CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

CASE OF MAMÈRE v. FRANCE

(Application no. 12697/03)

JUDGMENT

STRASBOURG

7 November 2006

FINAL

07/02/2007

In the case of Mamère v. France,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

András Baka, *President*,
Jean-Paul Costa,
Rıza Türmen,
Mindia Ugrekhelidze,
Elisabet Fura-Sandström,
Danutė Jočienė,
Dragoljub Popović, *judges*,
and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 17 October 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 12697/03) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a French national, Mr Noël Mamère ("the applicant"), on 11 April 2003.

2. The applicant was represented by Mrs C. Waquet, of the *Conseil d'Etat* and Court of Cassation Bar, and Mr A. Comte, a lawyer practising in Paris. The French Government ("the Government") were represented by their Agent, Mrs E. Belliard, Director of Legal Affairs at the Ministry of Foreign Affairs.

3. On 25 August 2005 the Vice-President of the Second Section decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

A. The circumstances of the case

4. The applicant was born in 1948 and lives in Paris. A member and leader of the "green" political party Les Verts, and former regional councillor and member of the European Parliament, since 1987 he has been mayor of Bègles and Vice-President of the Urban Community of Bordeaux and, since 1997, member of parliament for La Gironde. He has also worked

as a journalist – from 1977 to 1992, for example – for the State television channel Antenne 2.

5. In October 1999 the applicant took part in the recording of an infotainment programme for television called *Tout le monde en parle* ("Everyone's talking about it"), presented by Thierry Ardisson, which was aired on the State television channel France 2 during the night of 23 to 24 October 1999. During the programme Michel Polac, another guest personality, mentioned the Chernobyl nuclear accident of 26 April 1986 and spoke of the emotion he had felt on reading a book dedicated to the victims of the disaster. The applicant replied as follows (extract from the 3 October 2001 judgment of the Paris Court of Appeal):

> "Only a few weeks ago some mushrooms imported into France were found to contain caesium and that is the result of Chernobyl. I was presenting the 1 o'clock news on the day of the Chernobyl disaster in 1986; there was a sinister character at the SCPRI called Mr Pellerin who kept on telling us that France was so strong – the Asterix complex – that the Chernobyl cloud had not crossed our borders."

6. At the time of the Chernobyl disaster Mr Pellerin, a radiologist and qualified senior biophysics teacher, was head of the Central Service for Protection against Ionising Radiation (*Service central de protection contre les rayons ionisants* – "the SCPRI"). Under the dual authority of the Health and Labour Ministries, one of the SCPRI's tasks was to monitor contamination levels in France and alert the above ministries in the event of a problem; it was replaced in 1994 by the Office for Protection against Ionising Radiation (*Office de protection contre les rayonnements ionisants* – "the OPRI").

Mr Pellerin was placed under investigation on 31 May 2006 for "aggravated deception" by the first investigating judge at the Paris *tribunal de grande instance*, as part of an investigation opened after persons suffering from thyroid cancer, the Commission for Independent Research and Information on Radioactivity ("the CRIIRAD") and the French Association of Thyroid Disease Sufferers ("the AFMT") lodged a complaint in March 2001 against a person or persons unknown, together with an application to join the proceedings as civil parties claiming damages, for failure to protect the population against radioactive fallout from the Chernobyl accident, alleging in particular that official authorities had lied and played down the pollution of the air, soil and foodstuffs.

7. By summonses served on 18 and 19 January 2000, Mr Pellerin brought proceedings directly against the applicant in the Paris Criminal Court for public defamation of a civil servant, a punishable offence under sections 29 and 31 of the Freedom of the Press Act of 29 July 1881. He also brought proceedings against the television channel France 2 and its director of publication, Mr Marc Tessier.

In a judgment of 11 October 2000, the court found Mr Tessier and the applicant guilty (as principal and accessory respectively), sentenced them

each to pay a 10,000 French francs (FRF) fine and, jointly and severally, to pay FRF 50,000 in damages, declared the France 2 television company civilly liable and ordered the publication in a newspaper, at the defendants' cost, of the following announcement:

> "In a judgment delivered on 11 October by the Paris Criminal Court (Press Division), Mr Marc Tessier, director of publication of the national television company France 2, and Noël Mamère were sentenced to fines and to pay damages to Mr Pierre Pellerin, for having committed against him the offence of defamation of a civil servant, by making accusations against him on the *Tout le monde en parle* television programme aired on 23 October 1999."

