



## The conviction of a lawyer for breach of professional confidence following a media interview infringed her right to freedom of expression

In today's Chamber judgment in the case [Mor v. France](#) (application no. 28198/09), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**A violation of Article 10 (freedom of expression)** of the European Convention on Human Rights.

The case concerned the conviction of a lawyer for a breach of professional confidence following an interview with the press on the subject of an expert report submitted to an investigating judge concerning deaths following vaccination against hepatitis B.

### Principal facts

The applicant, Ms Gisèle Mor, is a French national who was born in 1953 and lives in Saint-Ouen-l'Aumône (France).

The applicant is a lawyer belonging to the Val-d'Oise Bar. In November 1998 she lodged a criminal complaint alleging manslaughter and an application to join the proceedings as a civil party, on behalf of the parents of a 12-year-old child who had died from an illness contracted after being vaccinated against hepatitis B. A judicial investigation was opened.

In November 2002 a doctor specialising in drug safety and pharmacoepidemiology submitted a 450-page expert report to the investigating judge.

At her clients' request, the applicant was contacted by journalists.

On 14 November 2002 the daily newspaper *Le Parisien* published an article headed "Hepatitis B vaccine: the report that points the finger", accompanied by a caption which read: "The expert report concerning deaths following hepatitis B vaccination is damning, especially for the health authorities...". In another article in the same edition Ms Mor, in reply to a journalist who asked her whether she thought the expert report was unduly virulent, stated: "No, it shows that the State has never devoted sufficient resources to assessing properly the scale of the vaccine's side-effects, although millions of French people have been vaccinated."

On 4 December 2002 the pharmaceutical laboratory which distributed the vaccine lodged a criminal complaint alleging a breach of the confidentiality of judicial investigations and

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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)

a breach of professional confidence, and sought leave to join the proceedings as a civil party.

In February 2003 Ms Mor, who had been summoned as a “witness assisted by a lawyer”, objected that the complaint was inadmissible since the pharmaceutical company was not implicated in the investigation. She admitted to the investigating judge that she had made comments to the press, at the request of her clients and in their interests, in replying to journalists who had already seen the expert report.

On 16 September 2003 Ms Mor was charged with a breach of the confidentiality of judicial investigations and a breach of professional confidence. In an order of 31 March 2006 the investigating judge committed her for trial before the Paris Criminal Court for having revealed the existence and content of documents featuring in an investigation, and specifically an expert report submitted to the investigating judge in charge of the case. The offences in question were punishable under Articles 226-13 and 226-31 of the Criminal Code.

In a judgment of 11 May 2007 the Criminal Court found Ms Mor guilty of a breach of professional confidence. However, the applicant was discharged on the ground that the disturbance to public order had been minimal and that other people had repeatedly breached the confidentiality of the investigation without being prosecuted. The court ordered her to pay one euro in damages to the claimant. Both Ms Mor and the prosecution appealed.

In a judgment of 10 January 2008 Paris Court of Appeal upheld the judgment. It found that the offence had been established as there was no doubt that Ms Mor’s comments had reflected the tenor of the expert’s findings. The fact that other people concerned had knowledge of the information covered by the rules of professional confidence did not mean that the information was not confidential and secret. Lastly, the court held that it had not been established that revealing the contents of the file had been necessary in order for the victims to exercise their rights.

On 11 January 2008 Ms Mor lodged an appeal on points of law alleging a violation of Article 10 of the European Convention on Human Rights. The Court of Cassation dismissed her appeal in a judgment of 28 October 2008.

## Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicant complained about her criminal conviction for a breach of professional confidence, arguing that the domestic courts had infringed her right to freedom of expression.

The application was lodged with the European Court of Human Rights on 28 April 2009.

