



## No violation of the Convention on account of transcription of telephone conversation between a lawyer and her client giving rise to the presumption that the lawyer had participated in an offence

In today's **Chamber** judgment<sup>1</sup> in the case of [Versini-Campinchi and Crasnianski v. France](#) (application no. 49176/11) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 8** (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the interception, transcription and use in disciplinary proceedings against her of conversations which the applicant, who is a lawyer, had had with one of her clients.

The Court held that as the transcription of the conversation between the applicant and her client had been based on the fact that the contents could give rise to the presumption that the applicant had herself committed an offence, and the domestic courts had satisfied themselves that the transcription did not infringe her client's rights of defence, the fact that the former was the latter's lawyer did not suffice to constitute a violation of Article 8 of the Convention in the applicant's regard.

### Principal facts

The applicants, Jean-Pierre Versini-Campinchi and Tania Crasnianski, are French nationals who were born in 1939 and 1971 respectively and live in Paris (France).

Following the death of a number of people suspected of having been contaminated after eating meat from cattle infected with bovine spongiform encephalopathy, a judicial investigation was opened in December 2000. The company Districoupe – a subsidiary of the Buffalo Grill chain of restaurants supplying the meat – was suspected of breaching the embargo on the importation of beef meat from the United Kingdom, a county affected by a major outbreak of the disease.

Mr Versini-Campinchi, a lawyer, was instructed to defend the interests of Mr Picart, managing director of Districoupe and chairman of Buffalo Grill's supervisory board. Ms Crasnianski, also a lawyer, assisted him on the case.

On instructions issued by the investigating judge on 2 December 2002, Mr Picart's telephone line was tapped. Telephone conversations between Mr Picart and the applicants were intercepted and transcribed, including a conversation with Ms Crasnianski on 17 December 2002 and one with Mr Versini-Campinchi on 14 January 2003.

Mr Picart was placed in police custody on 17 December 2002, and charged on 18 December 2002 along with three other people.

1. 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).

Mr Picart applied to the European Court of Human Rights on 31 March 2004 in the context of the criminal proceedings subsequently brought against him. His application was declared inadmissible by a decision of 18 March 2008.<sup>2</sup>

On 12 May 2003, having been requested to rule on the lawfulness of the phone-tapping records in question, the investigation chamber of the Paris Court of Appeal annulled the transcript of a conversation of 24 January 2003 between Mr Picart and Mr Versini-Campinchi on the grounds that it concerned the exercise of Mr Picart's rights of defence and could not support a presumption that the lawyer had participated in an offence. It refused to annul the other transcripts, however, considering that the contents were capable of disclosing a breach of professional confidentiality and contempt of court by Mr Versini-Campinchi and Ms Crasnianski. In a judgment of 1 October 2003 the Court of Cassation dismissed an appeal on points of law lodged by Mr Picart.

Meanwhile, on 27 February 2003, the public prosecutor at the Paris Court of Appeal had sent a letter to the Chairman of the Paris Bar asking him to initiate disciplinary proceedings against the applicants. On 21 March 2003 the Chairman had instituted disciplinary proceedings against Ms Crasnianski for breach of professional confidentiality. However he had discontinued the proceedings against Mr Versini-Campinchi regarding the contents of the conversation of 14 January 2003. Before the Bar Council the applicants sought to have the transcript of the phone-tapping record of 17 December 2002 removed from the evidence in the case on the grounds that it was illegal. On 16 December 2003 the Bar Council, sitting as a disciplinary board, rejected their request. On the merits, the Bar Council found that Ms Crasnianski's comments recorded on 17 December 2002 infringed Article 63-4 of the Code of Criminal Procedure and breached the obligation of professional confidentiality incumbent on her as a lawyer. Observing that she had acted on the instructions of Mr Versini-Campinchi, the Council found that they had acted jointly. The Bar Council imposed an order on Mr Versini-Campinchi debaring him from exercising the profession of lawyer for two years, suspended for 21 months, and debarred Ms Crasnianski from exercising the profession for one year, suspended.

