



## The conviction for defamation of the lawyer acting for Judge Borrel's widow was justified, but doubts could be raised as to the Court of Cassation's impartiality due to its composition

In today's Chamber judgment in the case of [Morice v. France](#) (application no. 29369/10), which is not final<sup>1</sup>, the European Court of Human Rights held:

unanimously, that there had been **a violation of Article 6 § 1 (right to a fair trial)** of the European Convention on Human Rights;

by a majority, that there had been **no violation of Article 10 (freedom of expression)** of the Convention.

The case concerned the conviction of a lawyer for public defamation of the judges responsible for investigating the death of Judge Bernard Borrel in Djibouti, following the publication of an article in the daily newspaper *Le Monde*.

The case raised two issues: firstly, a member of the Court of Cassation which ruled on Mr Morice's appeal on points of law had previously expressed his support for a judge who was a party to the proceedings against him. The Court concluded that serious doubts could be raised as to the Court of Cassation's impartiality and that Mr Morice's fears could be held to be objectively justified.

The Court also considered that the domestic courts could have been satisfied that the comments made by Mr Morice in *Le Monde* were serious and insulting to the judge in question, that they were capable of unnecessarily undermining public confidence in the judicial system and, lastly, that there were sufficient grounds to convict Mr Morice of public defamation.

### Principal facts

The applicant, Olivier Morice, is a French national who was born in 1960 and lives in Paris (France). He is the lawyer of Elisabeth Borrel, the widow of the French judge Bernard Borrel, whose dead body was found, partly burnt, on 19 October 1995, 90 kilometres from the city of Djibouti.

The investigation conducted by the gendarmerie concluded that Mr Borrel had committed suicide by self-immolation. In November 1995 a judicial investigation was opened in Toulouse into the causes of the judge's death. In February 1997 Ms Borrel disputed the above finding and filed a complaint as a civil party for premeditated murder. A judicial investigation was opened and assigned to judge M. and judge L.L.

On 21 June 2000, the case was withdrawn from the two investigating judges by the Paris Court of Appeal on account of their refusal - considered unjustified - to order a new visit

<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)

to Djibouti accompanied by the civil parties. The case was transferred to another investigating judge.

On 6 September 2000, Mr Morice and one of his colleagues sent a letter to the Minister of Justice in the context of the investigation into Judge Borrel's death. They stated that they were again complaining to the Minister of Justice about the "conduct of judges M. and L.L., [which is] entirely contrary to the principles of impartiality and loyalty". They asked that for an investigation to be carried out by the General Inspectorate of Judicial Services into "the numerous problems which had been brought to light in the context of the judicial investigation". They added that, after the case had been withdrawn from investigating judges M. and L.L., all of the evidence had been transmitted by them to the new judge, with the exception of a video recording made during an on-site visit, unaccompanied by the civil parties, which they suspected judges M. and L.L. of withholding. They had been obliged to protest to the new investigating judge and alleged that the latter, who obtained the requested item on the same day, had discovered on opening the cassette cover a stamped envelope addressed to judge M. which revealed – according to Mr Morice and his colleague – "a surprising and regrettable close complicity between the French judges and the Djibouti Public Prosecutor".

On 7 September 2000, *Le Monde* published an article entitled "Borrel Case: Judge M.'s impartiality called into question". The article stated that Ms Borrel's lawyers had "vigorously" challenged judge M. before the Minister of Justice, accusing her of "conduct that was completely contrary to the principles of impartiality and loyalty" and stating that she seemed "to have omitted to number and transmit an item from the proceedings to her successor". The article further stated that a letter had been discovered by the new investigative judge to whom the case had been transferred, which showed, according to the lawyers, "the scope of the connivance which existed between the Djibouti prosecutor and the French judges". The article concluded that the lawyers, who were angry and shocked, had called for an investigation to be carried out by the General Inspectorate of Judicial Services, which answered to the Minister of Justice.

On 12 and 15 October 2001 the two contested judges lodged a complaint for public defamation of a civil servant against the editor-in-chief of *Le Monde*, the journalist who had written the article and the applicant.

On 4 June 2002, following a complaint of the two contested judges, the court found Mr Morice to be an accessory of public defamation of judges M. and L.L. and imposed a fine of 4,000 euros (EUR). It also ordered him to pay, jointly and severally with the journalist and the editor-in-chief of *Le Monde*, EUR 7,500 to each of the judges. The court further ordered that an announcement be published in the newspaper. The three parties to the proceedings appealed against that judgment.

The Versailles Court of Appeal held that judge L.L.'s action was out of time and upheld the convictions of the three defendants in respect of judge M. The appeal court reduced the amount of the fines in question. The applicant and judge L.L. lodged an appeal on points of law before the Court of Cassation, which found inconsistencies in the reasoning, held that judge L.L.'s action was time-barred and remitted the case to the Rouen Court of Appeal.

By a judgment of 16 July 2008, the Rouen Court of Appeal upheld the decision of the first-instance court, found that Mr Morice had been an accessory to the offence of public defamation of a civil servant and reinstated the sentence to which he had been sentenced at first instance. Examining an appeal on points of law, the Court of Cassation found that decision to be justified.

## Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair hearing), Mr Morice alleged that his case had not been determined fairly and impartially by the Court of Cassation. He stated that judge J.M., who was part of the bench which ruled on his appeal on points of law, had previously and publicly expressed support for judge M. at the general assembly of judges sitting at the Paris *tribunal de grande instance* on 4 July 2000. Relying on Article 10 (freedom of expression), he alleged that there had been a breach of his right to freedom of expression.

