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

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Finding against *Le Point* magazine for publishing documents from criminal proceedings in the Bettencourt case did not infringe the Convention

In today's **Chamber** judgment[1] in the case of Giesbert and others v. France (application no. 68974/11) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned a finding against the *Le Point* weekly magazine, its editor-in-chief, Franz-Olivier Giesbert, and a journalist, Hervé Gattegno, for publishing documents from a set of criminal proceedings before it was to be read out at a public hearing, in the high-profile Bettencourt case.

The Court found, in particular, that the interests of the applicants and the general public in communicating and receiving information on a subject of general interest did not take precedence over the protection of the rights of others and the proper administration of justice.

Furthermore, the Court considered that the findings against the applicants had met a sufficiently compelling social need to prevail over the public interest in freedom of the press, and that they therefore could not be deemed disproportionate to the legitimate aims pursued.

Principal facts

On 10 December 2009 *Le Point* published a 4-page article concerning gifts worth one billion euros from Liliane Bettencourt, one of the wealthiest individuals in France, to her friend B., a writer and photographer. The article contained comments in quotation marks, presented as excerpts from statements made to the investigators. The article also reproduced statements by Ms Bettencourt under the heading "Exclusive: what Liliane Bettencourt actually told the police".

On 4 February 2010 *Le Point* published an article entitled "The Bettencourt affair: how to earn a billion (without too much trouble)". That article reproduced lengthy excerpts from statements made by persons working at Ms Bettencourt's home, which had been recorded during the preliminary inquiry. On 11 February 2010, further to the publication of that article, Ms Bettencourt brought urgent proceedings against the applicants before the Paris *tribunal de grande instance* ("TGI"). B. followed suit. Ms Bettencourt complained that the reproduction of procedural documents relating to the preliminary inquiry violated section 38 of the 29 July 1881 Freedom of the Press Act and Article 9 of the Civil Code guaranteeing respect for private life. The court ordered the applicants to pay her a sum of 3,000 euros (EUR), together with a further EUR 3,000 in respect of costs and expenses.

The applicants appealed against that decision. The Paris Court of Appeal upheld the substance of the decision, increased the award to EUR 10,000, and confirmed that the record of witness statements constituted "procedural documents", even if the preliminary inquiry had been discontinued. The court ruled that the publication of such excerpts amounted to a violation of section 38 of the 1881 Act, and was therefore an "unlawful nuisance" within the meaning of Article 809 of the Code of Civil Procedure. The Court of Cassation dismissed the applicants' appeal on points of law.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

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As regards B.'s complaint, the TGI held that the publication of the article had infringed his rights to a fair trial and to the presumption of innocence. The applicants were ordered to pay him an advance of EUR 3,000 on the compensation to be awarded in respect of non-pecuniary damage, and an equivalent amount in respect of costs and expenses. The applicants appealed. The Paris Court of Appeal upheld the substance of that decision. The Court of Cassation dismissed the applicants' appeal on points of law.

On 9 March 2010 B. brought proceedings against the applicants before the TGI, claiming compensation for the damage caused by the publication of the articles on 10 December 2009 and 4 February 2010 in breach of section 38 of the 1881 Act. The TGI dismissed all B.'s claims. In February 2012 the Court of Appeal set aside the judgment, ruled that the impugned publications had infringed B.'s right to a fair trial with respect for his defence rights and the presumption of innocence and violated section 38 of the 1881 Act, and ordered the applicants to pay B. EUR 1 in compensation for each publication and EUR 6,000 in respect of costs and expenses. The Court of Cassation dismissed the applicants' appeal on points of law.

From June 2010 onwards the startling developments and the political/financial ramifications of the Bettencourt affair attracted intensive media coverage.

In December 2011 B. was placed under formal investigation for exploitation of weakness, and on 28 May 2015 he was found guilty and sentenced to three years' imprisonment, of which he had to serve thirty months, a fine of EUR 350,000, and EUR 158 million in respect of damages payable to Ms Bettencourt. The Bordeaux Court of Appeal upheld the judgment and altered the sentence.

Complaints, procedure and composition of the Court

The applicants complained that the findings of civil liability against them under section 38 of the 1881 Freedom of the Press Act had amounted to a violation of Article 10 (freedom of expression).

