



## The Court considered that Jean-Marie Messier had been given a fair hearing

In today's Chamber judgment in the case of [Messier v. France](#) (application no. 25041/07), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been

**no violation of Article 6 §§ 1 and 3 (right to a fair hearing)** of the European Convention on Human Rights.

The case concerned procedural aspects of the proceedings brought from 2002 against Jean-Marie Messier (former chairman and chief executive of Vivendi Universal) before the Stock Exchange Regulatory Authority and subsequently the Financial Markets Authority. At the end of those proceedings Mr Messier was fined 500,000 euros for irregularities in his group's financial communication.

### Principal facts

The applicant, Jean-Marie Messier, is a French national who was born in 1956 and lives in New York. He was chairman and chief executive of the Vivendi Universal company until he resigned on 1 July 2002.

In July 2002 proceedings in respect of Vivendi Universal were instituted by the Stock Exchange Regulatory Authority (*Commission des opérations de bourse* – "the COB"). The proceedings, which had been brought in the context of a crisis of confidence in the company and its management, concerned the lawfulness of financial information released onto the market since the company's merger with a Canadian group in December 2000. The main point to be determined was whether management had informed the public as early as possible of any fact which, if it were known, was likely to have a significant impact on the share price. Complaints were communicated to Mr Messier on 12 September 2003. The COB stated that in view of the exceptional volume of documents in the proceedings and the need to make copies of them, the documents would be made available for three months, which was done from 29 October 2003.

Following the entry into force of the Financial Security Act of 1 August 2003, the COB was subsumed by the Financial Markets Authority (*Autorité des marchés financiers* – "the AMF") and proceedings under way before the COB automatically continued before the "sanctions commission" of the AMF.

Mr Messier filed his first observations in March 2004. At his request, the rapporteur summoned the press and public relations director of Vivendi Universal. She did not appear, but the rapporteur considered that she could be heard during a session of the

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<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)

sanctions commission. There were further exchanges of pleadings over the following months, during which Mr Messier complained in particular about the fact that certain documents (notes, minutes, opinions ...) had not been communicated to him by the AMF. The sanctions commission of the AMF examined the case on 28 October 2004. Evidence was heard from Mr Messier and from the press and public relations director, among others. The commission gave its decision on 3 November 2004, rejecting Mr Messier's complaints on the ground that the file had been sent to him, he had been heard and he had been able to produce the documents that he considered useful for his defence. With regard to the witnesses he had sought to call, the Commission noted that it had satisfied his request: apart from the witness evidence heard during the session, it had received written evidence from two other people cited by Mr Messier who had not appeared at the hearing. The Commission imposed a financial penalty of one million euros on Mr Messier.

On appeal to the Paris Court of Appeal, Mr Messier again argued that some of the contents of the file had been concealed from him. The AMF acknowledged that Mr Messier had not been given certain electronic documents when the photocopies of tens of thousands of pages making up the file had been handed to him, but stressed that the existence of the electronic documents had not been concealed, that Mr Messier could not have been unaware of the contents since they were his own electronic calendars and e-mails, and that he had not requested copies. It added that it would grant any request for communication of the supports. On 28 June 2005 the Court of Appeal gave judgment. It observed that the AMF had necessarily gathered documents that had no connection with the complaints communicated and that it could not be blamed for not having included in the file all the documents in its possession concerning the group, or the working notes drawn up in the course of its mission and which were not intended to be published. Furthermore, even presuming that some documents had disappeared – which had not been established – Mr Messier had not specified how those documents were capable of affecting the assessment of the facts. On the merits, the Court of Appeal fixed the penalty at 500,000 euros.

On 19 December 2006 the Court of Cassation upheld the Court of Appeal's reasoning in its entirety and dismissed an appeal lodged by Mr Messier.

## Complaints, procedure and composition of the Court

Relying in particular on Article 6 §§ 1 and 3, Mr Messier complained that the proceedings in his case had not observed the principle of equality of arms and had not been adversarial on grounds of failure to send him certain documents gathered in the course of the proceedings and the conditions in which certain witness evidence had been obtained (evidence of the Vivendi Universal press and public relations director heard only at the hearing of the AMF's sanctions commission; two further witness statements produced only in writing).

The application was lodged with the European Court of Human Rights on 12 June 2007. The Court gave a [decision on admissibility](#) on 19 May 2009.

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

Dean **Spielmann** (Luxembourg), *President*,  
 Elisabet **Fura** (Sweden),  
 Jean-Paul **Costa** (France),  
 Boštjan M. **Zupančič** (Slovenia),  
 Isabelle **Berro-Lefèvre** (Monaco),  
 Ann **Power** (Ireland),  
 Angelika **Nußberger** (Germany), *Judges*,

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

## Decision of the Court

With regard to the argument that some documents gathered during the proceedings had not been communicated, the Court noted that the COB and the AMF had highlighted the “exceptional volume of documents in the proceedings”, amounting to “tens of thousands of pages”. As the Court of Appeal had observed, documents having no bearing on the investigation were necessarily gathered and the AMF could not be blamed for not having included all the documents in its possession in the file. Concerning, in particular, the content of the electronic messages from Vivendi Universal (to which Mr Messier had said he no longer had access since his resignation), the Court noted, among other things, that in the domestic proceedings the applicant had not maintained that not all the messages had been printed out and included in the file. Furthermore, he had not indicated how the documents that had not been included in the file could have assisted his defence. Lastly, and even if that remedy had not served his purposes, he had had a remedy by which to request that the documents be included in the file (he had been able to assert his complaints before the Court of Appeal and then the Court of Cassation).

With regard to the witness evidence, the Court pointed out that Mr Messier had not submitted any argument in support of his submission that hearing the Vivendi Universal press and public relations director only at the stage of the hearing before the Sanctions Commission of the AMF had harmed his defence. What was more, he had not sought to have her called to give evidence again on appeal, or indeed the other two witnesses who had given their evidence only in writing before the sanctions commission.

It did not appear from the evidence before the Court that the failure to communicate documents or the conditions in which the witnesses were heard had infringed the rights of the defence or the principle of the equality of arms. There had accordingly been no violation of Article 6 §§ 1 and 3.

*The judgment is available only in French.*

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**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.