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

Press release issued by the Registrar, 8. 10. 2009

Chamber judgment

Gsell v. Switzerland (application no. 12675/05)

# DECISION TO REFUSE JOURNALIST ACCESS TO DAVOS FORUM DEVOID OF LEGAL BASIS

Violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 1,026 euros (EUR) in respect of pecuniary damage and EUR 7,000 for costs and expenses. (The judgment is available only in French.)

Principal facts

The applicant, Mario Gsell, is a Swiss national who was born in 1958 and lives in Kaltbach (Switzerland). He is a journalist with Gastro-News, a good-food magazine. For the World Economic Forum (WEF) in Davos in 2001, he was asked to write an article about the impact of the demonstrations on local restaurants and hotels.

On 27 January 2001, when Mr Gsell was on his way to the WEF, and more specifically to the Public Eye on Davos event being staged by anti-globalisation organisations, the police subjected the passengers of the bus in which he was travelling to an identity check. Despite showing his press card, Mr Gsell was prohibited from entering Davos by the police, who had put in place numerous security measures in anticipation of an unauthorised demonstration and of disturbances.

In February 2001 the applicant lodged a complaint, which was declared inadmissible by the Graubünden cantonal government in April 2002 on the ground that it had been submitted out of time. The cantonal government nevertheless held, as to the merits, that the application of the so-called general police clause enshrined in the Federal Constitution, which could be invoked by the authorities to deal with "emergency situations" in the absence of other legal means of averting a "clear and present danger", had not been disproportionate, given that public safety had been at stake and it had been impossible to distinguish between potentially violent individuals and other members of the public.

On 7 July 2004 the Federal Court dismissed two public-law appeals by the applicant. With regard to Article 6 of the Convention, on which Mr Gsell relied, it held that neither the exercise of his profession nor his professional reputation had been adversely affected as a result of his being barred from the WEF. In relation to Article 10, the court found that the Graubünden cantonal government had been entitled to invoke the general police clause, as past anti-globalisation events had given grounds for regarding the staging of Public Eye on Davos as an emergency situation which presented a real threat and was not clearly identifiable or foreseeable.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Mr Gsell complained of having been prohibited from entering Davos. On the basis of Article 6 § 1 (right to a fair trial) he complained, firstly, that his case had not been examined by a "tribunal" within the meaning of Article 6 § 1 and, secondly, that the proceedings before the Swiss authorities had been excessively long.

The application was lodged with the European Court of Human Rights on 5 April 2005.

Judgment was given by a Chamber of seven judges composed as follows:

Peer Lorenzen (Denmark), President,
Renate Jaeger (Germany),
Karel Jungwiert (the Czech Republic),
Rait Maruste (Estonia),
Mark Villiger (Liechtenstein),
Giorgio Malinverni (Switzerland),
Mirjana Lazarova Trajkovska ("the Former Yugoslav Republic of Macedonia"), judges,

and also Claudia Westerdiek, Section Registrar.

Decision of the Court

Article 10

The measure at issue had amounted to interference with Mr Gsell's right to freedom of expression, as he had been travelling to Davos with the intention of writing an article.

The authorities had made use of the general police clause under the Federal Constitution because there had been no explicit legal basis for barring Mr Gsell.

According to the case-law of the Federal Court, however, the general police clause could not be used by the authorities in foreseeable and recurring situations, but only in "emergency situations" in order to avert a "clear and present danger". While, in the instant case, the Court acknowledged the difficulty for the authorities of making a precise assessment of the risks inherent in the WEF, it did not consider that the scale of the demonstrations had been unforeseeable, in view of past experience and the findings of the Arbenz report on security at the WEF. The circumstances of the 2001 WEF had therefore been foreseeable and recurring. Furthermore, again according to the Federal Court's case-law, measures to restrict freedom of assembly were to be taken solely in respect of those persons who were creating a disturbance, which had not been the case with Mr Gsell.

Accordingly, the authorities had not been entitled to make use of the general police clause in order to prohibit the applicant from entering Davos. The interference by the authorities with his freedom of expression had not been prescribed by law and had therefore been in breach of Article 10.

Article 6 § 1

As to the applicant's complaint concerning the right of access to a court, the Court stressed the very detailed reasons given in particular by the Federal Court in its judgment of 7 July 2004, following adversarial proceedings in which the principle of equality of arms between the parties had been observed. Noting, in addition, that the facts had not been the subject of real dispute between the parties, it did not consider that the Federal Court's limited power to assess the facts in dealing with the public-law appeal had infringed Mr Gsell's right of access to a court. It therefore held that the complaint was manifestly ill-founded and should be dismissed.

The part of Mr Gsell's application concerning the length of the proceedings failed to satisfy the requirement to exhaust domestic remedies, as the applicant had made no complaint in that regard in his various applications to the authorities. This complaint was therefore dismissed as being manifestly ill-founded. The Court further noted that, in view of the circumstances of the case, the overall length of the proceedings – approximately three and a half years for four levels of jurisdiction – had not been excessive for the purposes of Article 6 § 1.