



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

CASE OF FRESSOZ AND ROIRE v. FRANCE

(Application no. 29183/95)

JUDGMENT

STRASBOURG

21 January 1999

In the case of Fressoz and Roire v. France,

The European Court of Human Rights, sitting, in accordance with Article 27 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), as amended by Protocol No. 11¹, and the relevant provisions of the Rules of Court², as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,
Mrs E. PALM,
Mr L. CAFLISCH,
Mr J. MAKARCZYK,
Mr J.-P. COSTA,
Mrs V. STRÁŽNICKÁ,
Mr W. FUHRMANN,
Mr K. JUNGWIERT,
Mr M. FISCHBACH,
Mrs N. VAJIĆ,
Mrs W. THOMASSEN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr T. PANȚÎRU,
Mr R. MARUSTE,
Mr E. LEVITS,
Mr K. TRAJA,
Mrs S. BOTOUCHAROVA,

and also of Mr P.J. MAHONEY and Mrs M. DE BOER-BUQUICCHIO, *Deputy Registrars*,

Having deliberated in private on 12 November 1998 and 13 January 1999,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court, as established under former Article 19 of the Convention³, by the European Commission of Human Rights (“the Commission”) and by the French Government (“the Government”) on 16 March 1998 and 15 May 1998 respectively, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. It originated in an application (no. 29183/95) against the

Notes by the Registry

1-2. Protocol No. 11 and the Rules of Court came into force on 1 November 1998.

3. Since the entry into force of Protocol No. 11, which amended Article 19, the Court has functioned on a permanent basis.

French Republic lodged with the Commission under former Article 25 by two French nationals, Mr Roger Fressoz and Mr Claude Roire, on 3 August 1995.

The Commission's request referred to former Articles 44 and 48 and to the declaration whereby France recognised the compulsory jurisdiction of the Court (former Article 46); the Government's application referred to former Article 48. The object of the request and of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 § 2 and Article 10 of the Convention.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of former Rules of Court A¹, the applicants stated that they wished to take part in the proceedings and designated the lawyer who would represent them (former Rule 30).

3. As President of the Chamber which had originally been constituted (former Article 43 of the Convention and former Rule 21) in order to deal, in particular, with procedural matters that might arise before the entry into force of Protocol No. 11, Mr R. Bernhardt, the President of the Court at the time, acting through the Registrar, consulted the Agent of the Government, the applicants' lawyer and the Delegate of the Commission on the organisation of the written procedure. Pursuant to the order made in consequence, the Registrar received the Government's and the applicants' memorials on 10 and 27 July 1998 respectively. On 24 August 1998 the Delegate of the Commission submitted written observations.

4. On 16 October 1998 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

5. After the entry into force of Protocol No. 11 on 1 November 1998 and in accordance with the provisions of Article 5 § 5 thereof, the case was referred to the Grand Chamber of the Court. The Grand Chamber included *ex officio* Mr J.-P. Costa, the judge elected in respect of France (Article 27 § 2 of the Convention and Rule 24 § 4 of the Rules of Court), Mr L. Wildhaber, the President of the Court, Mrs E. Palm, Vice-President of the Court, and Mr M. Fischbach, Vice-President of Section (Article 27 § 3 of the Convention and Rule 24 §§ 3 and 5 (a)). The other members appointed to complete the Grand Chamber were Mr L. Caflisch, Mr J. Makarczyk, Mrs V. Strážnická, Mr W. Fuhrmann, Mr K. Jungwiert, Mrs N. Vajić, Mrs W. Thomassen, Mrs M. Tsatsa-Nikolovska,

1. *Note by the Registry.* Rules of Court A applied to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and from then until 31 October 1998 only to cases concerning States not bound by that Protocol.

Mr T. Panțîru, Mr R. Maruste, Mr E. Levits, Mr K. Traja and Mrs S. Botoucharova (Rule 24 § 3 and Rule 100 § 4).

6. At the Court's invitation (Rule 99), the Commission delegated one of its members, Mr J.-C. Geus, to take part in the proceedings before the Grand Chamber.

7. In accordance with the President's decision, a hearing took place in public in the Human Rights Building, Strasbourg, on 12 November 1998.

There appeared before the Court:

(a) *for the Government*

Mr J.-F. DOBELLE, Deputy Director of Legal Affairs,
Ministry of Foreign Affairs, *Agent*,
Mr B. NEDELEC, *magistrat*, on secondment to the
Human Rights Section, Ministry of Foreign Affairs,
Mr A. BUCHET, *magistrat*, head of the Human Rights Office,
European and International Affairs Department,
Ministry of Justice,
Mrs C. ETIENNE, *magistrat*, of the Department of
Criminal Affairs, Ministry of Justice, *Counsel*;

(b) *for the applicants*

Mrs C. WAQUET, of the *Conseil d'Etat*
and Court of Cassation Bar, *Counsel*;

(c) *for the Commission*

Mr J.-C. GEUS, *Delegate*;
Ms M.-T. SCHOEPFER, *Secretary to the Commission*.

The Court heard addresses by Mr Geus, Mrs Waquet and Mr Dobelle.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. Mr Roger Fressoz and Mr Claude Roire, who are French nationals, lived in Paris at the material time. Mr Fressoz was born in 1921 and is a former publishing director of the weekly satirical newspaper *Le Canard enchaîné*. Mr Roire was born in 1939 and is a journalist on *Le Canard enchaîné*.

