

## Conviction of publication director of *Le Point* and two journalists for defamation in article headed “The Copé Affair” did not infringe their freedom of expression

In today’s Chamber judgment<sup>1</sup> in the case of [Giesbert and Others v. France](#) (application no. 835/20) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 10 (freedom of expression) of the European Convention on Human Rights**

The case concerned the conviction of the applicants – the publication director of *Le Point* magazine and two journalists working for that weekly – for defamation as a result of the publication, on 27 February 2014, of an article entitled “The Copé Affair” on the Bygmalion company and its links to the UMP political party and to that party’s then leader, Mr Jean-François Copé. The applicants submitted that their conviction for public defamation had been in breach of Article 10 of the Convention, which protected freedom of expression.

The Court saw no serious reason to call into question the assessment unanimously made by the domestic courts in the present case. In particular, it considered that it could reasonably have appeared to them that the applicants had failed to perform the requisite due diligence when verifying the accuracy of the facts alleged and that the offending article, which had presented the information and material reported therein as “The Copé Affair”, had been the product of a deliberate editorial decision lacking a sufficient basis in fact.

Taking the view that the sanction imposed on the applicants – a criminal fine – had not been disproportionate to the legitimate aim pursued, the Court concluded that, without overstepping their margin of appreciation, the domestic courts – the findings of which had been based on relevant and sufficient grounds – had had reason to consider that the interference with the applicants’ right to freedom of expression was necessary, in a democratic society, for the protection of the “reputation or rights of others”.

### Principal facts

The applicants, Franz-Olivier Giesbert, Christophe Labbé and Mélanie Delattre, are French nationals who were born in 1949, 1967 and 1978, respectively, and live in Paris. At the relevant time, the first was the director of *Le Point* magazine and the two others were journalists working for that weekly.

On 27 February 2014 *Le Point* published an issue of its magazine which included an eight-page article concerning alleged links between Mr Copé – the then chair of the Union pour un Mouvement Populaire (“UMP”) political party and member of parliament – and the senior management of the Bygmalion company, which had been awarded contracts to organise events for the 2012 presidential campaign of the UMP candidate, Mr Nicolas Sarkozy.

On 4 March 2014 Mr Copé filed a criminal complaint for public defamation, joining the proceedings as a civil party.

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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).

Following the publication of the article in question and of other articles in the press, a judicial investigation was opened on charges of forgery and making use of forged documents with intent to defraud, misappropriation, complicity in fraud and complicity in illegal campaign financing in connection with suspicions as to the implementation of an over-billing or fictitious invoicing scheme within the UMP during the 2012 presidential campaign.

On 9 September 2016 the Paris Criminal Court convicted Mr Franz-Olivier Giesbert – as principal offender – of public defamation of a private individual and of defamation of a member of the National Assembly to the extent that the article had concerned Mr Copé’s use of the parliamentary grant allocated to the UMP group by the National Assembly. The Criminal Court dismissed the charges against Christophe Labbé and Mélanie Delattre in connection with the offending passages of the article but convicted them as accomplices in the defamation offences in respect of the remainder of the text. The court held that the offending passages attributed specific acts to Mr Copé which were damaging to his honour and reputation.

The court went on to hold that, despite the public interest of the article’s subject matter, the allegations it contained lacked a sufficient factual basis to justify the applicants’ reliance on a defence of good faith.

The court sentenced Mr Franz-Olivier Giesbert to the payment of a fine of 1,500 euros (EUR). Mr Christophe Labbé and Ms Mélanie Delattre were sentenced to pay a fine of EUR 1,000 each and, jointly with Mr Franz-Olivier Giesbert, to pay Mr Copé one euro in damages and the sum of EUR 3,000. The court also ordered that a notice of the judgment be published in the contents page of the magazine.

The applicants appealed against the judgment.

On 27 April 2017 the Paris Court of Appeal upheld the judgment in respect of the convictions and sentences and ordered the applicants each to pay the civil party EUR 1,000 under Article 475-1 of the Code of Civil Procedure. The Court of Appeal endorsed the rejection by the lower court of the applicants’ defence of good faith. It further ordered the publication of a notice of the judgment in *Le Point*.

The applicants lodged an appeal on points of law, alleging a violation of Article 10 of the Convention.

On 8 January 2019 the Court of Cassation quashed the part of the appeal judgment relating to the sentences handed down and dismissed the remainder of the appeal.

In a judgment of 20 June 2019 the Paris Court of Appeal, to which the case had been sent back, upheld the fines imposed at first instance.

The so-called “Bygmalion” case was heard at first instance in the month of June 2021, at which time Mr Copé was examined as an assisted witness. On 30 September 2021 the senior managers of the Bygmalion company were convicted of complicity in forgery, using forged documents with intent to defraud, fraud and/or complicity in illegal election campaign financing. The director of Mr Copé’s private office was convicted of misappropriation and complicity in illegal election campaign financing and Mr Nicolas Sarkozy of exceeding the statutory cap on expenses for the 2012 campaign. Ten of the fourteen individuals convicted at first instance appealed against that judgment. On 14 February 2024 the Paris Court of Appeal upheld their convictions. The former French President announced that he would appeal against the judgment on points of law.

## Complaints, procedure and composition of the Court

The applicants submitted that their conviction for public defamation had been in breach of Article 10 of the Convention.

The application was lodged with the European Court of Human Rights on 17 December 2019.

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

María Elósegui (Spain), *President*,  
Mattias Guyomar (France),  
Gilberto Felici (San Marino),  
Andreas Zünd (Switzerland),  
Diana Sârcu (the Republic of Moldova),  
Kateřina Šimáčková (the Czech Republic),  
Mykola Gnatovskyy (Ukraine),

and also Victor Soloveytchik, *Section Registrar*.

## Decision of the Court

### Article 10

At the outset, the Court pointed out that, in view of Mr Copé's office and the nature of the issues raised, the offending article had reported on a debate of public interest, in which restrictions on freedom of expression normally had no place.

Secondly, with regard to the nature of the statements in question and their factual basis, the Court was of the view that the criticisms levelled at Mr Copé had been presented as statements of fact as to his personal involvement in the enrichment of the Bygmalion company.

In this connection, the Court noted that the domestic courts had taken the view that, at the time when the offending article was published, the applicants could not reasonably rely on the copious material and documents available to them establishing Mr Copé's links to the senior managers of the Bygmalion company and the state of the UMP's finances in order to substantiate the allegation that he had been personally and directly responsible for serious misappropriation or manipulation to the detriment of the UMP. It could reasonably have appeared to the domestic courts that the applicants had failed to perform the requisite due diligence when verifying the accuracy of the facts alleged and that the offending article, which had presented the information and material reported therein as "The Copé Affair", had been the product of a deliberate editorial decision lacking a sufficient factual basis.

In addition, given the article's lack of a sufficient factual basis, the Court saw no serious reason to question the assessment of the domestic courts, according to which the applicants had displayed a lack of moderation and prudence in certain passages, in particular with regard to headings and subheadings, and that there had therefore been cause to reject their defence of good faith. The Court reiterated that the safeguard afforded by Article 10 to journalists in relation to reporting on issues of public interest was subject to the proviso that they were acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism.

Thirdly, in view of the small amounts of the fines and of the fact that the publication of a notice of judgment did not constitute an excessive restriction on freedom of expression in the circumstances of the case, the Court took the view that the punishment imposed on the applicants had not been disproportionate to the legitimate aim pursued.

There had therefore been no violation of Article 10 of the Convention.

*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.