On 12 May 2004 the Paris Court of Appeal dismissed an appeal by the applicants against the decision of 16 December 2003. On 10 October 2008 the Court of Cassation quashed and set aside the judgment of the Paris Court of Appeal of 12 May 2004 and remitted the case to the Court of Appeal, which dismissed the applicants' appeal in a judgment of 24 September 2009. An appeal by the applicants to the Court of Cassation was declared inadmissible.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), Mr Versini-Campinchi and Ms Crasnianski complained of the interception and transcription of their conversations with their client and the use of the corresponding phone-tapping records in the disciplinary proceedings brought against them.

The application was lodged with the European Court of Human Rights on 1 August 2011.

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

Angelika **Nußberger** (Germany), *President*,  
Ganna **Yudkivska** (Ukraine),  
Erik **Møse** (Norway),  
André **Potocki** (France),  
Yonko **Grozev** (Bulgaria),  
Carlo **Ranzoni** (Liechtenstein),  
Mārtiņš **Mits** (Latvia),

<sup>2</sup> [Picart v. France](#), decision of 18 March 2008

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

## Decision of the Court

The Court observed that the interception, recording and transcription of the telephone conversation of 17 December 2002 between Mr Picart and Ms Crasnianski amounted to an interference with their right to respect for their private life and their correspondence. That interference had continued in Ms Crasnianski's case by the use of the transcript of that conversation in disciplinary proceedings against her.

The legal basis of the interference in question was contained in Articles 100 et seq. of the Code of Criminal Procedure, with the interception, recording and transcription of the conversation having been carried out further to authorisation by an investigating judge – on the basis of those provisions – to tap the telephone line. The consequence of that, by definition, was that conversations with third parties would be listened to and thus utterances by persons who were not targeted by the measure ordered by the judge would also be intercepted.

The Court reiterated that it had accepted that Articles 100 et seq. of the Code of Criminal Procedure met the required standard of “quality of the law”. It observed, however, that those provisions did not cover the situation of persons whose utterances had been intercepted in the course of tapping another person's telephone. In particular, they did not provide for the possibility of using the intercepted utterances against the author in the context of a different set of proceedings from those in which the telephone tapping had been ordered.

The Court noted, however, that the Court of Cassation had already ruled at the relevant time that, as an exception, a conversation between a lawyer and his or her client overheard while carrying out a lawful investigative measure could be transcribed and added to the file where it appeared that the contents could give rise to a presumption that the lawyer was participating in an offence<sup>3</sup>. Admittedly, it was only in a judgment delivered on 1 October 2003 – in the context of the present case – that the Court of Cassation had expressly indicated that the same was true where the offence did not relate to the case being examined by the investigating judge. The Court held, however, that in the light of Articles 100 et seq. of the Code of Criminal Procedure and the case-law of the Court of Cassation, Ms Crasnianski, a legal practitioner, could have foreseen that Mr Picart's telephone was likely to be tapped pursuant to those provisions, that those utterances which gave rise to a presumption of her participation in an offence could be recorded and transcribed – despite her status as a lawyer – and that she ran the risk of being prosecuted. She could have foreseen that disclosing information covered by professional confidentiality would expose her to proceedings under Article 226-13 of the Criminal Code. She could also have foreseen that a breach of that kind would expose her to disciplinary proceedings before the Bar Council, which could take action, *inter alia*, on the request of the public prosecutor. The Court therefore accepted that the interference in question had been in accordance with the law.

The Court had already had the opportunity to specify<sup>4</sup> that as it had been done in the context of criminal proceedings, the interception, recording and transcription of Mr Picart's telephone communications in accordance with the judge's instructions of 2 December 2002 had pursued one of the aims provided for in Article 8, namely, “prevention of disorder”. The Court found that the same was true of the use of the transcript of the telephone conversation of 17 December 2002 in the context of disciplinary proceedings brought against Ms Crasnianski for breach of professional confidentiality.