A. The article at the heart of the case

9. September 1989 was a period of industrial unrest within the Peugeot motor company. The workforce's demands included pay rises, which the management, led by the company chairman and managing director Mr Jacques Calvet, refused to award.

10. On 27 September 1989, *Le Canard enchaîné* published an article by Mr Roire under the headline:

“Calvet turbo-charges his salary”

with the subhead:

“His tax forms reveal more than he does. The Peugeot boss has given himself a 45.9% rise over the last two years.”

The article itself included the following:

“When Jacques Calvet appeared on the Antenne 2 programme '*L'heure de vérité*' in October 1988, he refused to answer a question about his pay. This is seen as a public-relations blunder on the part of the Peugeot boss, but the *Canard* is now in a position to put it right, thanks to the famous M.D.'s three most recent tax-assessment forms, which have come into our hands by chance. At the time of the broadcast, he was earning 185,312 francs net per month.

These documents show that, between 1986 and 1988, Calvet's total salary (plus benefits in kind and sickness benefit) rose by 45.9%. According to Peugeot's own figures, the average pay of the group's 158,000 workers rose by 6.7% over the same two years – in other words, almost seven times less than the boss's.

M.D.'s blues

Calvet has turned Peugeot around in spectacular style, but in a recent interview on Antenne 2 he said he was under stress due to his group's position in the face of the Japanese offensive. It would appear that this painful psychological crisis has not prevented him from swelling his income – though it should be noted that Calvet is far from Number 1 in the hit-parade of chief executives' salaries.

In 1987 he awarded himself a 17% increase in his annual pay, bringing it to 1,786,171 francs – that is, 148,847 francs a month. Why? Probably because the Revenue had grabbed a big slice of his previous year's income. And this dreadful tax-pay spiral continued its destructive course the following year. In 1988, in order to scrape by, Calvet was forced to give himself another rise, of 24%. His salary that year came to 2,223,747 francs, i.e. 185,312 francs a month after deductions ...”

The article was illustrated by a box reproducing a photocopy of that part of each of the three notices of assessment to tax which detailed Mr Calvet's “total taxable income” and showed the amounts he had received by way of “salary, benefits in kind and sickness benefit”. Each of the three totals was circled in pencil.

B. The criminal proceedings against the applicants

1. The investigative stage

11. On 2 October 1989 Mr Calvet lodged a criminal complaint against a person or persons unknown, together with an application to join the proceedings as a civil party claiming damages, with the senior investigating judge at Paris *tribunal de grande instance*. He submitted that the events in question must have involved the unlawful removal and possession of the originals or copies of documents normally held by the tax authorities and amounted to the offences of misappropriation of deeds or documents by a public servant, breach of professional confidence, misappropriation of documents for the time needed to reproduce them and handling unlawfully obtained documents.

12. On 5 October 1989 the public prosecutor applied to the investigating judge for an investigation to be opened into allegations of theft, breach of professional confidence, unlawful removal of deeds or documents by a public servant and handling unlawfully obtained goods.

13. On 25 October 1989 the Minister for the Budget also lodged a criminal complaint, together with an application to join the proceedings as a civil party claiming damages, against a person or persons unknown for unlawful removal of government documents and breach of professional confidence. On 11 December 1989 the public prosecutor requested that a further investigation be opened.

14. In the course of the investigation, an analysis of the computer reference number on the copy documents in Mr Roire's possession revealed that they were photocopies of the part of the tax-assessment notice which is kept by the tax authorities and is not intended to leave their premises. An inspection of the premises confirmed that the locks on the cabinets containing the documents had not been forced and that the alarm protecting the premises outside working hours had not been activated.

An examination of the original of Mr Calvet's tax assessment for 1988 revealed a palm-print belonging to the Divisional Director of Taxes. However, it was asserted that this person had called up the relevant tax file on 27 September 1989 at the request of the Head of the Revenue and the Director of Taxes for the *département*. The person or persons responsible for unlawfully removing the document from the tax authorities' premises could not be identified, with the result that no one was ever charged under that head.

15. On 8 March 1991 the applicants were charged with handling copies of notices of assessment to tax obtained through a breach of professional confidence, unlawful removal of deeds or documents and theft.

16. On 20 December 1991 the public prosecutor filed a report recommending that no one should be charged with the offences of theft or breach of professional confidence, that all the charges against the first applicant should be dropped and that the second applicant should be committed for trial before the Criminal Court on charges of handling photocopies of Mr Calvet's tax assessments obtained through a breach of professional confidence by an unidentified tax official.

17. On 27 January 1992 the investigating judge ordered that, as no culprit had been identified, the proceedings for theft and breach of professional confidence should be discontinued. The judge committed both applicants for trial before the Criminal Court on charges of handling confidential information concerning Mr Calvet's income obtained through a breach of professional confidence by an unidentified tax official and of handling stolen photocopies of Mr Calvet's tax assessments.

2. *In Paris Criminal Court*

18. The applicants submitted two arguments in their defence: first, that the conditions for publishing directors to be criminally liable, laid down in section 42 of the Freedom of the Press Act of 29 July 1881 (see paragraph 25 below) did not apply and, second, that the elements of the offences with which they had been charged, as defined in Article 460 of the Criminal Code (see paragraph 27 below), were not made out in their case.