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

Dean **Spielmann** (Luxembourg), *President*,  
Elisabet **Fura** (Sweden),  
Karel **Jungwiert** (the Czech Republic),  
Mark **Villiger** (Liechtenstein),  
Ann **Power-Forde** (Ireland),  
Ganna **Yudkivska** (Ukraine),  
André **Potocki** (France), *Judges*,

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

## Decision of the Court

### Article 10

The Court reiterated that States which had ratified the European Convention on Human Rights had a certain margin of appreciation in assessing whether an instance of interference was necessary, but that went hand in hand with a European supervision embracing both the law and the decisions applying it. The Court pointed out that the special status of lawyers gave them a central position in the administration of justice, as intermediaries between the public and the courts. They played a key role as officers of justice in maintaining public confidence in the courts.

In order to have faith in the proper administration of justice the public had to have confidence in the ability of lawyers to represent members of the public effectively. Lawyers were thus entitled to freedom of expression and to comment in public on the administration of justice, provided that they did not overstep certain bounds. The notion of “authority of the judiciary” was underpinned by the confidence which the courts had to inspire in the public. Interference with a lawyer’s freedom of expression could be deemed necessary in a democratic society only in exceptional circumstances.

The Court noted that Ms Mor had been found guilty of a breach of professional confidence for having disclosed to the press the content of an expert report submitted to the judge in the course of a judicial investigation concerning manslaughter. The trial courts had discharged her. The Court observed that the interference in question had been prescribed by the law, according to which lawyers must not make any disclosure in breach of professional confidence and must respect the confidentiality of judicial investigations. They had to refrain from communicating any information from the file, except to their clients for the purposes of the latter’s defence, and from publishing letters or other documents concerning a current investigation.

The Court observed that Ms Mor had not been punished for disclosing the expert report to the media but for having disclosed information contained therein. It noted that the press had already been in possession of all or part of the report when the journalists had interviewed the applicant. The newspaper *Le Parisien* had published an article preceding the interview, in which the findings of the expert report had been spelled out with regard to the side-effects of the vaccine, the number of victims and the conduct of the authorities, the manufacturers of the vaccine and the Medicines Agency. Furthermore, other sections of the media had covered the story and published extracts from the report.

The Court considered that Ms Mor’s statements to the press had formed part of a debate of general interest and that the facts had been of direct relevance to a public health issue and therefore of interest to the public at large. It reiterated that there was little scope under the Convention for restrictions on political speech or on debate on matters of public interest. In a media context, the disclosure of information was apt to safeguard the public’s right to be informed of the activities of the judicial authorities.

The Court observed that Ms Mor had confined herself to commenting on information already disseminated through the article in *Le Parisien*. However, the fact that the public had knowledge of information covered by the rules of professional confidence, and that its confidentiality was undermined accordingly, did not dispense lawyers from their obligation to exercise caution with regard to the secrecy of ongoing investigations<sup>2</sup>.

In the light of the circumstances of the case, the Court considered that the protection of confidential information did not constitute sufficient grounds for finding Ms Mor guilty of

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<sup>2</sup> See also [Recommendation R\(2000\)21](#) of the Committee of Ministers of the Council of Europe.

a breach of professional confidence. In particular, it took the view that the protection of lawyers' freedom of expression should take account of exceptional cases in which the exercise of the rights of the defence could make a breach of professional confidence necessary.

Lastly, with regard to the allegations that pressure had been placed on the expert who wrote the report, which were not mentioned in the article in *Le Parisien* but which Ms Mor discussed with the journalists, the Court considered that the victims' families had a clear interest in those allegations being reported to the public, as such pressure, should its existence be proven, was unacceptable and liable to impede the proper progress of the investigation. The Court further noted that Ms Mor had been discharged and that neither Principal State Counsel nor the Bar Association to which she belonged had deemed it necessary to take disciplinary action against her on account of her statements to the press.

The Court was satisfied that the conviction of the applicant, who had been speaking in her capacity as a lawyer defending the interests of her clients, had amounted to disproportionate interference with her right to freedom of expression. It therefore held that there had been a violation of Article 10 of the Convention.

#### Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that France was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage.

*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.