8. The applicant appealed, but the Paris Court of Appeal upheld the judgment in respect of the guilty verdict, the sentences and the civil claims, in a judgment of 3 October 2001 worded as follows:

> "...
>
> Defamation
>
> Mr Mamère accuses Mr Pellerin of repeatedly ("kept on") claiming ("telling us") at the time of the Chernobyl disaster that the radioactive cloud would not cross France's borders. He further specifies that the civil party worked for the SCPRI (Central Service for Protection against Ionising Radiation), thereby reminding us that because of his expertise and his role he could not have been unaware of what was actually happening and what is now common knowledge.
>
> Mr Mamère thus accuses Mr Pellerin of lying to journalists, and therefore to the general public, concerning the passage of the radioactive cloud over France, when the file clearly shows that Mr Pellerin never said any such thing, and that he had actually said that the level of radioactivity had increased in France – which obviously meant that the cloud had passed over the country – but that the increase would be without any harmful effect on public health, a claim which has yet to be disproved with any certainty.
>
> To accuse Mr Pellerin of having knowingly supplied, in his capacity as a specialist on radioactivity issues, erroneous or even untrue information about such a serious problem as the Chernobyl disaster, which was of potential consequence for the health of the French population, is undeniably damaging to his honour and his reputation and is therefore defamatory. The fact that Mr Mamère's comments, according to his counsel, were uttered in a humorous tone, as a quip, makes them no less defamatory and to acknowledge that is not a violation of Article 10 of the Convention ...
>
> Good faith
>
> As the events criticised occurred so long ago, the defendant has adduced no proof that his defamatory allegations are true, but claims that he acted in good faith.
>
> Moderation of tone
>
> In using such terms as "kept on telling us", Mr Mamère insists strongly and in no uncertain terms that Mr Pellerin deliberately and repeatedly lied, and that he constantly and knowingly distorted the truth.

He also describes Mr Pellerin as a "sinister" character, which is not a neutral expression, particularly when used in connection with something like the Chernobyl disaster. He also says the civil party suffers from the "Asterix complex", thereby subjecting him to derision and undermining his credibility.

The insistence shown by Mr Mamère, the peremptory nature of his comments and the pejorative characteristics he attributes to the civil party reveal a lack of moderation in his remarks.

As one of the conditions of good faith is lacking, the defendant cannot be considered to have acted in good faith and there is no need to examine the other aspects of good faith.

He must therefore be convicted.

..."

9. The Criminal Division of the Court of Cassation dismissed an appeal on points of law lodged by the applicant, Mr Tessier and France 2 based, *inter alia*, on an alleged violation of Article 10 of the Convention. The judgment, delivered on 22 October 2002, reads as follows:

"...

The terms of the impugned judgment and the examination of the case file place the Court of Cassation in a position to affirm that the Court of Appeal, for reasons which are neither insufficient nor contradictory and which address the essential grounds raised in the pleadings submitted to it, correctly assessed the meaning and scope of the remarks impugned in the summons and rightly denied the defendants the benefit of good faith, after finding, without contravening the provisions of Article 10 of the Convention ... that the said remarks amounted to defamation.

For the remainder, the Court of Appeal correctly considered that the director of publication, whose duty it is to supervise and verify every pre-recorded programme the channel broadcasts, is answerable in law for any remarks made in the course of the programme which are found to be defamatory.

...."

B. Documents produced by the applicant

10. The applicant adduced a copy of a Ministry of Agriculture press release dated 6 May 1986, which reads as follows:

"French soil is far enough away to have been completely spared by the radioactive fallout from the accident at the Chernobyl power station. At no time has the recorded increase in radioactivity levels been a threat to public health.

The Ministry of Agriculture has readings taken by the Central Service for Protection against Ionising Radiation (SCPRI), which answers to the Ministry of Social Affairs

and Employment. According to the SCPRI the maximum airborne radioactivity levels have always remained entirely negligible.

France has asked the European Economic Community to put in place a uniform monitoring procedure, without delay, which all countries could apply in respect of non-member countries, based on the recommendations of the International Commission on Radiological Protection. Such measures should on no account hinder intracommunity exchanges. Furthermore, we have asked all the member States to inform their partners of any measurements taken and their results.

Special precautionary measures have been put in place in certain member States in respect of French products. This is quite unnecessary. The Ministry of Agriculture will make every effort to see to it that the free movement of all French products towards these countries is restored as soon as possible."