19. At the trial Mr Fressoz stated that the first time he had seen the extracts from the tax assessments printed in the newspaper was when he looked at the proofs before personally passing the article for press. He said he had asked Mr Roire “whether his documents were sound in journalistic terms”, that is to say, “whether the information was accurate and had been checked”. He acknowledged that, as a general rule, passing copy for press was the responsibility of an editorial assistant, who, “if there is a problem, consults the editor and, in the last resort, the publishing director”.

The second applicant stated that the photocopies of the tax assessments had been sent anonymously in an envelope addressed to him by name, about a fortnight before they were used in the paper. He explained that he had “checked the plausibility” of the information in the documents, in particular by looking up the level of Mr Calvet's remuneration in specialist works including *Fortune France*. He said that he had also checked with various persons to ensure that the documents were photocopies of “genuine” tax-assessment notices. He specified that he had also verified that they really were tax-authority documents, adding that once it appeared that there was no proof that they had been obtained unlawfully, “the overriding consideration was the documents' significance”.

20. In a judgment of 17 June 1992, Paris Criminal Court acquitted the applicants, holding that the principal offences of theft and breach of professional confidence had not been made out because it had proved impossible to identify who had disclosed the documents or to establish the circumstances in which the offences had been committed.

In relation to the offence of breach of professional confidence, the court held as follows:

“ ...

In the instant case, while it has been established that the originals of the documents in question are notices of assessment to tax held on Mr Calvet's tax file, it cannot be inferred from this that the person guilty of wrongfully taking them for the time needed to photocopy them, or of disclosing them to third parties, or of divulging the information contained in them, necessarily fell within one of the categories of person defined in the above-mentioned provision [Article L. 103 of the Code of Tax Procedure]; since the tax authorities themselves have suggested that the perpetrator might be 'someone from outside' ... – whatever the security regulations at the time.

The fact that the status and professional functions of the person responsible for the disclosure are unknown therefore rules out any possibility of proving one of the essential elements of the offence of breach of professional confidence.

Consequently, there is no formal proof that this offence was committed, so that the charge against the defendants of handling the fruits of a breach of professional confidence has not been made out ...”

In relation to the theft charge, the court held:

“... In particular, it has not been shown that the person who originally copied the documents had any unlawful intention or had such an intention at the time of taking the documents.

Hence, without further rehearsing the numerous questions remaining unanswered concerning how these documents found their way into Mr Roire's hands, we find that the elements of the offence of theft have not been sufficiently proved.

Unless it can be precisely established that, in the first place, an act defined as a serious crime (*crime*) or other major offence (*délit*) was committed, and its elements can be made out, the prerequisite for an offence of handling is lacking, and the defendant must be acquitted.”

21. On 25 and 26 June 1992 respectively, the public prosecutor and the civil parties claiming damages appealed.

3. *In Paris Court of Appeal*

22. In a judgment of 10 March 1993, Paris Court of Appeal reversed the judgment and found the applicants guilty of handling photocopies of Mr Calvet's tax returns obtained through a breach of professional confidence by an unidentified tax official. Mr Fressoz and Mr Roire were sentenced to, respectively, fines of 10,000 and 5,000 French francs (FRF) and ordered, jointly and severally, to pay Mr Calvet FRF 1 by way of damages for non-pecuniary damage and FRF 10,000 by way of reimbursement of legal costs under Article 475-1 of the Code of Criminal Procedure.

The Court of Appeal held as follows:

“This Court cannot agree with the manner in which the court below analysed the facts. The results of the investigations show that only a tax official familiar with the department could have leaked the documents, since no outside party had requested Jacques Calvet's file and that file was found, on the morning of 27 September 1989, in its normal condition, with the documents filed according to the particular practice of Chaillot Tax Office. It is certain that a third party, someone who was not a civil servant or was from outside the tax department, could not – without attracting attention – have taken documents filed in two separate places in the file, photographed or photocopied them and put them back in exactly the right place, given that the file is kept in a metal cabinet in a locked room to which there is access only for authorised persons.

Contrary to the court below, we therefore hold that, in this case, it has been established that the offence of breach of professional confidence was committed, and that the fact that the culprit has not been identified is irrelevant.

Mr Roire told the investigating judge that the photocopies of Jacques Calvet's tax notices were sent to him anonymously at the newspaper, in an envelope addressed to him personally. He confirmed that he had questioned various people in order to ensure that they were indeed copies of genuine tax documents.

Mr Roire's article, containing a reproduction of the documents in question, was submitted to Roger Fressoz, the publishing director of *Le Canard enchaîné*, who, personally, passed it for press.

Mr Fressoz told the investigating judge that he saw the extracts from Jacques Calvet's tax notices at that point. He explained that – as a general rule – copy is passed for press by the senior editorial assistant, who, if there is a problem, consults the editor and, in the last resort, himself.

The offence of handling the fruits of a breach of professional confidence was characterised, in the instant case, by the publication of documents obtained in breach of the provisions of Article L. 103 of the Code of Tax Procedure and Article 378 of the Criminal Code and was committed by Mr Roire and Mr Fressoz given that, in the light of the nature of the documents and of the checks which Mr Roire says he carried out, the defendants must have known that those documents came from a tax file. Moreover, this explains why the article was passed for press by Mr Fressoz, the publishing director, and not an editorial assistant or the editor. It is worth recalling that, although Mr Fressoz was not the person to whom the documents were sent, he saw them before giving his authorisation to publish the article reproducing extracts from them. Therefore, both the *actus reus* and the *mens rea* of the offence of handling the fruits of a breach of professional confidence are present in his case as well as in that of the author of the article, Mr Roire ...”