The application was lodged with the European Court of Human Rights on 7 May 2010.

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

Mark **Villiger** (Liechtenstein), *President*,  
Angelika **Nußberger** (Germany),  
Boštjan M. **Zupančič** (Slovenia),  
Ganna **Yudkivska** (Ukraine),  
André **Potocki** (France),  
Paul **Lemmens** (Belgium),  
Aleš **Pejchal** (the Czech Republic),

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

## Decision of the Court

### Article 6 § 1

The Court noted that Mr Morice contested the impartiality of J.M., a member of the Court of Cassation, who, at the general assembly of judges sitting at the Paris *tribunal de grande instance* on 4 July 2000, had publicly expressed his support for and confidence in judge M., who was being criticised at the time for the manner in which she was conducting the investigation into a case concerning the Church of Scientology. The Court noted that Mr Morice was at that time acting for certain civil parties in that case and had contacted the Minister of Justice with regard to difficulties encountered with judge M. in that investigation.

The Court noted that J.M. had been part of the bench in the Criminal Division of the Court of Cassation which had ruled on the appeals on points of law by judge M. and Mr Morice in the proceedings between them, and which had dismissed those appeals, thus upholding Mr Morice's conviction. Although judge J.M. had expressed his opinion several years previously, it remained the case that judge M. was already investigating the Borrel case when judge J.M. made his statement. In addition, the Rouen Court of Appeal had emphasised in its judgment of 16 July 2008 that, at Mr Morice's request, the Church of Scientology case (in which judge M. was suspected of removing documents) had been placed before the investigating chamber at the Paris Court of Appeal two days before the impugned article was published in *Le Monde*. Mr Morice and judge M. were thus opposed both in the case in which judge M. had received support from judge J.M. – concerning the Church of Scientology – and in the case in which judge J.M. had sat as a judge at the Court of Cassation – the Borrel case.

Serious doubts could be raised as to the impartiality of the Court of Cassation and Mr Morice's fears in this respect could be held to be objectively justified.

There had been a violation of Article 6 § 1 of the Convention.

## Article 10

In the article in the newspaper *Le Monde*, dated 7 September 2000, the lawyers acting for Mrs Borrel – including Mr Morice – accused judge M. of “conduct [which is] completely contrary to the principles of impartiality and loyalty” and of having, with her colleague, omitted to “number and transmit an item from the proceedings to her successor”. The article referred to the note from the Djibouti prosecutor, addressed to judge M., which had infuriated the lawyers acting for Mrs Borrell, in that this document purportedly demonstrated “the extent of the connivance” which allegedly existed between the Djibouti prosecutor and the French judges.

The Court noted that Mr Morice had not confined himself in the article to factual statements about the failure to hand over the video cassette and the presence of a letter from the Djibouti prosecutor inside the cassette cover. Mr Morice had accompanied those factual observations with value judgments which cast doubt on the impartiality and loyalty of judge M. and alleged the existence of connivance between the investigating judges and the Djibouti prosecutor.

Furthermore, Mr Morice and one of his colleagues had, on the previous day, sent a letter to the Minister of Justice, containing the same claims and calling for an investigation by the General Inspectorate of Judicial Services into the “numerous problems” brought to light in the context of the judicial investigation into Judge Borrel’s death. Yet the investigation file had already been removed from judge M. by a decision of the investigating chamber at the Paris Court of Appeal dated 21 June 2000. Judge M. was thus no longer in charge of the case when Mr Morice made his statements about her working methods in the case.

The Court noted that Mr Morice had publicly attacked the investigating judge and the functioning of the judicial system just one day after contacting the Minister of Justice, without awaiting a response to his request.

Even had the aim been to alert the public with regard to possible problems in the functioning of the justice system, which the Court acknowledged to be a matter of public interest, Mr Morice had done so in particularly virulent terms.

The Court reiterated that the primary task of lawyers was to defend their clients and that they had available to them judicial remedies seek redress for possible shortcomings in the justice system, and that Mr Morice had already used those remedies.

The Court concluded that, in expressing himself as he had, Mr Morice had behaved in a manner which exceeded the limits that lawyers had to respect in publicly criticising the justice system. The Court considered that the domestic courts could have been satisfied that the comments in question were serious and insulting to judge M., that they were capable of unnecessarily undermining public confidence in the judicial system – given that the investigation in the Borrel case had been assigned to another judge several months previously – and, lastly, that there were sufficient grounds to find Mr Morice guilty of defamation.

Having regard to the margin of appreciation left to Contracting States by Article 10 of the Convention, the Court held that authorities had not overstepped their margin of appreciation in penalising the applicant for defamation, and concluded that there had been no violation of Article 10 of the Convention.

## Just satisfaction (Article 41)

The Court held that France was to pay Mr Morice 6,000 euros (EUR) in respect of non-pecuniary damage and EUR 6,000 in respect of costs and expenses.

*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 [@ECHR\\_Press](https://twitter.com/ECHR_Press).

**Press contacts**

[echrpess@echr.coe.int](mailto:echrpess@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)

Nina Salomon (tel: + 33 3 90 21 49 79)

Jean Conte (tel: + 33 3 90 21 58 77)

**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.