The applicant also adduced an extract of the transcript of the statement made by the Minister of Industry to the Senate on 23 May 1986; it reveals in particular that between the Chernobyl accident and that date the SCPRI issued at least twenty-five statements about the accident.

11. The applicant further adduced a document, dated 23 November 2005, entitled "Recapitulation of the mission completed by the two experts in accordance with the orders of 6 February 2002 and 16 July 2003 of [the] ... first investigating judge at the Paris *tribunal de grande instance*". It is the opinion of two judicial experts appointed by the judge in charge of the investigation mentioned in paragraph 6 above to analyse, among other things, the sealed samples collected by the SCPRI at the time of the Chernobyl accident and determine what the SCPRI knew. The "general conclusions" of the opinion read as follows:

"At this stage in our investigation it is clear that the SCPRI was very promptly supplied with all the scientific data in the possession of its network and the information it requested urgently from various bodies concerning radioactive contamination in mainland France and Corsica, for most of the radioactive isotopes, including iodine 131, iodine 132, tellurium 132, caesium 134 and caesium 137. The information was interpretable and location-specific.

The SCPRI was also aware that the results for the iodine isotopes were obtained using filters which captured only a small percentage, which meant that the readings for iodine 131 and 132 were well below the real values.

The release of this information by the SCPRI to the decision-making authorities and the public was neither complete nor precise and certain values were concealed.

The use of different units, some of which were no longer in current use, made comparisons or evaluations very difficult, even for specialists, and therefore even more so for the decision-making authorities and the public.

The publication of mean values per *département*, region or part of the country helped to mask the reality of contamination concentrated in certain localities, later referred to as "leopard spots", linked to weather conditions – particularly rainfall – and the landscape.

In this manner the presence, especially in the first fortnight after the clouds passed, of quantities of radioactive isotopes which were dangerous, particularly for fœtuses and for young children, was hidden from the decision-making authorities and the public.

Telex messages contained in the sealed evidence also show how, in France and even in the international scientific community, partial or mean values were imposed (some mean values being based on single readings), which led to the publication of inaccurate maps.

In our opinion mapping is possible only at the level of the "leopard spots", where populations living in relative isolation may have been subjected to levels of radiation similar to those in certain territories close to the Chernobyl power station in April-May-June 1986.

Attempts are still being made today to produce these maps which, in these conditions, cannot reflect what really happened in France in the days following the Chernobyl accident, and this is still a bone of contention.

The information of the IRSN [*Institut de radioprotection et de sûreté nucléaire* – Institute for Radioprotection and Nuclear Safety] sheds some light on the subject, but it was received too late to be included in this report within the allotted time.

Finally, there is information in the sealed evidence concerning the respective roles by the various State authorities in such circumstances [*sic*]. There was a major controversy over the subject, including whether informing the public was the role of the SCPRI or the SGCISN [Secretary General of the Interministerial Nuclear Safety Committee], whose job it was according to interministerial directive SGSN 5400 on informing the public and the media in the event of a nuclear safety incident or accident. This aspect of the evidence cannot be neglected."

C. Relevant domestic law

12. The relevant provisions of Chapter IV of the Freedom of the Press Act of 29 July 1881 provide:

Section 29

"It shall be defamatory to make any statement or allegation of a fact that damages the honour or reputation of the person or body of whom the fact is alleged. The direct publication or reproduction of such a statement or allegation shall be an offence, even if expressed in tentative terms or if made about a person or body not expressly named but identifiable by the terms of the impugned speeches, shouts, threats, written or printed matter, placards or posters.

It shall be an insult to use any abusive or contemptuous language or invective not containing an allegation of fact."

Section 31

"Defamation by reference to the functions or capacity of one or more ministers or ministry officials, one or more members of one of the two legislative chambers, a civil servant, a representative or officer of the law, a minister of religion in receipt of a State salary, a citizen temporarily or permanently responsible for a public service or discharging a public mandate, a member of a jury or a witness on the basis of his witness statement [in speeches, shouts or threats made or uttered in public places or meetings, or in written or printed matter, drawings, engravings, paintings, emblems, images or any other written, spoken or pictorial medium sold or distributed, offered for sale or exhibited in public places or meetings, or on placards or posters on public display, or in any audiovisual medium] shall be punishable [by a fine of 45,000 euros].

..."