4. *In the Court of Cassation*

23. Mr Fressoz and Mr Roire appealed to the Court of Cassation on points of law. In their grounds of appeal (and subsequently in a reply to Mr Calvet's pleadings), they submitted two arguments.

As the first ground of appeal, Mr Fressoz argued that, since he was a publishing director as defined in the Act of 29 July 1881, the lower courts

were not empowered to convict him of a handling offence under the general criminal law, but only of one of the offences specially defined in that Act. In his reply, he pointed out that the other side was confusing “handling” with “publishing”, submitting that Mr Calvet was concerned, not by the handling but by the publication – something which did not contravene any provision of the press laws, so that the prosecution had resorted to another, inappropriate, charge, that of handling.

As the second ground, both applicants argued that the elements of the offence with which they had been charged, as defined in the relevant domestic law, including sections 5, 6 and 42 of the 1881 Act, were not made out in their case. On that point, they maintained that Mr Calvet's tax assessments were not covered by a duty to preserve confidentiality – so that there could have been no breach of such a duty – but contained information which was available to the public. They argued that a journalist could not lawfully be convicted of “handling information” and submitted that the Court of Appeal had failed to demonstrate how the *actus reus* and *mens rea* of the offence with which they had been charged – namely possession or control of the thing in question and knowledge that it had been obtained unlawfully – were made out in their case. With regard to the fact that the Court of Appeal had deduced that Mr Roire must have known that the documents had been obtained unlawfully since, when he had received them, he had verified that they were indeed copies of tax assessments, Mr Roire submitted that he had “merely fulfilled his duty as a journalist: before publishing information, he had checked that it was genuine, as required by the obligation on all journalists to exercise caution and verify sources”.

24. The Court of Cassation dismissed the appeal on 3 April 1995, holding as follows:

“ ...

The grounds [of the Court of Appeal's judgment], following as they do from findings of fact which are not subject to review by this Court, show that the appellate court, having established that the defendants knowingly had in their possession or control documents obtained through a breach of professional confidence, contrary to Article L. 103 of the Code of Tax Procedure, did not misdirect themselves in law as alleged [by the appellants].

In particular, the Court of Appeal cannot be held to have misinterpreted Article 460 of the Criminal Code as it stood at the time, in which the only offence defined is that of handling stolen goods, since, although it found the applicants guilty of handling unlawfully obtained photocopies, it rightly dismissed the charge of handling unlawfully obtained information on which the journalists were committed for trial before the Criminal Court.

Information, whatever its nature or source, is covered neither by Article 460 nor by Article 321-1 of the Criminal Code which came into force on 1 March 1994, so that,

if a problem arose – that is, if certain information were published and that publication were challenged by the persons concerned – the only legal provisions governing it would be those specifically concerning the freedom of the press or of audiovisual communication ...”

II. RELEVANT DOMESTIC LAW

A. Freedom of the Press Act of 29 July 1881

25. The relevant sections of the Freedom of the Press Act of 29 July 1881 provide as follows:

Section 1

“Anyone may print or sell books and other publications”.

Section 5

“Any newspaper or periodical may be published without prior authorisation or the payment of any security, provided that the declaration required by section 7 has been made”.

Section 6

“All press publications must have a publishing director ...”

Section 42

“The following persons shall be liable, as principals and in the following order, to penalties for serious crimes (*crimes*) or other major offences (*délits*) committed through the press:

(1) publishing directors or publishers, whatever their profession or title and, in the circumstances defined in section 6(2), joint publishing directors;

(2) in the absence of any of the foregoing, the actual offenders;

...”

B. The Code of Tax Procedure

26. The relevant Articles of the Code of Tax Procedure provide as follows:

Article L. 103

“The duty to preserve professional confidentiality, as defined in Article 378 of the Criminal Code, applies to any person who is required, in the course of his duties or exercise of his powers, to take any action concerning the assessment, inspection or recovery of, or disputes over, any taxes, duties, imposts or levies referred to in the General Tax Code. The duty shall cover all information obtained in the course of the above-mentioned operations.”

Article L. 111-1

“A list of the persons liable for income tax or corporation tax shall be drawn up, distinguishing between the two types of tax as levied in each municipality.

...

The list shall be kept by the Revenue Department for each area and shall be available for consultation by the taxpayers in that area. The Department may order it to be posted.

...

The list concerning income tax shall also show, in the manner provided for by decree and for each taxpayer, the number of dependants' allowance tax units applicable, the amount of tax payable and the total tax credits.

...

Publishing or otherwise disseminating the lists referred to above or any information relating to those lists which concerns a named person is forbidden on pain of a tax fine under Article 1768 *ter* of the [General Tax] Code”.

C. The Criminal Code

27. At the material time, Article 460 of the Criminal Code provided:

“Anyone who knowingly handles any goods (or any part thereof) taken, misappropriated or obtained by means of a serious crime (*crime*) or other major offence (*délit*) shall be liable to between three months' and five years' imprisonment or a fine of between FRF 10,000 and FRF 2,500,000 or both. The amount of the fine may be increased to a sum exceeding FRF 2,500,000 but not exceeding half the value of the goods handled ...”