3. Cass. crim., 8 November 2000, no. 00-83570

4 [Picart c. France](#), decision of 18 March 2008

The telephone tapping and the transcription in question had been ordered by a judge and carried out under the latter's supervision, a judicial review had taken place in the context of the criminal proceedings brought against Mr Picart and Ms Crasnianski had obtained a review of the lawfulness of the transcription of the recording in the context of the disciplinary proceedings brought against her. The Court considered that, even if she had not been able to apply to a judge to have the transcription of the telephone communication of 17 December 2002 annulled, in the specific circumstances of the case there had been effective scrutiny capable of limiting the interference complained of to that which was necessary in a democratic society.

With regard to the fact that on 17 December 2012 Ms Crasnianski had been communicating with Mr Picart in her capacity as a lawyer, the Court had previously observed in its earlier case-law<sup>5</sup> that whilst legal professional privilege was of great importance for both the lawyer and his or her client and for the proper administration of justice and was one of the fundamental principles on which the administration of justice in a democratic society was based it was not, however, inviolable. It primarily imposed certain obligations on lawyers and the lawyer's defence role formed the very basis of legal professional privilege.

The Court observed that French law very clearly provided that respect for the rights of the defence required that telephone conversations between a lawyer and his client remained confidential, and prohibited the transcription of such conversations, even those overheard while carrying out a lawful investigative measure. There was only one exception to that: transcription was possible where it was established that the contents of a conversation could give rise to a presumption that the lawyer himself was participating in an offence. Moreover, Article 100-5 of the Code of Criminal Procedure expressly established that, on pain of nullity, communications with a lawyer relating to the exercise of the rights of the defence could not be transcribed.

According to the Court, that approach, which was compatible with its case-law, was tantamount to finding that, as an exception, legal professional privilege, the basis of which was respect for the client's rights of defence, did not preclude the transcription of an exchange between a lawyer and his client in the context of lawful interception of the client's telephone conversations where the contents of that exchange gave rise to a presumption that the lawyer himself was participating in an offence, and in so far as the transcription did not affect the client's defence rights.

The Court accepted that as that exception to the principle of confidentiality of communications between a lawyer and his client was restrictively worded, it contained an adequate safeguard against abuse.

The Court reiterated that what was important in this context was that the client's rights of defence were not adversely affected, that is, that the utterances transcribed were not used against him in the proceedings. In the present case the investigation chamber had annulled certain other transcripts on the ground that the conversations recorded had concerned the exercise of Mr Picart's defence rights. The reason for refusing to annul the transcript of 17 December 2002 was that it had found that Ms Crasnianski's utterances were capable of disclosing a breach of professional confidentiality on her part, and not because they had amounted to evidence against her client.

As the transcription of the conversation of 17 December 2002 between Ms Crasnianski and Mr Picart had been based on the fact that the contents gave rise to a presumption that Ms Crasnianski had herself committed an offence, and the domestic courts had been satisfied that the transcription did not infringe Mr Picart's defence rights, the Court held that the fact that Ms Crasnianski was Mr Picart's lawyer did not suffice to find a violation of Article 8 of the Convention in her regard. A lawyer was particularly well qualified to know where the limits of lawfulness were and to realise that, where applicable, his communications with his client were capable of giving rise to a presumption that he

5. [Michaud c. France](#), judgment of 6 December 2012

had himself committed an offence. This was particularly true where the utterances themselves were capable of amounting to an offence, such as a breach of professional confidentiality.

Accordingly, the interference in question was not disproportionate to the legitimate aim pursued – “prevention of disorder” – and could be regarded as “necessary in a democratic society” within the meaning of Article 8 of the Convention. There had not therefore been a violation of Article 8.

*The judgment is available only in French.*

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