether on the occasion of a demonstration or in relation to any other isolated incident?

If so, are the measures taken as a result of the disciplinary proceedings and of the provisions of domestic law compatible with the Convention from the point of view of the margin-of-appreciation/ proportionality ratio?

I have not been able to find any precise answer to these two questions in the Court's reasoning.

On the first point, the majority has not, in my view, explained its conclusion that a subsequent sanction could be sufficient to deter the person concerned from participating in another demonstration at a later stage. That being the case, it would in any event have been necessary to express a view on the question of proportionality: at what point did such a subsequent sanction become disproportionate? The Court could have adopted an approach based on its reasoning in the *Albert and Le Compte v. Belgium* case in determining the threshold of applicability of Article 6 (art. 6) in relation to civil rights and obligations.

Moreover, was the contested sanction intended to be deterrent or merely symbolic?

The requirement that the interference found to be lawful be proportionate in relation to the aim of public interest presupposes a direct ratio between the elements considered. Where the Court

assesses this ratio, it does so generally in the light of the margin of appreciation left to the States; however, I do not find in the Court's reasoning in the present judgment these usual criteria, either with regard to the pressing social need or in relation to necessity in a democratic society. It is the major consideration of the freedom to demonstrate on which the Commission and the Court concentrated in particular. No criticism under the Convention was directed at the conduct of the authorities concerning the demonstration itself; the Court interpreted Article 11 (art. 11) from the point of view of the a posteriori sanction.

In so far as the Court states that Article 10 (art. 10) is to be regarded as a *lex generalis* in relation to Article 11 (art. 11), *lex specialis*, with the result that it is not necessary to take into consideration Article 10 (art. 10) separately, it should be noted that paragraph 2 of Article 10 (art. 10-2) provides as follows:

"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."

A similar notion is to be found in an analysis of proportionality.

In paragraph 52 of the judgment the Court referred to the need to strike a just balance so as to avoid discouraging individuals from demonstrating their beliefs; in paragraph 53 it is said that the freedom to take part in an assembly or demonstration cannot be restricted unless the person concerned has acted reprehensibly. By implication this reasoning also presupposes the assessment of proportionality or the examination of what is reprehensible as the point of reference; this was not expressly stated.

It is indeed true that the scope of the judgment is limited to the case before the Court and by the fact that the review carried out by the Court of the right to participate freely in a demonstration absorbed the examination of the other problems. The Court in its summary of the facts observed that no obstacles had been placed in the way of the demonstration despite its controversial nature and that no criminal proceedings came to trial, the criminal investigation having been terminated by a general discharge order, which was not appealed against.

On another point the reasoning of the judgment may appear questionable where the majority rejects the Government's arguments concerning the refusal to give evidence (Article 109 of the Code of Criminal Procedure), taking the view that the summons to appear as a witness was the consequence of the demonstration.

The requirements of Article 109 apply irrespective of the classification of the facts preceding the summons by the judge.

It would have been preferable in this connection to draw attention to the specific position of lawyers and the relevant practice in France on this matter.

It also seems to me to be regrettable that the majority did not refer to the margin of appreciation of the State in such a field, based on the second paragraphs of Articles 10 and 11 (art. 10-2, art. 11-2). If it had done so, the Court would no doubt have cited its usual case-law, under which a margin is accorded to States to a greater or lesser extent depending on the Articles and cases in question.

It could have been concluded that as far as judge/avocat relations and disciplinary proceedings were concerned (equation = conduct of the person concerned: the severity of the sanction), the margin of appreciation could be at least as broad as that accorded in the Handyside and Markt Intern cases. In any event the question of proportionality necessarily arose and had to be analysed and defined, which it was not.

Since the Court, agreeing on this point with the Commission, did not deal directly (see paragraph 33) with the problem raised concerning the judge/avocat relationship with reference to Articles 106 and 107 of the Decree of 9 June 1972 and Article 8 of the Act of 15 June 1982 with regard to the oath, the judgment leaves open the question of the compatibility of these provisions with the Convention. The Bar Council had also taken account of the above-mentioned provisions because in point two of the operative part of its decision it reminded the whole of the Bar "of the traditional rules of good behaviour and sound judgment in all activities in which their status as avocats [might] be involved".

There is therefore a paradox which may make the Court's reasoning appear contradictory. In so far as disciplinary sanctions are made conditional on the finding of punishable or reprehensible conduct, the authorities are indirectly encouraged to take decisions of a criminal nature, whereas it is the French tradition precisely for the prosecuting authority in minor cases to leave the matter to be dealt with in disciplinary proceedings under Article 106.

The Court, in its majority, like the Commission, showed the importance which it attached to the right to demonstrate, but did the case under examination provide an appropriate occasion for expressing this principle?

### **CONCURRING OPINION OF JUDGE DE MEYER (Translation)**

I willingly accept that it was "unnecessary to make a separate examination of the case under Article 10 (art. 10)"<sup>1</sup>. But in my view that should have meant that it was necessary to examine it not simply in relation to Article 11 (art. 11), even considering that Article "in the light of Article 10 (art. 10)"<sup>2</sup>, but rather in relation to both Articles (art. 10, art. 11) taken together.

By taking part in the demonstration in issue, the applicant in fact exercised both his freedom of expression and his freedom of assembly, and the conduct for which he was criticised came within the ambit of the former as much as within that of the latter. Both freedoms were in this

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<sup>1</sup> Point 1 of the operative provisions of the judgment.

<sup>2</sup> Paragraph 37 of the judgment.

instance more than "closely linked"<sup>3</sup>: the exercise of each of them was inextricably bound up with the exercise of the other.

In my opinion, the reasoning set forth in the judgment shows that there was an infringement both of freedom of expression and of freedom of assembly<sup>4</sup>.

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<sup>3</sup> Paragraph 51 of the judgment.

<sup>4</sup> See in particular paragraph 52 of the judgment.