

APPLICATION N° 23943/94

Jack LANG v/FRANCE

DECISION of 30 June 1995 (Striking out of the list of cases)

Article 6, paragraphs 1 and 3 (a) of the Convention: *Conseil constitutionnel (France) removes from office candidate declared elected in parliamentary elections and disqualifies him from standing for election for one year for breach of the rules limiting election expenses*

Article 30, paragraph 1 (a) of the Convention: *Striking out of the list of cases Application withdrawn as a result of decision of Conseil constitutionnel to allow the parties to address it henceforth in election-law cases. No reason to continue examination of the application*

THE FACTS

The applicant is a French national. He was born in 1939 and lives in Paris. He is a qualified (agrégé) lecturer in law, a former government minister, a former Member of Parliament and the mayor of Blois. He was represented before the Commission by Mr Frédéric Thiriez, a member of the Bar of the Conseil d'Etat and Court of Cassation

The applicant stood as a candidate in the parliamentary elections held on 21 and 28 March 1993 in the first electoral district of Loir-et-Cher. He was declared elected following the second round of the ballot, with 51.41% of the vote.

On 28 May 1993, the applicant submitted his return as to election expenses to the National Commission on Election Accounts and Political Funding. His return showed total expenses of 498,502 francs and total receipts of 654,912 francs.

In a decision of 23 July 1993 the National Commission on Election Accounts revised the applicant's return, adding back various sums expended on the election campaign which had not been declared, namely, the cost of an opinion poll carried out by the company "Conseils, Sondages, Analyses" (47,440 francs), the cost of a leaflet on safety published by Blois mayor's office (94,868.60 francs) and the cost of a trip to Paris for Blois old-age pensioners (9,520 francs)

The National Commission calculated the applicant's total expenditure at 650,330 90 francs. Finding that this exceeded the statutory limit on election expenses of 500,000 francs, it refused to approve the applicant's return and submitted the matter to the Conseil constitutionnel in accordance with Article 136-1 of the Election Code

Meanwhile, the applicant's opponent in the parliamentary elections had applied to the Conseil constitutionnel seeking to have the election held on 21 and 28 March 1993 in the first electoral district of Loir-et-Cher département annulled. She claimed that the applicant had exceeded the relevant limit on election expenses, which, under Article L 52-11 of the Election Code, was 500,000 francs

In a decision of 9 December 1993, the Conseil constitutionnel, in a joint ruling on the application made by the applicant's opponent and on the case submitted by the National Commission on Election Accounts, disqualified the applicant from standing for election for one year from 28 March 1993 and stripped him of his parliamentary seat under Article L 0 136-1 of the Election Code. The Conseil constitutionnel calculated the applicant's total expenses at 589,816 65 francs. It added back to the applicant's expenses the cost of a publication produced and published by the Member for the first electoral district of Loir-et-Cher in his capacity as the applicant's substitute, on the ground that the content of such a publication made its distribution a form of political propaganda

COMPLAINTS

The applicant claimed that the procedure followed before the National Commission on Election Accounts and the Conseil constitutionnel did not comply with the requirements of Article 6 of the Convention

1. *As regards the applicability of Article 6 para 1 of the Convention*

The applicant considered that the provisions of the Law of 15 January 1990 introduced a new type of proceedings in which the Conseil constitutionnel may impose a real, quasi-criminal penalty - that is, one year's disqualification from election - whereas the Conseil constitutionnel's powers had hitherto been confined to annulling an election.

The law on election returns is directed to all citizens, in that any of them is free to stand in any election he or she may choose. Moreover, a disqualification order is repressive in purpose; further it is one of the forms of deprivation of civic rights envisaged by French criminal law (see Articles 42 and 43 of the Criminal Code)

Admittedly, the Conseil constitutionnel cannot sentence the perpetrator either to pay a fine or to imprisonment. However, Article L 113-1 of the Election Code provides that anyone who exceeds the limit on election expenses set by Article L 52-11 shall be ordered to pay a fine of 25,000 francs and sentenced to one year's imprisonment. Although only the criminal courts have the power to impose these criminal sanctions, the applicant emphasises that judgments of the Conseil constitutionnel are binding on all administrative and judicial organs by virtue of Article 62 of the Constitution and it is the Conseil constitutionnel which finds as a fact that the limit has been exceeded and which makes the disqualification order.

Furthermore, a Conseil constitutionnel decision has one final consequence which is analogous to a fine, since, where it has held that the limit on election expenses has been exceeded, the National Commission on Election Accounts must order the candidate concerned to pay a sum equivalent to the amount overspent - a sum which is not, therefore, limited by statute

2. *As regards the lack of a public hearing before the Conseil constitutionnel*

The applicant complained of the fact that there was no public hearing before the Conseil constitutionnel which, he emphasised, is the court of first and last resort in these cases. The applicant added that he had requested an opportunity to put his case to the National Commission on Election Accounts, which had replied "that the law did not provide for the candidate to appear before the commission, the exchange of written submissions being sufficient to ensure that both sides of the case are put."

The applicant added that, in a case raising issues not only of law but of fact, there was no substitute for a personal appearance by the "defendant" Finally, the applicant claimed that the proceedings before the Conseil constitutionnel are so secret that the parties are kept in ignorance, not merely of the name of the reporting judge and of the judges who will make the decision, but also of the date on which their case will be examined and decided.

3 *As regards the violation of the principle of equality of arms*

The applicant also alleged a violation of the principle of equality of arms in that he was not informed of the conclusions reached by the reporting judge who, although he or she does not take part in the judgment itself, is present during the deliberations, so that his or her conclusions have a decisive influence.

- 4 *As regards the lack of information as to the nature and cause of the accusation against him*

Finally, the applicant complained that Article 6 para 3 (a) of the Convention had been violated, in that the Conseil constitutionnel raised of its own motion the issue of the cost of a publication brought out by his substitute, without his ever having had an opportunity to provide an explanation on this point, and, therefore, without having been informed of the nature and cause of the accusation against him

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 3 March 1994 and registered on 22 April 1994

On 6 July 1994, the Commission decided to give notice of the application to the respondent Government and to invite them to submit observations on its admissibility and merits

The Government's observations were submitted on 3 November 1994 The applicant's observations in reply were submitted on 4 January 1995

On 20 February 1995 the Commission decided to hold a hearing on 30 June 1995

By fax dated 29 June 1995, the applicant informed the Commission Secretariat that he was purely, simply and irrevocably withdrawing his application to the Commission in the light of the Conseil constitutionnel decision of 28 June 1995, under which a provision for the parties to be heard was to be inserted into its Rules of Procedure relating to disputes concerning the election of Members of Parliament and of the Senate

REASONS FOR THE DECISION

The Commission formally notes the applicant's fax in which he indicates that he wishes to withdraw his application to the Commission

The Commission concludes from this that the applicant does not intend to pursue his application, within the meaning of Article 30 para 1 (a) of the Convention

In addition, the Commission considers that no particular circumstance affecting respect for human rights as defined in the Convention requires the further examination of the application pursuant to Article 30 para 1 of the Convention

For these reasons, the Commission, unanimously,

DECIDES TO STRIKE THE APPLICATION OUT OF ITS LIST OF CASES