The application was lodged with the European Court of Human Rights on 28 October 2011.

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

Angelika **Nußberger** (Germany), *President*,
Erik **Møse** (Norway),
André **Potocki** (France),
Yonko **Grozev** (Bulgaria),
Síofra **O'Leary** (Ireland),
Gabriele **Kucsko-Stadlmayer** (Austria),
Lətif **Hüseynov** (Azerbaijan),

and also Milan **Blaško**, *Deputy Section Registrar.*

Decision of the Court

Article 10

The Court pointed out that it had already ruled that the provisions of section 38 of the 1881 Act was sufficiently foreseeable as required by Article 10 of the Convention (see Tourancheau and July, 24 November 2005, §§ 59 and 60). It emphasised that the journalists, Mr Giesbert and Mr Gattegno, were experienced professionals and had been well placed to weigh up the risks facing them. The interference with the applicants' freedom of expression had therefore been "prescribed by law".

The Court held that the impugned interference had been intended to protect B.'s right to a fair trial, with respect for the presumption of innocence, and, as regards Ms Bettencourt, to protect her rights by guaranteeing proper administration of justice.

The Court noted that Mr Giesbert and Mr Gattegno could not have been unaware of the origin of the documents reproduced in their articles or of the confidentiality of the information published. Section 38 of the 1881 Act targeted and punished not the conditions under which a procedural document had been obtained, but the mere fact that it had been published.

As regards the content of the articles, the Court observed that the content of the article published on 10 December 2009 had been appraised differently at first instance and on appeal. However, even though the journalist had been careful not to draw any explicit conclusions in the article, its whole thrust was that B. was guilty. The article had provided several quotations to highlight the contradictions and weaknesses of B.'s statements and to provide the public with biased information. As regards the article published on 4 February 2010, the Court saw no reason to challenge the decision of the national courts, which had held that a reading of the article suggested that Ms Bettencourt, who was mentally fragile, had been manipulated by B. Nor had the article been neutral in its treatment of B., practically accusing him of manipulation, in breach of the presumption of innocence. The Court therefore saw no reason to substitute its opinion for that of the Court of Appeal or of the Court of Cassation.

As regards whether the articles had contributed to the public interest, the Court considered that the impugned statements by the applicants, which had concerned public figures and the functioning of the judiciary, had been part of a public-interest debate which went beyond the mere curiosity of a particular readership about a given event or an anonymous trial. The Court took the view that the domestic courts could have provided more explicit reasons for its exercise of balancing the interests of Ms Bettencourt, of B. and of the proper administration of justice against the general interest argument adduced by the applicants. Nevertheless, it considered that the fact that the domestic courts had not emphasised the potential influence of the articles on the public debate and the public interest fell within their legitimate margin of appreciation.

Publishing such articles – on 10 December 2009, the day before B.'s appearance at the Nanterre Criminal Court, and on 4 February 2010, two months before the scheduled hearing – was liable to heavily influence the conduct of the proceedings and affect potential witnesses, and indeed the judges. The Court reiterated that publishing a biased article could affect the objectivity of the trial court. The Court did not agree with the applicants that the extensive media coverage of the case had vindicated the verbatim publication of numerous lengthy excerpts from procedural documents. Given the complex issues before the courts, the publication of quotations from those documents in biased articles had risked disrupting the proper conduct of the proceedings and jeopardising B.'s right to a fair trial. Confirming that the publishing ban set out in section 38 of the 1881 Act was limited in scope and duration, the Court ruled that Mr Giesbert and Mr Gattegno, as press professionals, had been in a position to obviate such risks without affecting the substance of the information which they had wished to disseminate.

Finally, the Court held that the penalties imposed on the applicants could not be deemed excessive or capable of having a chilling effect on the exercise of freedom of the media.

The Court concluded that the reasons given by the domestic courts for finding against the applicants and interfering with their right to freedom of expression had been appropriate and sufficient for the purposes of Article 10 of the Convention.

The Court found that the domestic findings had met a sufficiently compelling social need to take precedence over the public interest in the freedom of the press, and that those findings could not be deemed disproportionate to the legitimate aims pursued. There had therefore been no violation of Article 10.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.