EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

ECHR 355 (2023)
14.12.2023

By sitting in a case despite their regular professional contacts with one of the parties, Court of Cassation judges cast legitimate doubt on their objective impartiality: violation of Article 6 § 1 of the Convention

In today's **Chamber** judgment[1] in the case of Syndicat National des Journalistes and Others v. France (application no. 41236/18) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights.

The case concerned an alleged violation of the right to a fair hearing by an impartial court, as a result of the involvement of three Court of Cassation judges – who, in the applicants' submission, had ties with the opposing party – in the examination of their appeal on points of law.

In the present case, at least two of the three judges in question regularly worked with the legal publishing company which was one of the parties to the profit-sharing dispute. In the context of a restructuring operation within the parent publishing company, a loan of 445 million euros had been taken out to acquire the shares of the wound-up group companies, which had resulted in a level of indebtedness that precluded any payments to employees under the mandatory profit-sharing scheme.

The Court emphasised, first, that the contribution of judges to the dissemination of law, particularly through research events, teaching activities or publications, was clearly part of their role. However, it then considered that the professional contacts between certain judges and one of the parties to the proceedings had been regular, close and remunerated, which was sufficient to conclude that those judges should have withdrawn from sitting in the case, as the National Legal Service Commission (*Conseil supérieur de la magistrature*) itself had also held. It concluded that the applicant trade unions' fears as to the judges' lack of impartiality had been objectively justified. There had therefore been a violation of Article 6 § 1 of the Convention.

Principal facts

The applicants are three trade unions, the Syndicat National des Journalistes (SNJ), the Syndicat National des Médias et de l'Écrit CFDT (SNME-CFDT) and the Union Générale des Ingénieurs, Cadres et Techniciens CCGT (UGICT-CGT). Their registered offices are in Paris (SNJ and SNME-CFDT) and Montreuil (UGICT-CGT).

The Wolters Kluwer (WK) group, which resulted from the merger of two Dutch publishing companies, is a provider of information, tools and solutions for professionals, including in the legal domain.

On 30 June 2007 restructuring within the WK group ("operation cosmos") gave rise to the transfer of assets and liabilities from nine of the group's companies to WK France SAS (WKF), a subsidiary of Holding WKF (HWKF). In order to acquire the shares belonging to the wound-up companies, WKF

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.

took out a loan of 445 million euros (EUR) from HWKF, which resulted in a level of indebtedness that precluded any payments to employees under the mandatory profit-sharing scheme.

On 22 June 2010 WKF's works council brought proceedings before the public prosecutor at the Nanterre *tribunal de grande instance*, complaining of an interference with its proper functioning. The public prosecutor sought an opinion from a works inspector, who, in a report of 17 February 2011, concluded that the offence of interference had been committed in so far as the duty to consult the works council had knowingly been breached, on at least five occasions between 2007 and 2009, by the continuing refusal to provide all legally required information regarding the company's accounts and operation, particularly information about the EUR 445 million loan and its repercussions for the special employee profit-sharing reserve.

On 28 June 2012 four trade unions, including two of the applicant trade unions (the SNJ and the SNE-CFDT), brought civil proceedings against WKF and HWKF in the *tribunal de grande instance*, seeking an order that "operation cosmos" was without effect against the employees and obliging the two companies to recreate a profit-sharing reserve for each fiscal year from 2007 to 2022.

In a judgment of 22 January 2015, the Nanterre *tribunal de grande instance* declared those requests inadmissible. The applicant trade unions appealed against that decision. On 2 February 2016 the Versailles Court of Appeal upheld the lower court's judgment in so far as it had declared the trade unions' claims in respect of HWKF inadmissible. On the other hand, it allowed a voluntary intervention by the trade union UGICT-CGT (the third applicant), found that the restructuring exercise amounted to fraudulent practice in respect of the works council and WKF's employees, and declared the operation without effect against the latter group in so far as it concerned the repercussions of the EUR 445 million loan from the parent company HWKF for the special profit-sharing reserve.

The Court of Appeal also ordered an accountant's report, with a view to calculating the sum that WKF's employees should have received for the years 2007-15. WKF and HWKF appealed on points of law against that decision.

In a judgment of 13 June 2017, the Versailles Court of Appeal partially allowed a request by the applicants and extended the accountant's remit. The expert's report, submitted on 5 February 2018, valued the profit-sharing sum owed to the employees for the period 2007-10 at between EUR 2,471,000 and EUR 5,169,000.

On 28 February 2018 a section of the Social Division of the Court of Cassation, composed of six judges, quashed the Versailles Court of Appeal's judgment of 2 February 2016. Referring to Article L. 3326-1 of the Labour Code, the Court of Cassation ruled that the amount of net profit to be retained in calculating the special profit-sharing reserve, as certified by the company's auditor, could not be challenged in a dispute relating to profit-sharing, although the claim filed by the trade unions alleged fraud or abuse of rights in the company's management. Holding that there was no reason to remit the case to a different court of appeal, the Court of Cassation also decided to close the proceedings and to publish the judgment.

On 18 April 2018 the weekly magazine *Le Canard Enchaîné* published an article in which it revealed that three of the six judges sitting in the case worked regularly for WKF, and provided, in particular, training for legal professionals in return for payment.

