



Disproportionate sanction imposed on lawyer who had criticised judges' procedural decisions in pleadings

In today's **Chamber** judgment¹ in the case of **Bono v. France** (application no. 29024/11) 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 a disciplinary sanction imposed on Mr Bono, as lawyer acting for a suspected terrorist, S.A., for remarks made in his pleadings before the Court of Appeal. He claimed that the French investigating judges had been complicit in the torture of S.A. by the Syrian secret services and thus sought the exclusion of statements obtained through the use of torture.

The Court found that the remarks in question, as they were so harsh, clearly showed some contempt for the investigating judges. However, they did not refer to the judges personally but concerned the manner in which they had carried out the investigation. The written submissions, which had a factual basis, contributed directly to the defence of Mr Bono's client and did not leave the courtroom. As Mr Bono had already been summoned to show moderation, during the hearing in the Paris Court of Appeal, the Court found that the disciplinary sanction was not proportionate.

While it was for judicial and disciplinary authorities, in the interest of the proper functioning of the justice system, to penalise certain conduct by lawyers, those authorities had to ensure that such scrutiny did not have a chilling effect that would hinder them in defending their clients' interests.

Principal facts

The applicant, Sébastien Bono, is a French national who was born in 1974 and lives in Paris.

Mr Bono, a lawyer, acted for S.A., who was arrested in Damascus on 12 July 2003 on the basis of charges laid against him in France for participation in a conspiracy to commit a terrorist offence. On 1 April 2004 the investigating judges handling the case issued an international letter of request to the Syrian military authorities for the purposes of questioning S.A. In May 2004 one of the investigating judges visited Damascus to execute the letter of request. It was subsequently alleged that S.A. had been tortured during his questioning. S.A. was extradited to France and committed to stand trial in the Paris Criminal Court.

In his pleadings before that court, Mr Bono sought the exclusion from the file of statements that had been obtained, according to him, through the use of torture by the Syrian secret services, asserting that the French judges had been complicit in that torture.

In a judgment of 14 June 2006 the court excluded the statements obtained on the basis of the international letter of request and sentenced S.A. to nine years' imprisonment. S.A. appealed against the judgment. Mr Bono filed submissions with the Paris Court of Appeal, once again requesting that the statements allegedly given under torture should be excluded and reiterating that the French judges had been complicit in its use. In a judgment of 22 May 2007 the Court of Appeal upheld the

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.

conviction of S.A. and increased his sentence to ten years' imprisonment, after excluding the documents in question.

On 4 February 2008 the Principal Public Prosecutor asked the disciplinary authority for lawyers to initiate a disciplinary procedure against Mr Bono for breaching the basic principles of honour, tact and moderation governing the legal profession. The disciplinary board of the Paris Bar Association cleared Mr Bono of all accusations, finding that the offending remarks were not personal attacks on the judges. The prosecutor appealed against that decision. In a judgment of 25 June 2009 the Paris Court of Appeal overturned the Bar Association's decision, issuing Mr Bono with a reprimand and disqualifying him from professional bodies for five years. Pointing out that the freedom of expression of lawyers was not absolute, the Court of Appeal took the view that the offending remarks had personally called into question the moral integrity of the investigating judges. It found that the accusation of complicity in acts of torture had been pointless as the relevant statements had been excluded by the first-instance court. It concluded that the attacks had not been proportionate to the aim pursued and that the remarks constituted a breach of the basic principles of the legal profession. Mr Bono lodged an appeal on points of law which was dismissed.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicant complained about the disciplinary sanction imposed on him.

The application was lodged with the European Court of Human Rights on 14 April 2011.

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

Angelika **Nußberger** (Germany), *President*,
Khanlar **Hajiyev** (Azerbaijan),
Erik **Møse** (Norway),
André **Potocki** (France),
Faris **Vehabović** (Bosnia and Herzegovina),
Síofra **O'Leary** (Ireland),
Mārtiņš **Mits** (Latvia),

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

Decision of the Court

[Article 10 \(freedom of expression\)](#)

The disciplinary sanction imposed on Mr Bono could be regarded as an interference with his right to freedom of expression. That interference was, however, prescribed by law – the rules governing the legal profession – and its aim was to protect the reputation or rights of others and to maintain the authority of the judiciary.

The Court noted that the remarks in question, as they were so harsh, clearly showed some contempt for the investigating judges. Moreover, they were not necessary in order to attain the aim pursued, as the Paris Court of Appeal had noted, because the first-instance court had already agreed to exclude the statements given by S.A. under torture.

The Court observed, however, that the offending remarks did not refer to the judges personally but concerned the manner in which they had carried out the investigation. Mr Bono had complained in particular about their decision to issue an international letter of request when the interrogation methods of the Syrian secret services were infamous, thus criticising the judges' procedural choices. Finding that the domestic courts had excluded the statements obtained in violation of Article 3 of

the Convention, the Court took the view that Mr Bono's pleadings contributed directly to the defence of his client.

In addition, the Court noted that Mr Bono's criticisms, which had a factual basis, did not leave the courtroom because they were contained in his written submissions. They were not therefore capable of damaging the reputation of the judiciary in the minds of the general public.

In view of the foregoing and the fact that Mr Bono had already been summoned to show moderation, during the hearing in the Paris Court of Appeal, the Court was of the opinion that the disciplinary sanction was not proportionate. In addition to the negative repercussions of that sanction on a lawyer's professional career, it took the view that any subsequent scrutiny of a lawyer's speech or writing had to be carried out with particular prudence and reserve. Considering the warning by the judges at the hearing to be sufficient, and noting that those judges had not seen fit to ask the Principal Public Prosecutor to initiate a disciplinary procedure, the Court found that the referral of the matter by that prosecutor to the disciplinary authority several months after the Court of Appeal's judgment was at odds with the lawyer's duty to defend his clients' interests.

In conclusion, the Court held that there had been a violation of Article 10 of the Convention on account of the disproportionate nature of the sanction imposed on Mr Bono.

[Article 41 \(just satisfaction\)](#)

The Court held that France was to pay Mr Bono 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.