



## The decision to resort to criminal proceedings may have a chilling effect on freedom of expression

In today's Chamber judgment<sup>1</sup> in the case of [Reichman v. France](#) (application no. 50147/11) the European Court of Human Rights held, by six votes to one, that there had been:

**a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights, and a violation of Article 10 (freedom of expression) of the Convention.**

The case concerned an allegation of disproportionate interference with the right of access to the Court of Cassation and with the right to freedom of expression.

The Court found in particular that by declaring Mr Reichman's appeal on points of law inadmissible on the ground that he had given his lawyer special authorisation to appeal on points of law before the court of appeal had delivered its judgment, the authorities had displayed excessive formalism, amounting to a disproportionate interference with his right of access to a court.

With regard to the complaint under Article 10 of the Convention, the Court considered that the contested remarks had been made as part of a debate on matters of general interest and concerned the freedom of the press, in the context of which the applicant was expressing himself. It noted that the domestic courts had merely proved the constituent elements of defamation, without examining the various criteria laid down by the Court in the context of its review of proportionality. In particular, the Court noted that the domestic court had not drawn a distinction between statements of fact and value judgments, although similar violations had already been found in cases concerning Article 10 of the Convention.

Lastly, the Court emphasised that the very fact of imposing a criminal conviction was one of the most serious forms of interference with the right to freedom of expression, having regard to the existence of other means of intervention and rebuttal, particularly through civil remedies. It pointed out that it had invited the domestic authorities on a number of occasions to show restraint in resorting to criminal proceedings.

### Principal facts

The applicant, Claude Reichman, is a French national who was born in 1937 and lives in Paris (France).

At the relevant time Mr Reichman was responsible for a programme broadcast on Radio Courtoisie. On 14 November 2006 he made a presentation about the radio station's situation since the death of its founder, Jean Ferré. He described at the outset a meeting held at the radio station a short time previously, during which L., the new vice-chairman of the board of directors of the association responsible for managing the radio station had allegedly ensured, with the help of bodyguards, that the attendees could not express themselves. He then criticised L.'s decision to assume control of the radio station's editorial line and stated, in particular: "... the radio station's financial situation has

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](http://www.coe.int/t/dghl/monitoring/execution).

given rise to certain... I was going to say acrobatic feats... let's just say, to actions whose lawfulness should be verified, and all of this leaves me very uneasy ...”

On 9 February 2007 L. lodged a complaint, together with an application to join the proceedings as a civil party. On 3 May 2007, an injunction appointed a judicial administrator, who was charged with convening a general assembly to elect a new board of directors and with ensuring the day-to-day running of the radio station's management association. The urgent-applications judge noted that there had been a succession crisis at Radio Courtoisie since the death of its founder in October 2006.

By an order of 8 February 2008, the investigating judge committed Mr Reichman for trial before the criminal court on a charge of public defamation. On 17 February 2009 the Paris Criminal Court found the applicant guilty of public defamation of a private person, on the ground that he had imputed to the civil party actions which could be classified as criminal in nature or, at the least, could entail his liability. The court held that Mr Reichman's plea of good faith could not be accepted, in the absence of serious evidence to substantiate his accusation. He was ordered to pay a suspended fine of 1,000 euros (EUR), and to pay EUR 1,500 in damages and EUR 2,000 for irrecoverable costs to L. The appeal court upheld the applicant's conviction.

The Court of Cassation declared Mr Reichman's appeal on points of law inadmissible, on the ground that he had given his lawyer special authorisation to bring proceedings before the Court of Cassation dated 25 May, although the appeal court's verdict had been delivered on 27 May 2010.

## Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right of access to a court), Mr Reichman complained that there had been a disproportionate interference with his right of access to the Court of Cassation. He also alleged a breach of his right to freedom of expression, protected by Article 10 of the Convention.

The application was lodged with the European Court of Human Rights on 25 July 2011.

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

Angelika **Nußberger** (Germany), *President*,  
Ganna **Yudkivska** (Ukraine),  
André **Potocki** (France),  
Faris **Vehabović** (Bosnia and Herzegovina),  
Síofra **O'Leary** (Ireland),  
Carlo **Ranzoni** (Liechtenstein),  
Mārtiņš **Mits** (Latvia),

and also Claudia **Westerdiek**, *Section Registrar*.