Section 35

"The truth of the defamatory allegation, but only when it relates to functions, may be established in the ordinary way in the case of allegations against State institutions, the army, navy or air force, the public authorities and any of the persons listed in section 31.

The truth of defamatory and insulting allegations may also be established against directors or administrators of any public industrial, commercial or financial company.

The truth of the defamatory allegations may always be established except:

(a) when the allegation concerns the person's private life;

(b) when the allegation refers to events dating back more than ten years;

(c) when the allegation refers to events in respect of which an amnesty has been granted or which are time-barred or gave rise to a conviction which has been expunged by rehabilitation or review.

Subsections (a) and (b) above shall not apply when the facts are offences provided for and punishable under Articles 222-23 to 222-32 and 227-22 to 227-27 of the Criminal Code and were committed against a minor.

In the cases provided for in the previous two paragraphs, rebutting evidence is reserved. If proof of the defamatory allegation is established, the defendant shall be acquitted.

In any other circumstances and in respect of any other unspecified person, when the allegation has given rise to proceedings brought by the prosecution service or a complaint lodged by the defendant, while the resulting investigation takes its course the proceedings and trial for defamation shall be suspended."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

13. The applicant complained that the French courts had convicted him of aiding and abetting public defamation of a civil servant on account of statements he had made during a television programme called *Tout le monde en parle*, broadcast on France 2 during the night of 23 to 24 October 1999. He complained of a violation of his right to freedom of expression as guaranteed under Article 10 of the Convention, which is worded as follows:

> "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 frontier. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 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."

A. The parties' submissions

14. The applicant emphasised in particular that the impugned remarks concerned a very serious public-health issue as they referred to the Chernobyl disaster – the most serious nuclear accident Europe has experienced – and the shortcomings of the authorities and the public body in charge of informing the French population – the Central Service for Protection against Ionising Radiation ("SCPRI") – and were fully consistent with his political commitment to environmental issues.

He claimed that in a joking tone verging on "exaggeration", or even "provocation" (the applicant referred here to *Prager and Oberschlick v. Austria*, 26 April 1995, Series A no. 313), he had replied spontaneously with a "quip" to the mention of a serious subject brought up during a talk show, so it was unlikely that viewers would have taken his remarks at face value. He added that he could not have avoided mentioning Mr Pellerin as the latter chaired and personified the body he meant to criticise for circulating falsely reassuring information about the effects of the disaster in France.

The applicant considered that freedom to receive and communicate information and ideas should be unrestricted in a case like this, arguing that

"the fact that the nuclear lobby is so powerful in France does not mean that it is unacceptable to express ideas that offend it or shock its supporters: democracy means pluralism, tolerance and broadmindedness (see *Handyside v. the United Kingdom*, 7 December 1976, Series A no. 24, and *Jersild v. Denmark*, 23 September 1994, Series A no. 298)".

15. The Government submitted that the application was manifestly ill-founded.

They acknowledged that the applicant's conviction for aiding and abetting defamation of a civil servant constituted interference with the exercise of his right to freedom of expression. They considered, however, that the interference was "prescribed by law", namely the Freedom of the Press Act of 29 July 1881, and pursued one of the legitimate aims set out in Article 10 § 2: "the protection of the reputation ... of others", namely Mr Pellerin in his capacity as director of the SCPRI.

The Government admitted that the applicant's comments concerned a question of general concern relating to public health, but felt that they had overstepped the limits laid down with a view to protecting the reputation of others. In their submission, they had targeted Mr Pellerin in insulting terms while he was "exercising public authority in connection with a highly sensitive subject, namely monitoring radioactivity levels in France at the time of the Chernobyl disaster", and accused him of "lying to journalists and therefore to the general public by deliberately concealing the truth about the repercussions of [that] disaster on France". In so doing the applicant had allegedly cast aspersions on Mr Pellerin's honour, honesty and credibility as director of the SCPRI (and not, as he had alleged, the director of France's nuclear authorities as a whole). The fact that the comments had been made at a time when Mr Pellerin was no longer active and the SCPRI no longer existed made no difference to the damage done to his reputation and that of the SCPRI, as they had "suggested that there had been manipulation of the facts by the public authorities, for which Mr Pellerin and the SCPRI had knowingly been responsible". That being so, and bearing in mind that the impugned comments had been made on a popular television programme and the applicant had only been sentenced to a fine of 1,500 euros and to publish a statement, the interference with his freedom of expression had been proportionate and necessary in a democratic society within the meaning of Article 10 § 2.

