



## Political insults in a trade-union context are covered by the right to freedom of expression

In today's Chamber judgment in the case [Vellutini and Michel v. France](#) (application no. 32820/09), which is not final<sup>1</sup>, the European Court of Human Rights held, by a majority, that there had been:

**a violation of Article 10 (freedom of expression)** of the European Convention on Human Rights.

The case concerned the conviction of the President and General Secretary of the municipal police officers' union (USPPM) for public defamation of a mayor, on the basis of statements made in their capacity as union officials.

### Principal facts

The applicants, Bernard Vellutini and Cédric Michel, are French nationals who were born in 1957 and 1979 respectively, and live in Lunel and Hostens. Mr Vellutini is the president and Mr Michel the general secretary of the municipal police officers' union (*Union syndicale professionnelle des policiers municipaux* – USPPM).

An officer who was a USPPM member had a dispute with the mayor of the municipality of Vendays-Montalivet, where she worked. On 9 January and 6 February 2006 she was disciplined by the mayor for having an offensive attitude and threatening behaviour towards colleagues. Assisted by one of the applicants, she challenged the two disciplinary decisions before the Bordeaux Administrative Court. In November 2006 she filed a complaint against a number of municipal employees for wilful assault, insults and threats, and false accusations. The mayor subsequently criticised her directly in two issues of the municipal newsletter.

On 24 February 2007 she filed a complaint against the mayor himself for public insults and procuring of false evidence. Mr Vellutini and Mr Michel then published a leaflet, distributed to the residents of the town, containing remarks which, in the mayor's view, were clearly defamatory and were directed against him as an elected official in order to discredit him in the eyes of those residents.

On 28 March 2007 the mayor brought criminal proceedings against the two applicants before the Bordeaux Criminal Court, which, on 18 July 2007, sentenced them each to a fine of 1,000 euros (EUR) after finding inadmissible their offer to bring evidence. In addition, they were ordered to pay EUR 2,500 each in damages to the civil party, and to publish extracts of the judgment in the local newspaper and the full judgment on the union's website.

---

<sup>1</sup> 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)

The applicants appealed against the judgment and maintained their offer to bring evidence. They alleged that they had acted in good faith for a legitimate purpose, without personal animosity, prudently and dispassionately, after verifying the quality and reliability of their information.

In a judgment of 1 February 2008 Bordeaux Court of Appeal upheld the judgment of the criminal court, finding that they had taken improper advantage of their freedom of expression as trade unionists to allege particularly serious acts, using indelicate wording and without proving them with appropriate evidence.

On 9 December 2008 the Court of Cassation declared the applicants' appeals on points of law inadmissible. Ultimately, on 1 June 2010, the disciplinary measures taken against the female police officer were annulled by the Bordeaux Administrative Court of Appeal.

## Complaints, procedure and composition of the Court

Relying on Articles 10 (freedom of expression) and 11 (freedom of assembly and association), the applicants complained that they were convicted of public defamation of a person holding public office on the basis of statements made in their capacity as union officials.

The application was lodged with the European Court of Human Rights on 5 June 2009.

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

Dean **Spielmann** (Luxembourg), *PRESIDENT*,  
 Elisabet **Fura** (Sweden),  
 Jean-Paul **Costa** (France),  
 Karel **Jungwiert** (the Czech Republic),  
 Mark **Villiger** (Liechtenstein),  
 Ganna **Yudkivska** (Ukraine),  
 Angelika **Nußberger** (Germany), *JUDGES*,

and also Claudia **Westerdiek**, *SECTION REGISTRAR*.

## Decision of the Court

### Article 10

The Court found it necessary to take into account the fact that the applicants had made their statements in their capacity as union officials and in connection with the professional situation of one of the union's members. Mr Vellutini and Mr Michel had not criticised municipal policy in general, but had called into question the role of an elected official in his capacity as employer. The controversy, in the context of which the remarks had been made, had had a considerable impact on the mayor and on local public opinion. The mayor himself had drawn particular attention to the case by mentioning it twice in the municipal newsletter and the matter had been reported in the press. Accordingly, the Court found that the impugned remarks had been made in the context of a debate of general interest, a situation in which the Convention did not generally allow for restrictions on freedom of expression.

In their capacity as representatives of a trade union, Mr Vellutini and Mr Michel had nevertheless been obliged to ensure that their remarks fell within the limits of the right to freedom of expression, namely by giving consideration to the interest of the "protection of the reputation and rights of others". The mayor, who had been identifiable from the leaflet, had not however been mentioned by name. He had simply been

criticised in connection with his duties, and no allegations of a private nature had been made against him.

The Court reiterated that the limits of acceptable criticism were wider as regards a politician than as regards a private individual. Politicians inevitably and knowingly laid themselves open to close scrutiny of their every word and deed by both journalists and the public at large, and they consequently had to display a greater degree of tolerance towards criticism. Moreover, the local controversy in today's case was in itself a very lively one. The applicants' remarks had been made in response to the mayor's accusations about the professional and personal conduct of a member of their union. In that context, as for any individual who took part in a public debate, a degree of exaggeration, or even provocation, with the use of somewhat immoderate language, was permitted. Moreover, the Court took the view that the impugned remarks had not been offensive or hurtful to a degree that went beyond the framework of trade union discourse.

As to the question of the factual basis of their remarks, the Court noted that the applicants had submitted an offer to bring evidence before the domestic courts but the offer had been refused for procedural reasons. The Court noted that, while Mr Vellutini and Mr Michel had not complied with the procedural rules governing offers to bring evidence, they had constantly pleaded good faith and had claimed with sufficient detail that they had serious enough grounds on which to allege that their comments were true. Those comments were not therefore devoid of any factual basis.

The Court held that the conviction, on account of the nature and harshness of the sanctions imposed on Mr Vellutini and Mr Michel – a fine of EUR 1,000 each and an award of EUR 5,000 against them jointly in damages – had been disproportionate to the impugned conduct.

The Court found that the interference with the applicants' right to freedom of expression, in their capacity as trade union officials, had not been necessary in a democratic society.

#### Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that France was to pay the applicants EUR 4,000 euros each in respect of pecuniary damage, and EUR 6,338.80 jointly for costs and expenses.

#### Separate opinion

Judge Villiger expressed a dissenting 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 to the [Court's RSS feeds](#).

#### 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)**

Emma Hellyer (tel: + 33 3 90 21 42 15)

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

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)  
Nina Salomon (tel: + 33 3 90 21 49 79)

**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.