PROCEEDINGS BEFORE THE COMMISSION

28. Mr Fressoz and Mr Roire applied to the Commission on 3 August 1995. They asserted that their conviction by the Court of Appeal constituted a breach of their right to freedom of expression under Article 10 of the Convention. They also complained that the principle of the presumption of innocence enshrined in Article 6 § 2 had been violated in their case.

29. The Commission declared the application (no. 29183/95) admissible on 26 May 1997. In its report of 13 January 1998 (former Article 31 of the Convention), it expressed the opinion that there had been a violation of Article 10 (twenty-one votes to eleven) and that no separate issue arose under Article 6 § 2 (eighteen votes to fourteen). The full text of the Commission's opinion and of the three dissenting opinions contained in the report is reproduced as an annex to this judgment¹.

FINAL SUBMISSIONS TO THE COURT

30. In their memorial, the Government asked the Court to dismiss Mr Fressoz and Mr Roire's application as inadmissible for failure to exhaust domestic remedies or, in the alternative, to hold that there had been no violation of Article 10 of the Convention. With regard to the complaint under Article 6 § 2 of the Convention, they requested the Court to dismiss it as incompatible *ratione materiae* with the provisions of the Convention or, in the alternative, to hold that Article 6 § 2 had not been violated.

31. The applicants asked the Court to find that Articles 10 and 6 § 2 had been violated and to afford them just satisfaction.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

32. The applicants submitted that their conviction by the Paris Court of Appeal had infringed Article 10 of the Convention, which provides:

1. *Note by the Registry.* For practical reasons this annex will appear only with the final printed version of the judgment (in the official reports of selected judgments and decisions of the Court), but a copy of the Commission's report is obtainable from the Registry.

“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 frontiers ...

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.”

The Government contested that submission; the Commission agreed with it.

A. The Government's preliminary objection

33. As they had done before the Commission, the Government pleaded failure to exhaust domestic remedies. Mr Fressoz and Mr Roire had confined themselves to denying the charge of handling stolen goods that had been brought against them. At no stage, not even as an alternative submission, had they sought to argue that there was a contradiction between the charges on which they had been found guilty and the principle of freedom of expression. Thus, they had not complained, either expressly or in substance, of a breach of Article 10 of the Convention before the domestic courts even though they might have succeeded on that point of law, which had been admissible before the national courts. They had accordingly failed to afford the French courts an opportunity to decide whether the criminal proceedings that had been brought against them were compatible with the principle of freedom of expression. Consequently, domestic remedies had not been exhausted and the Court, consistent with its decision in the *Ahmet Sadık v. Greece* case (see the judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 1654, §§ 32-33), was unable to hear the case.

34. The applicants replied that they had raised in substance the complaint of a violation of Article 10 of the Convention before the Court of Cassation, as their pleadings before that court showed (see paragraph 23 above). After referring to the Act of 29 July 1881, which established the principle of freedom of the press, they had argued, firstly, that Mr Calvet's tax assessments were not confidential as they were available to the public and, secondly, that they could not in law be guilty of “handling information”. In any event, arguing that there had been a breach of Article 10 would not have prevented the ordinary rules of law governing the handling of stolen goods taking precedence over the protection of freedom of expression.

35. In its decision on the admissibility of the application, the Commission dismissed the objection on the ground that the applicants had

made a complaint before the Court of Cassation that was in substance connected with a breach of Article 10. The Delegate of the Commission in addition maintained before the Court that, as the Court of Cassation's powers had been limited (it could not have reopened the Court of Appeal's findings of fact), it was unlikely that redress for the alleged violation would have been obtained through an appeal on points of law. In his opinion, there would have been little point in the applicants' asserting their right to freedom of expression when dissemination of the information did not give rise to a risk of conviction under the general law.

36. Article 35 § 1, formerly Article 26, of the Convention reads as follows:

“The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.”

37. The Court reiterates that the purpose of the rule referred to above is to afford the Contracting States the opportunity of preventing or putting right – usually through the courts – the violations alleged against them before those allegations are submitted to the Court. That rule must be applied “with some degree of flexibility and without excessive formalism”; it is sufficient that the complaints intended to be made subsequently in Strasbourg should have been raised, “at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law”, before the national authorities (see the *Castells v. Spain* judgment of 23 April 1992, Series A no. 236, p. 19, § 27, and the *Akdivar and Others v. Turkey* judgment of 16 September 1996, *Reports* 1996-IV, pp. 1210-11, §§ 65-69).

38. The applicants are engaged in the business of disseminating information and were convicted after publishing documents. In the Court of Cassation the applicants relied on various provisions of the Freedom of the Press Act of 29 July 1881, which, so far as the applicants' activities are concerned, contains provisions equivalent to those of Article 10. In their pleadings in support of their appeal to that court, the applicants argued that their article had not contravened any provision of the Freedom of the Press Act and that, as a journalist, Mr Roire had simply been doing his “duty” (see paragraph 23 above). In their pleading in reply, the applicants criticised the prosecution for confusing “handling” with “publication” saying that they had been charged with handling so that they could be prosecuted under the general law rather than under the special provisions governing the media (see paragraph 23 above). Indeed, by making a distinction in its judgment between the law applicable to the information itself and the law applicable to the document in which it was contained, the Court of Cassation indirectly ruled on the scope of journalists' rights to information.

39. In these circumstances, the Court holds that freedom of expression was in issue, if only implicitly, in the proceedings before the Court of

Cassation and that the legal arguments made by the applicants' in that court included a complaint connected with Article 10 of the Convention.

