

January 1999

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## ***Fressoz and Roire v. France [GC] - 29183/95***

Judgment 21.1.1999

### **Article 10**

#### **Article 10-1**

##### **Freedom of expression**

Conviction for handling unlawfully obtained photocopies: *violation*

### **Article 35**

#### **Article 35-1**

##### **Exhaustion of domestic remedies**

Complaint raised in substance: *preliminary objection dismissed*

*Facts:* The applicants, who are both French nationals, were born in 1921 and 1939 respectively and lived in Paris at the material time. In September 1989, against the background of an industrial dispute in the Peugeot company following the rejection of pay claims by management, *Le Canard enchaîné* published an article by the second applicant referring to salary increases awarded to Mr Jacques Calvet, the company's Chairman and Managing Director. The article, which was accompanied by photocopies of extracts from Mr Calvet's last three tax assessments, carried the headline "Mr Calvet turbo-charges his salary – his tax forms reveal more than he does. The boss has given himself a 45.9% rise over the last two years". Following a complaint by Mr Calvet, criminal proceedings were brought against the applicants for handling photocopies of his tax assessments which had been obtained through a breach of professional confidence by an unidentified tax official. After acquittal at first instance, the Paris Court of Appeal convicted the applicants of handling the photocopies. Mr Fressoz was fined 10,000 French francs (FRF) and Mr Roire FRF 5,000. Their appeal on points of law was dismissed by the Court of Cassation in April 1995.

The applicants had complained that their conviction by the Paris Court of Appeal infringed their right to freedom of expression guaranteed under Article 10 of the Convention. They had also alleged a violation of their right to be presumed innocent on the ground that they had not been proved guilty according to law within the meaning of Article 6 § 2 of the Convention.

*Law:* Article 10 of the Convention - The Court dismissed the Government's objection of failure to exhaust domestic remedies and examined the merits of the complaint. The Court considered, firstly, that the applicants' conviction was an "interference" with the exercise of their right to freedom of expression. It found that, as required by paragraph 2 of Article 10, the interference was "prescribed by law" and was intended to protect the reputation or rights of others and to prevent the disclosure of information received in confidence. It therefore had to

consider whether the interference had been “necessary” in a democratic society in order to achieve those aims. After reiterating the fundamental principles under its case-law, the Court examined whether relevant and sufficient reasons existed to justify the applicants’ conviction for the purposes of paragraph 2 of Article 10. The Court was unconvinced by the Government’s argument that the information was not a matter of general interest. The article had been published during an industrial dispute – widely reported in the press – at one of the major French car manufacturers. 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. It had not been intended to damage Mr Calvet’s reputation but to contribute to the more general debate on a topic that interested the public. An interference with the exercise of press freedom could not be compatible with Article 10 of the Convention unless it was justified by an overriding requirement in the public interest. While recognising the vital role played by the press in a democratic society, the Court stressed that journalists could not, in principle, be released from their duty to obey the ordinary criminal law on the basis that Article 10 afforded them protection. Indeed, paragraph 2 of Article 10 defined the boundaries of the exercise of freedom of expression. It fell 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 had been sent to them. The Court had in particular to determine whether the objective of protecting fiscal confidentiality, which in itself was legitimate, constituted a relevant and sufficient justification for the interference. Although publication of the tax assessments had in the case before the Court been prohibited, the information they contained had not been confidential. Indeed, the remuneration of people who, like Mr Calvet, ran major companies was regularly published in financial reviews and the second applicant had 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. Accordingly, there was no overriding requirement for the information to be protected as confidential. If, as the Government had 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 had been contained, namely the tax assessments, could not be justified under Article 10. In essence, that Article left it for journalists to decide whether or not it was necessary to reproduce such documents to ensure credibility. It protected journalists’ rights to divulge information on issues of general interest provided that they were acting in good faith and on an accurate factual basis and furnished “reliable and precise” information in accordance with the ethics of journalism. In the case before it, the Court noted that neither Mr Fressoz and Mr Roire’s account of the events nor their good faith had been called into question. Mr Roire, who had verified the authenticity of the tax assessments, had acted in accordance with the standards governing his profession as a journalist. The extracts from each document had been intended to corroborate the terms of the article in question. The publication of the tax assessments had thus been relevant not only to the subject matter but also to the credibility of the information supplied. In sum, there had not, in the Court’s view, been 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 had in ensuring and preserving freedom of the press.

*Conclusion:* violation (unanimously).

Article 6 § 2 of the Convention - The applicants had argued that the national courts had failed to apply the presumption of innocence in two respects. The Court held that, in the light of its finding of a violation of Article 10 and the

matters it took into account in so finding, no separate issue arose under Article 6 § 2 of the Convention.

*Conclusion:* no separate issue (unanimously).

Article 41 of the Convention: The Court found that there was a causal link between the FRF 10,001 that Mr Fressoz and Mr Roire had been ordered by the Paris Court of Appeal to pay Mr Calvet and the violation of Article 10, such that the applicants should recover that sum. It was therefore appropriate to award the amount claimed. That apart, the finding of a breach made in the judgment constituted just satisfaction for any other damage. As regards costs and expenses, the Court, ruling on an equitable basis and on the basis of the information it had before it, awarded the applicants FRF 60,000.

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