Lastly, the Government considered the reasons given by the trial court "pertinent and sufficient". They conceded that the applicant had been unable to plead the defence of truth (*exceptio veritatis*) because the impugned comments concerned events dating back more than ten years (the justification for that principle lying in the need for the law to ensure that the reality of past events could not be challenged without any limit in time), but considered, in the light of the documents the applicant had produced in court, that he would have had little chance of success in any event. They

added that the applicant had, on the other hand, been able to plead good faith, which was assessed according to four cumulative criteria: caution in the choice of words, lack of personal animosity, legitimate aim of the information and serious verification. The courts had rejected that claim, in particular because they had rightly found that the first two criteria had not been met. The Court of Appeal had found that "the peremptory nature" of the applicant's comments and the "pejorative characteristics" he had attributed to the civil party revealed a lack of moderation. According to the Government, "the applicant should have been all the more careful in that he was a member of parliament and a mayor, elected offices which require a degree of self-restraint, and he was expressing himself on a popular television programme"; as the Court of Appeal had rightly found, the fact that he had spoken in jest did not make what he had said any less defamatory. As regards personal animosity, the Government submitted in particular that the court of first instance had noted that the applicant's remarks had been directed against Mr Pellerin alone, not against the French nuclear authorities, and had not been devoid of "a certain animosity towards the civil party".

16. In reply the applicant produced the opinion of the judicial experts appointed by the investigating judge for the purposes of a preliminary investigation initiated following a complaint against a person or persons unknown, together with a civil-party application, lodged, *inter alia*, by people suffering from thyroid cancer, with a view in particular to analysing the sealed samples collected by the SCPRI at the time of the Chernobyl accident and determining exactly what the SCPRI had known (see paragraphs 6 and 11 above). He stressed that the experts had "found that the SCPRI had very promptly received all the relevant information about the accident and that the information it had issued had been neither complete nor precise, and certain values had been concealed".

B. The Court's assessment

1. Admissibility

17. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and no other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

2. The merits

18. The Court has no doubt that the applicant's conviction for aiding and abetting public defamation of a civil servant constitutes interference with the exercise of his right to freedom of expression or that the interference

was "prescribed by law" (Freedom of the Press Act of 29 July 1881) and pursued one of the legitimate aims set out in Article 10 § 2 ("the protection of the reputation ... of others"). Moreover, that has not been disputed.

19. It remains to be ascertained whether the interference was "necessary in a democratic society" to achieve that aim.

The basic principles found in the Court's case-law on this subject are the following (see, among many other authorities, *Hertel v. Switzerland*, 25 August 1998, § 46, *Reports of Judgments and Decisions* 1998-VI):

(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no "democratic society". As set forth in Article 10, this freedom is subject to exceptions which, however, must be narrowly interpreted and the necessity for any exceptions must be convincingly established.

(ii) The adjective "necessary", within the meaning of Article 10 § 2, implies the existence of a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10.

(iii) The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts.

20. That being so, the Court points out first of all that the instant case is one where Article 10 requires a high level of protection of the right to freedom of expression, for two reasons. The first is that the applicant's remarks concerned issues of general concern, namely, protection of the environment and public health (see, among other authorities, *Hertel*, cited

above, § 47; Bladet Tromsø *and Stensaas v. Norway* [GC], no. 21980/93, ECHR 1999-III; *VgT Verein gegen Tierfabriken v. Switzerland*, no. 24699/94, §§ 70 and 72, ECHR 2001-VI; *Vides Aizsardzības Klubs v. Latvia*, no. 57829/00, § 42, 27 May 2004; and *Steel and Morris v. the United Kingdom*, no. 68416/01, §§ 88-89, ECHR 2005-II), and how the French authorities dealt with those issues in the context of the Chernobyl disaster; indeed, they were part of an extremely important public debate focused in particular on the insufficient information the authorities gave the population regarding the levels of contamination to which they had been exposed and the public-health consequences of that exposure. The second reason is that the applicant was undeniably speaking in his capacity as an elected representative committed to ecological issues, so his comments were a form of political or "militant" expression (see, among other authorities, *Steel and Morris*, cited above, loc. cit.).

The Court accordingly considers that the margin of appreciation available to the authorities in establishing the "need" for the impugned measure was particularly narrow.