The applicants' complaint under Article 10 of the Convention was thus raised, at least in substance, before the Court of Cassation. The Government's objection of failure to exhaust domestic remedies must therefore be dismissed.

B. The merits of the complaint

40. The applicants submitted that their conviction for handling photocopies of tax returns obtained through a breach of professional confidence by an unidentified tax official had infringed their right to freedom of expression.

41. The applicants' conviction was an “interference” with the exercise of their right to freedom of expression. Such interference breaches Article 10 unless it was “prescribed by law”, pursued one or more of the legitimate aims referred to in paragraph 2 and was “necessary in a democratic society” to attain such aim or aims.

1. “Prescribed by law”

42. Those appearing before the Court agreed that the interference was “prescribed by law”, namely Article 460 of the former Criminal Code and Article L. 103 of the Code of Tax Procedure. The Court shares that view.

2. Legitimate aims

43. According to the applicants, the Government and the Commission, the interference was intended to protect the reputation or rights of others and to prevent the disclosure of information received in confidence. The Court sees no reason to conclude otherwise.

3. “Necessary in a democratic society”

44. The Court must therefore consider whether the interference was “necessary” in a democratic society in order to achieve those aims.

(a) General principles

45. The Court reiterates the fundamental principles under its case-law concerning Article 10.

(i) Freedom of expression constitutes one of the essential foundations of a democratic society. 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” (see the *Handyside v. the United Kingdom* judgment of 7 December 1976, Series A no. 24, p. 23, § 49, and the *Jersild v. Denmark* judgment of 23 September 1994, Series A no. 298, p. 26, § 37).

(ii) The press plays an essential role in a democratic society. Although it must not overstep certain bounds, in particular in respect of the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest (see the *De Haes and Gijssels v. Belgium* judgment of 24 February 1997, *Reports* 1997-I, pp. 233-34, § 37). In addition, the Court is mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see the *Prager and Oberschlick v. Austria* judgment of 26 April 1995, Series A no. 313, p. 19, § 38).

(iii) As a matter of general principle, the “necessity” for any restriction on freedom of expression must be convincingly established. Admittedly, it is in the first place for the national authorities to assess whether there is a “pressing social need” for the restriction and, in making their assessment, they enjoy a certain margin of appreciation. In cases, such as the present one, concerning the press, the national margin of appreciation is circumscribed by the interest of democratic society in ensuring and maintaining a free press. Similarly, that interest will weigh heavily in the balance in determining, as must be done under paragraph 2 of Article 10, whether the restriction was proportionate to the legitimate aim pursued (see, *mutatis mutandis*, the *Goodwin v. the United Kingdom* judgment of 27 March 1996, *Reports* 1996-II, pp. 500-01, § 40, and the *Worm v. Austria* judgment of 29 August 1997, *Reports* 1997-V, p. 1551, § 47).

(iv) The Court's task in exercising its supervisory function is not to take the place of the national authorities but rather to review under Article 10 the decisions they have taken pursuant to their power of appreciation. In so doing, the Court must look at the “interference” complained of in the light of the case as a whole and determine whether the reasons adduced by the national authorities to justify it are “relevant and sufficient” (see, among many other authorities, the *Goodwin* judgment cited above, pp. 500-01, § 40).

(b) Application of the above principles to the present case

46. Mr Fressoz and Mr Roire said that their article had been published in the context of a public debate of general interest to which changes in Mr Calvet's earnings were, at the time, of particular relevance. The article

was intended to contribute to a debate that went beyond the Peugeot chairman as an individual, since his importance, his role, the scale of the industrial dispute and the size of the company concerned were all matters lending themselves to discussion. The published article did not therefore concern Mr Calvet's reputation or rights, but the management of the company he ran.

The penalty imposed on them was all the more unjust in that, under the Court of Cassation's case-law, publishing details of a person's income or assets did not constitute an interference with his private life, especially if he exercised public or quasi-public functions.

Nor had the penalty been necessary to secure compliance with the duty to preserve confidentiality. In the instant case only the tax officials had been subject to confidentiality obligations. Other people, such as members of the works' council or of Mr Calvet's family, could have disclosed the information about his income. In any event, Mr Fressoz and Mr Roire could not have known that the photocopies of the tax assessments sent to them anonymously had been obtained through a breach of professional confidence, as the national courts themselves had been unable to establish such a breach, despite a two-year investigation.

By publishing part of the photocopied documents the applicants had been able to show that their information was true and fulfil their duty as journalists to communicate data that had been verified and proof.

Lastly, the reasoning of the Court of Appeal and the Court of Cassation was transparently artificial and its pernicious effects on freedom of the press immediate. Mr Calvet had complained solely because his income had been disclosed. The fact that the applicants had been convicted of the purely technical offence of handling photocopies disguised what was really a desire to penalise them for publishing the information, although publication in itself was quite lawful.

47. The Commission agreed in substance with those submissions.

48. The Government maintained that it was the breach of confidence regarding tax matters that had led to the applicants' conviction and that conviction had been necessary to secure effective preservation of confidentiality. It would be unrealistic to hope to secure compliance with a duty to preserve confidentiality if any information, including information that was to remain confidential, could be disclosed with impunity. Restrictions on freedom of expression were to be assessed in the light of the responsibilities and obligations of those concerned when the information was obtained. The addressees of the letter must have been aware that the documents had been obtained unlawfully. Indeed, the second applicant had not disputed knowing that the documents came from a tax file and should therefore have treated them as confidential.