On 26 June 2018 the applicant trade unions lodged a complaint with the National Legal Service Commission (*Conseil supérieur de la magistrature* – CSM) against the three judges named in the *Le Canard Enchaîné*'s investigation.

On 19 December 2019 the CSM gave its decision. It considered, in particular, that the regular and remunerated participation of these three judges in the training sessions organised by WKF constituted a direct interest between the judges and WKF as a party to the appeal before the Court

of Cassation, and that the existence of that direct interest could have given rise to legitimate doubts as to their impartiality. It also observed that the three judges had even discussed whether they should withdraw from sitting in the case. In conclusion, it held that judges F., H. and P. should have withdrawn from sitting in the case, but found, nonetheless, that their failure to comply with the rules of conduct had not been sufficiently serious to constitute a disciplinary offence.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair hearing), the applicant trade unions complained of a violation of their right to a fair hearing, by an impartial court, as a result of the involvement of three Court of Cassation judges – who, they submitted, had ties with the opposing party – in examining their appeal on points of law. They alleged that there had been a legitimate doubt – heightened by a number of aggravating circumstances – as to the judges' impartiality.

The application was lodged with the European Court of Human Rights on 27 August 2018.

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

Georges **Ravarani** (Luxembourg), *President*,
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia),
Stéphanie **Mourou-Vikström** (Monaco),
María **Elósegui** (Spain),
Mattias **Guyomar** (France),
Mykola **Gnatovskyy** (Ukraine),

and also Victor **Soloveytchik**, *Section Registrar.*

Decision of the Court

Article 6 § 1

The Court began by noting that the issue before it was whether the three Court of Cassation judges who worked with the publishing company WKF could sit in the case between WKF and the applicant trade unions, having regard to the requirement of (objective) impartiality imposed by Article 6 § 1 of the Convention. The Court observed, however, that it was not its task to rule on whether these three judges had complied with their professional obligations with regard to additional activities, which was in the sole province of the domestic authorities.

Referring to its case-law concerning the performance of additional activities by judges in the light of the impartiality requirement, the Court noted that in the present case the CSM had stated that it was "convinced that judges should be involved in public life" while also observing that "participating in dissemination of the case-law and reflection on the way in which the law [was] applied [was] of vital interest for both the judiciary and society as a whole, and [contributed] to the necessary dialogue between the judiciary and society". The Court saw no reason to depart from that finding.

In the present case, the link between the three judges in question and WKF had not come to light until more than a month after the delivery of the relevant Court of Cassation judgment, through an article in the press. It appeared that at least two of these three judges had worked regularly for WKF: F., President of the Social Division, for almost thirteen years; and H., senior judge, for almost four years. The Court noted, however, that it had not been claimed that any of the three judges had been in contact with WKF concerning "operation cosmos", that they had expressed a view on it or had come out in support of WKF before sitting in the appeal on points of law brought by the applicant trade unions. Nevertheless, the long-standing nature of the judges' professional relationship with

WKF, especially in the cases of F. and H., was such as to confirm the regularity of their work for WKF and, at the very least, a certain continuity in their relations.

With regard to the payment received, it was not disputed that the three respondent judges had each been paid approximately EUR 1,000 by WKF for a day's work, and EUR 500 to 600 per half-day. In the Court's view, those sums could not be described as insignificant, although they were received only occasionally.

In the context of the proceedings brought against the judges, the CSM had concluded that there existed "a direct link between the three judges and one of the parties to the appeal on points of law in which they were sitting" and that "the existence of that link could have given rise to legitimate doubts on the part of the litigants as to the impartiality of the judges in question". In the CSM's view, although "the failure to comply with the rules of conduct [it had] found [was] not sufficiently serious to constitute a disciplinary offence", "the three judges in question, [F., H. and P.], [ought to] have made use of the rule on withdrawal". The Court saw no reason to depart from that finding. It also noted, first, that Judges F. and H. had been aware of the complexity of the issue submitted to the Court of Cassation, and also of the questions that could arise regarding their objective impartiality, and that they had therefore decided to sit in this case in full knowledge of those facts, and, secondly, that a memorandum on the prevention of conflicts of interests for judges at the Court of Cassation had been issued after the case was brought before the CSM. As a subsidiary consideration, the Court observed that the conclusions reached by a section of the Court of Cassation, in a judgment which it decided to publish, were not necessarily limited to merely reiterating consistent case-law.

In conclusion, while emphasising that judges' contribution to dissemination of the law, in particular through research events, teaching activities or publications, was clearly part of their role, the Court noted that the professional contacts between judges F., H. and P. and one of the parties to the proceedings had been regular, close and remunerated, which was sufficient to conclude that they ought to have withdrawn from sitting in the case and that the applicant trade unions' fears as to their lack of impartiality were objectively justified.

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

Just satisfaction (Article 41)

The Court held that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant trade unions.

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. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter @ECHR_CEDH.

Press contacts
echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

We would encourage journalists to send their enquiries via email.

Denis Lambert (tel.: + 33 3 90 21 41 09)
Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)
Inci Ertekin (tel.: + 33 3 90 21 55 30)
Neil Connolly (tel.: + 33 3 90 21 48 05)
Jane Swift (tel.: + 33 3 88 41 29 04)

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.