21. The Court notes that in convicting the applicant the Paris Court of Appeal considered that the applicant's remarks had damaged Mr Pellerin's "honour and reputation" by accusing him of repeatedly "having knowingly supplied, in his capacity as a specialist on radioactivity issues, erroneous or even untrue information about such a serious problem as the Chernobyl disaster, which was of potential consequence for the health of the French population", and were accordingly defamatory within the meaning of section 29 of the 1881Act.

Then, having held that the "defamatory statements" related to events that had occurred too long ago for the applicant to be able to absolve himself of criminal liability by proving that they were true, the Court of Appeal found that he had not acted in good faith simply because he had lacked moderation. It considered that in using phrases like "kept on telling us" the applicant had insisted strongly and in no uncertain terms that Mr Pellerin had deliberately and repeatedly lied, and that he had constantly and knowingly distorted the truth; he had also attributed "pejorative characteristics" to Mr Pellerin, calling him "sinister" and saying that he suffered from the "Asterix complex" (see paragraph 8 above).

22. The Court does not propose to substitute its own assessment for that of the domestic courts regarding the alleged damage to Mr Pellerin's "honour and reputation" within the meaning of section 29 of the 1881 Act. It simply notes that the applicant criticised Mr Pellerin by name, clearly suggesting that in the course of his duties at the SCPRI he had contributed to the dissemination of inaccurate information about the effects of the Chernobyl disaster in France, and concludes accordingly that the reasoning followed by the Court of Appeal on that point is sufficient.

23. However, the Court reiterates that people prosecuted as a result of comments they make about a topic of general interest must have an opportunity to absolve themselves of liability by establishing that they acted in good faith and, in the case of factual allegations, by proving they are true (see *Castells v. Spain*, 23 April 1992, § 48, Series A no. 236; see also *Colombani and Others v. France*, no. 51279/99, § 66, ECHR 2002-V). In the instant case the impugned remarks amounted to value judgments but were also – as the domestic courts found – factual allegations; the applicant should therefore have been offered both those opportunities.

24. However, as the applicant's remarks referred to events – the Chernobyl disaster, the attitude of the French authorities and the statements made by the SCPRI and its director in the media – that dated back more than ten years, section 35 of the 1881 Act barred the applicant from relying on the defence of truth (*exceptio veritatis*).

The Government argued that the principle was justified by the need for the law to ensure that the reality of past events could not be challenged without any limit in time; they added that the applicant would in any event have had little chance of success even if he had been able to rely on that defence. The Court is not convinced by this argument. In general terms it does see the logic behind a time bar of this nature, in so far as the older the events to which allegations refer, the more difficult it is to establish the truth of those allegations. However, where historical or scientific events are concerned, new facts may emerge over the years that enrich the debate and improve people's understanding of what actually happened. That is clearly the case with regard to the environmental and public-health effects of the Chernobyl accident and the way in which the authorities in general and the SCPRI in particular handled the crisis; the expert judicial report mentioned above bears this out (paragraphs 6, 11 and 16 above). That document, as well as the other evidence adduced by the applicant (the press release issued by the Ministry of Agriculture on 6 May 1986 and the extract from the transcript of the statement of the Minister of Industry to the Senate on 23 May 1986; see paragraph 10 above), show that each of the assertions the Court of Appeal relied on to reach its conclusion that the impugned remarks were defamatory was susceptible to an attempt to establish its truth, be it the number and content of the communications by the SCPRI and its director to the population and the authorities, the accuracy or otherwise of the information thus passed on or, if applicable, whether or not the authorities concerned were aware that the information they were disseminating was false.

25. Moreover, as it relies solely on the debatable immoderation of the impugned comments, the reasoning on which the Court of Appeal based its finding that the applicant had not spoken in good faith does not convince the Court.

Under the case-law, while any individual who takes part in a public debate of general concern – like the applicant in the instant case – must not overstep certain limits, particularly with regard to respect for the reputation and the rights of others, a degree of exaggeration, or even provocation, is permitted (see, for example, *Steel and Morris*, cited above, § 90), in other words, a degree of immoderation is allowed.