Furthermore, disclosing the remuneration of just one person, albeit the head of a major private company, did not contribute to the debate on a topic of interest to the public. The published information concerned a particular situation that was too specific to be a matter of public interest. It had been published solely with a view to damaging Mr Calvet and putting him in a difficult position in the pay negotiations that were under way.

French law made it possible for citizens to obtain information concerning the income and the tax liabilities of taxpayers in France. Thus under Article L. 111 of the Code of Tax Procedure (see paragraph 26 above) taxpayers in a municipality were entitled to consult a list of the people liable for tax and to find out those people's taxable income and tax liability.

In any event, there could not have been a disproportionate interference with freedom of expression as an alternative solution had been available that would have allowed any right the public had to information to be upheld, without the commission of a criminal offence. The applicants would not have been guilty of the offence of handling photocopies if they had confined themselves to publishing the information about Mr Calvet's income, without reproducing extracts from the photocopies of the tax assessments that had been sent to them by a person who was rightfully subject to professional confidentiality obligations. Admittedly, proceedings could have been brought against them for press libel. However, the case-law of the Court of Cassation established that journalists were entitled to adduce evidence justifying their assertions, even if obtained unlawfully. Subject to that condition, the applicants could have disclosed the information without restriction.

49. In the light of those arguments, the Court must examine whether relevant and sufficient reasons existed to justify the applicants' conviction for the purposes of paragraph 2 of Article 10.

50. The Court is unconvinced by the Government's argument that the information was not a matter of general interest. The article was published during an industrial dispute – widely reported in the press – at one of the major French car manufacturers. The workers were seeking a pay rise which the management were refusing. The article showed that the company chairman had received large pay increases during the period under consideration while at the same time opposing his employees' claims for a rise. By making such a comparison against that background, the article contributed to a public debate on a matter of general interest. It was not intended to damage Mr Calvet's reputation but to contribute to the more

general debate on a topic that interested the public (see, for example, the *Thorgeir Thorgeirson v. Iceland* judgment of 25 June 1992, Series A no. 239, p. 28, § 66).

The Court of Cassation has held that questions relating to the finances of public figures, such as heads of major companies, do not concern their private life. That is not something the Government disputed.

51. Not only does the press have the task of imparting information and ideas on matters of public interest: the public also has a right to receive them (see, among other authorities, the following judgments: *Observer and Guardian v. the United Kingdom* of 26 November 1991, Series A no. 216, p. 30, § 59; *Jersild*, cited above, p. 23, § 31; and *De Haes and Gijssels*, cited above, p. 234, § 39). That is particularly true in the instant case, as issues concerning employment and pay generally attract considerable attention. Consequently, an interference with the exercise of press freedom cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest (see the *Goodwin* judgment cited above, p. 500, § 39).

52. Admittedly, people exercising freedom of expression, including journalists, undertake “duties and responsibilities” the scope of which depends on their situation and the technical means they use (see, *mutatis mutandis*, the *Handyside* judgment cited above, p. 23, § 49 *in fine*). In the present case the Court of Appeal held that in the light of the nature of the documents and of the checks which Mr Roire says he carried out, the defendants must have known that the documents came from a tax file (see paragraph 22 above) and were therefore confidential. While recognising the vital role played by the press in a democratic society, the Court stresses that journalists cannot, in principle, be released from their duty to obey the ordinary criminal law on the basis that Article 10 affords them protection. Indeed, paragraph 2 of Article 10 defines the boundaries of the exercise of freedom of expression. It falls to be decided whether, in the particular circumstances of the case, the interest in the public's being informed outweighed the “duties and responsibilities” the applicants had as a result of the suspect origin of the documents that were sent to them.

53. The Court must in particular determine whether the objective of protecting fiscal confidentiality, which in itself is legitimate, constituted a relevant and sufficient justification for the interference. In that connection, it must be noted that although the applicants' conviction was based solely on the reproduction in *Le Canard enchaîné* of documents in the possession of the tax authorities that were held to have been communicated to Mr Fressoz

and Mr Roire in breach of professional confidence, it inevitably concerned the disclosure of information. The issue does however arise as to whether there was any need to prevent the disclosure of information that was already available to the public (see the *Weber v. Switzerland* judgment of 22 May 1990, Series A no. 177, p. 23, § 51, and the *Vereniging Weekblad Bluf!* v. the Netherlands judgment of 9 February 1995, Series A no. 306-A, p. 15, § 41) and might already have been known to a large number of people. As the Government accepted, a degree of transparency exists regarding earnings and pay rises. Thus local taxpayers may consult a list of the people liable for tax in their municipality, with details of each taxpayer's taxable income and tax liability (see paragraphs 26 and 48 above). While that information cannot be disseminated, it is thus accessible to a large number of people who may in turn pass it on to others. Although publication of the tax assessments in the present case was prohibited, the information they contained was not confidential. Indeed, the remuneration of people who, like Mr Calvet, run major companies is regularly published in financial reviews and the second applicant said, without it being disputed, that he had referred to information of that type in order to check roughly how much Mr Calvet was earning (see paragraph 19 above). Accordingly, there was no overriding requirement for the information to be protected as confidential.