## Decision of the Court

### Article 6 § 1

The Court noted that the terms of the authorisation given by Mr Reichman to his lawyer showed an unequivocal and thorough desire to appeal on points of law in the event of conviction. It further noted that it was necessary to take into account the particularly short nature of the deadline for lodging an appeal on points of law in such cases, namely five clear days.

In view of those circumstances, the Court considered that by declaring Mr Reichman's appeal on points of law inadmissible on the ground that he had given his lawyer special authorisation to appeal to the Court of Cassation before the court of appeal had even delivered its judgment, the authorities

had displayed excessive formalism, amounting to a disproportionate interference with his right of access to a court.

Mr Reichman had in fact been deprived of any examination of the merits of his appeal on points of law, although he had been convicted in criminal proceedings and his freedom of expression was at stake.

The Court concluded that there had been a violation of Article 6 § 1.

### Article 10

The Court considered that the contested remarks had been made as part of a debate on matters of general interest and concerned the freedom of the press, in the context of which the applicant was expressing himself in his capacity as the presenter, of more than fifteen years' standing, of a news programme, and even if he was personally affected by the difficulties encountered by the radio station. It noted that this resulted in a particularly narrow margin of appreciation for the State in restricting the right to freedom of expression.

The Court considered that a certain degree of "exaggeration" or even "provocation" was permitted in the exercise of journalistic freedom. It noted that the impossibility of proving the truthfulness of a statement could not imply a failing by the writer or speaker to comply with professional ethics. The Court reiterated that the protection afforded by Article 10 to journalists was subject to the proviso that they acted in good faith in order to provide accurate and reliable information in accordance with the tenets of responsible journalism.

The questions posed on the airwaves by Mr Reichman were such as to suggest the possible existence of irregularities in the financial management of the radio station, but did not however refer to any specific fact. Mr Reichman was thus expressing an overall impression concerning the management of the radio station over a period which included the civil party's presidency. He concluded his remarks by referring to the need to carry out further checks in this area. The court noted that the criminal court itself had described this statement as "allusive" and that it was the statement's abstract nature which had led the domestic courts to accept the existence of defamation. The Court concluded from this that the contested statement amounted to a value judgment and not a statement of fact.

The Court noted that the contested remarks were not a matter of gratuitous incentive, but, on the contrary, had a factual basis. It noted in this connection that Mr Reichman had been able to submit two documents from, respectively, the radio station's accounts department and its auditor, attesting to the station's poor financial situation. The Court also noted the relatively measured nature of the contested remarks, which were made in a context of disagreements within the station and followed on from incidents that had taken place a short time previously between members of staff and the civil party.

The Court noted that the domestic courts had merely proved the constituent elements of defamation, without examining the various criteria laid down by the Court in the context of its review of proportionality. In particular, the Court noted that the domestic court had not drawn a distinction between statements of fact and value judgments, although similar violations had already been found in cases concerning Article 10 of the Convention.

Finally, the Court reiterated that a criminal sanction, even a relatively light one, could have a chilling effect on the exercise of freedom of expression. The Court noted that the very fact of imposing a criminal conviction was one of the most serious forms of interference with the right to freedom of expression, having regard to the existence of other means of intervention and rebuttal, particularly through civil remedies, and reiterated that it had invited the domestic authorities on a number of occasions to show restraint in resorting to criminal proceedings.

The Court concluded from these elements that Mr Reichman's conviction had amounted to a disproportionate interference with his right to freedom of expression and that there had therefore been a violation of Article 10 of the Convention.

### Just satisfaction (Article 41)

The Court held that France was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 210 in respect of costs and expenses.

### Separate opinion

Judge Nußberger expressed a separate opinion, which is annexed to the judgment.

*The judgment is available only in French.*

---

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on [www.echr.coe.int](http://www.echr.coe.int). To receive the Court's press releases, please subscribe here: [www.echr.coe.int/RSS/en](http://www.echr.coe.int/RSS/en) or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

### Press contacts

[echrpress@echr.coe.int](mailto:echrpress@echr.coe.int) | tel.: +33 3 90 21 42 08

**Denis Lambert (tel: + 33 3 90 21 41 09)**

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Inci Ertekin (tel: + 33 3 90 21 55 30)

**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.