In the opinion of the Court, the impugned remarks in the instant case, although sarcastic, remain within the limits of admissible exaggeration or provocation. The Court sees no manifestly insulting language in the remarks: although Mr Pellerin is called a "sinister character", the real meaning of the word should be borne in mind, and the fact that the applicant was not referring to him so much as a person but also and above all as a representative of a body that had been in the front line when it came to informing the public about the effects in France of the Chernobyl accident, which was a sinister event. As to the reference to the "Asterix complex", that – just like the image of a radioactive cloud "blocked" at the French border – can only be seen as a caricature of the situation as perceived by the applicant, evoking a particularly confident attitude on the part of the authorities, to the detriment of geographical common sense (even if the real effects of the Chernobyl disaster in France remain largely uncertain to this day). As to the phrase "kept on telling us ...", rather than an allegation of deliberate repeated lying, one can only see it as a reference to the numerous statements made by the director of the SCPRI in the media, which the applicant, a television journalist at the time of the disaster, had been in a good position to witness. The remarks must also be placed in their context: the applicant was reacting spontaneously to the mention by another guest personality of the emotion he had felt on reading a book devoted to the victims of the Chernobyl disaster, on a programme which was more of an entertainment than a news programme and which owed its popularity to the exaggeration and provocation featured on it.

26. In the Court's view the reasons given by the domestic courts for their finding of a lack of good faith reveal a particularly inflexible interpretation of the applicant's remarks which is not easy to reconcile with the right to freedom of expression.

27. The Court must certainly also take into account the fact that the impugned comments criticised Mr Pellerin in his capacity as head of the SCPRI, particularly as the applicant was convicted of aiding and abetting public defamation of a "civil servant" under section 31 of the 1881 Act. In *Janowski v. Poland* ([GC], no. 25716/94, § 33, ECHR 1999-I) the Court stressed that civil servants must enjoy public confidence in conditions free of undue perturbation if they are to be successful in performing their tasks and it may prove necessary to protect them from offensive verbal attacks when on duty; this also applies to defamatory allegations concerning acts

performed in the exercise of their duties (see, for example, *Busuioc v. Moldova*, no. 61513/00, § 64, 21 December 2004).

The Court does accept that the eminent value of freedom of expression, especially in debates on subjects of general concern, cannot take precedence in all circumstances over the need to protect the honour and reputation of others, be they ordinary citizens or public officials. On a number of occasions it has found that the nature and gravity of accusations against civil servants or former civil servants can lead it to conclude that measures taken in such a context are compatible with Article 10 (see, for example, *Radio France and Others v. France*, no. 53984/00, ECHR 2004-II, or *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, ECHR 2004-XI).

However, that does not mean that the punishment of all criticism of civil servants related to the performance of their duties is, *ipso facto*, compatible with Article 10 of the Convention. As the Court also pointed out in *Janowski*, while it cannot be said that civil servants knowingly lay themselves open to close scrutiny of their every word and deed to the extent to which politicians do, in certain cases civil servants acting in an official capacity are subject to wider limits of acceptable criticism than ordinary citizens. It would be going too far to extend the principle established in that judgment without reservation to all persons who are employed by the State, in any capacity whatsoever (see *Busuioc*, cited above, loc. cit.). Moreover, the requirements of protecting civil servants have to be weighed against the interests of freedom of the press or of open discussion of matters of public concern (see *Janowski* and *Busuioc*, both cited above).

28. In the instant case the Court notes that one of the tasks of the SCPRI, of which Mr Pellerin was the director, was to monitor radiation levels in the country and alert the relevant ministries in the event of a problem. It understands that the confidence of the public is particularly important to the successful accomplishment of such a task. However, those responsible for carrying it out must themselves help to win that confidence, for example by showing caution when announcing their assessment of dangers and risks such as those arising from an event like the Chernobyl disaster. The Court fails to see how such an issue could still be topical at the time when the applicant made the allegedly defamatory comments: the SCPRI no longer existed and the civil servant concerned was 76 years old and no longer in service. Furthermore, the question of Mr Pellerin's personal and "institutional" responsibility is an integral part of the debate on a matter of general concern, seeing that as director of the SCPRI he 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, in France.

29. On that basis the Court finds that the fact that the impugned comments criticised Mr Pellerin in his capacity as the former director of the

SCPRI did not legitimately justify any particular severity in the judgment of the applicant's case.

30. In the light of the above, and in particular the extreme importance of the debate on a matter of general concern in the context of which the impugned comments were uttered, the applicant's conviction for defamation cannot be considered proportionate and therefore "necessary in a democratic society" within the meaning of Article 10 of the Convention. There has therefore been a violation of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

32. The applicant has submitted no claim for just satisfaction. Accordingly, the Court considers that no award should be made under this head.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention.

Done in French, and notified in writing on 7 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	András Baka
Deputy Registrar	President