54. If, as the Government accepted, the information about Mr Calvet's annual income was lawful and its disclosure permitted, the applicants' conviction merely for having published the documents in which that information was contained, namely the tax assessments, cannot be justified under Article 10. In essence, that Article leaves it for journalists to decide whether or not it is necessary to reproduce such documents to ensure credibility. It protects journalists' right to divulge information on issues of general interest provided that they are acting in good faith and on an accurate factual basis and provide "reliable and precise" information in accordance with the ethics of journalism (see, in particular, the *Goodwin* judgment cited above, p. 500, § 39; the *Schwabe v. Austria* judgment of 28 August 1992, Series A no. 242-B, p. 34, § 34; and, as an example of a finding to the contrary on the facts, the *Prager and Oberschlick* judgment cited above, p. 18, § 37).

55. In the instant case, the Court notes that neither Mr Fressoz and Mr Roire's account of the events nor their good faith has been called into question. Mr Roire, who verified the authenticity of the tax assessments, acted in accordance with the standards governing his profession as a

journalist. The extracts from each document were intended to corroborate the terms of the article in question. The publication of the tax assessments was thus relevant not only to the subject matter but also to the credibility of the information supplied.

56. In sum, there was not, in the Court's view, a reasonable relationship of proportionality between the legitimate aim pursued by the journalists' conviction and the means deployed to achieve that aim, given the interest a democratic society has in ensuring and preserving freedom of the press. There has therefore been a violation of Article 10 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

57. The applicants complained of two breaches of Article 6 § 2 of the Convention, which provides:

“Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

The national courts had failed to apply the presumption of innocence in two respects. Firstly, Mr Fressoz's conviction had resulted from an unwarranted extension to the special criminal-law system created by the Act of 29 July 1881 (see paragraph 25 above) that rendered publishing directors strictly liable for press offences. Secondly, the applicants should not have been convicted of an offence under the general law as there was no concrete evidence against them. In order to be able to convict, the Court of Appeal had had to resort to a purely hypothetical intellectual construction whereby the applicants were presumed to have known the fraudulent origin of the photocopies they had received.

58. The Government submitted that this complaint was incompatible *ratione materiae* with the provisions of the Convention. What the applicants were in fact seeking to do was to challenge the merits of their conviction by the Court of Appeal. However, it was not for the Convention institutions to determine whether the national courts had correctly assessed the evidence. In any event, there had been no presumption of guilt against the journalists in the Court of Appeal, which had given perfectly valid reasons for its decision.

59. Having heard the arguments made before it and in view of its conclusion that there had been a violation of Article 10 of the Convention, the Commission considered that the complaint under Article 6 § 2 arose out of the same facts and did not give rise to any issues of fact or law requiring separate examination.

60. The Court reaches the same conclusion and considers that, in the light of its finding in paragraph 56 and the matters it took into account in so finding, no separate issue arises under Article 6 § 2 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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.”

A. Damage

62. The applicants considered that a finding by the Court that there had been a violation of the Convention would constitute just satisfaction. They claimed, however, reimbursement of the sum of 10,001 French francs (FRF) which the Court of Appeal had ordered them to pay Mr Calvet for non-pecuniary damage (one franc) and, under Article 475-1 of the Code of Criminal Procedure, for the costs incurred in the proceedings (see paragraph 22 above).

63. The Government submitted that the latter claim for reimbursement could not be allowed since the applicants had not pointed to any particular pecuniary damage under that head and, in addition, an award would cast doubt on the binding nature of the Court of Appeal's decision. As to the remainder, a finding of a violation would in itself constitute just satisfaction.

64. The Delegate of the Commission did not make any observations on the subject.

65. The Court finds that there is a causal link between the payment of FRF 10,001 awarded to Mr Calvet and the violation of Article 10 which it has found, such that the applicants should recover that sum. It is therefore appropriate to award the amount claimed. That apart, the finding of a breach made in this judgment constitutes just satisfaction for any other damage.

B. Costs and expenses

66. The journalists claimed FRF 166,100 for the costs and expenses incurred in order to be represented. They apportioned the sum as follows: FRF 55,800 for the proceedings before the domestic courts, including FRF 12,000 for the proceedings in the Court of Cassation, and FRF 110,300 for the proceedings before the Strasbourg institutions.

67. The Delegate of the Commission made no observations.

68. The Government contended that they should not have to bear the costs of the domestic proceedings as the complaint under Article 10 of the Convention had not been made at that stage. They should only be liable to reimburse costs and expenses incurred in the proceedings before the Convention institutions and their liability should not exceed FRF 40,000, regard being had to the amounts generally awarded by the Court in the past.

69. On the basis of the information it has before it, the Court, ruling on an equitable basis, awards the applicants FRF 60,000.

C. Default interest

70. According to the information available to the Court, the statutory rate of interest applicable in France at the date of adoption of the present judgment is 3.36% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a breach of Article 10 of the Convention;
3. *Holds* that no separate issue arises under Article 6 § 2 of the Convention;
4. *Holds* that the respondent Government is to pay the applicants, within three months, 10,001 (ten thousand and one) French francs for pecuniary damage and 60,000 (sixty thousand) French francs for costs and expenses, together with simple interest at an annual rate of 3.36% payable from the expiry of the above-mentioned three months until settlement;
5. *Holds* that the present judgment constitutes in itself sufficient just satisfaction for any other damage;

6. *Dismisses* the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 21 January 1999.

Luzius WILDHABER
President

Paul MAHONEY
Deputy Registrar