



The conviction for malicious falsehood of the author of an open letter to the Financial Markets Authority was disproportionate

In today's **Chamber judgment**¹ in the case of **Tête v. France** (application no. 59636/16) 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.

In this case the applicant complained about his conviction for malicious falsehood on account of an open letter which he had written to the President of the French Financial Markets Authority (AMF), in which he accused the Olympique Lyonnais Group ("the OL Group") and its CEO of providing false and misleading information during the company's stock-market flotation. The flotation had been aimed at allowing the construction of a new football stadium known as "OL Land" in a suburb of Lyons.

The Court noted, in particular, that the domestic courts had not duly examined the necessity of the interference with Mr Tête's right to freedom of expression. It also observed that the AMF had not taken any action in response to the letter and that no proceedings had been instituted against the CEO of the OL Group. Moreover, Mr Tête had been writing on an issue of general concern and in a context of political and campaigning activity. The Court also noted the fact that the sanctions imposed had been of a criminal nature.

Consequently, the Court held that the interference with the applicant's right to freedom of expression had not been proportionate to the legitimate aim pursued (namely the protection of the reputation or rights of others, in this instance those of the CEO of the OL Group) and that the reasons given for the domestic courts' decisions had been insufficient to justify it.

Principal facts

The applicant, Etienne Tête, is a French national who was born in 1956 and lives in Lyons (France). He is a lawyer and a municipal councillor in that city.

In the context of its stock-market flotation, the OL Group prepared a "basic document" under Law no. 2006-1770. That document was registered in January 2007. The flotation was aimed at allowing the construction of a projected new football stadium in the suburbs of Lyons, known as "OL Land". Mr Tête, who opposed the project, was the lawyer of other opponents and of persons whose property had been expropriated in connection with the implementation of the project.

In January 2010 Mr Tête sent an open letter to the President of the AMF drawing his attention to the circumstances surrounding the flotation, and in particular to the quality of the information on the "OL Land" project set out in the basic document. According to the Government, Mr Tête made that letter public during a press conference.

In February 2010 the President of the AMF replied to Mr Tête that the AMF was indeed responsible for dealing with the facts which Mr Tête had brought to his attention. The AMF President, however,

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.

pointed out that he could provide no further information since the AMF was bound by strict professional secrecy rules. The AMF took no administrative or judicial action in response to the letter.

In April 2010 the OL Group and its CEO lodged a complaint for malicious falsehood against Mr Tête. At first instance, Mr Tête was ordered to pay a fine of 3,000 euros (EUR), and also to pay a sum of EUR 5,000 for the costs incurred by the civil parties. The Court of Appeal upheld that judgment, adding EUR 5,000 to be paid for the costs incurred before it by the civil parties.

In April 2016 the Court of Cassation dismissed an appeal on points of law by Mr Tête.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Mr Tête complained about his conviction.

The application was lodged with the European Court of Human Rights on 10 October 2016.

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

Síofra O’Leary (Ireland), *President*,
Gabriele Kucsko-Stadlmayer (Austria),
Ganna Yudkivska (Ukraine),
André Potocki (France),
Yonko Grozev (Bulgaria),
Lətif Hüseynov (Azerbaijan),
Anja Seibert-Fohr (Germany),

and also Claudia Westerdiek, *Section Registrar*.

Decision of the Court

Article 10

The Court emphasised that reporting alleged unlawful conduct to an authority was apt to come within the scope of freedom of expression.

The Court went on to find that Mr Tête’s conviction for malicious falsehood on account of the open letter he had written to the President of the AMF amounted to interference with the exercise of his freedom of expression, since the conviction had been based on the substance of the remarks contained in the letter. It noted that the interference had been prescribed by law (Article 226-10 of the Criminal Code) and had pursued the legitimate aim of protecting the reputation or rights of others (in this instance, those of the CEO of the OL Group).

As to whether the interference had been necessary in a democratic society, the Court noted the following.

The Paris Court of Appeal had confined itself to ascertaining whether the constituent elements of the offence of malicious falsehood were made out, without taking account in its reasoning of the right to freedom of expression, on which Mr Tête had expressly relied. The Court of Cassation had subsequently found that the courts below had not been required to respond to that argument. The domestic courts had not conducted a balancing exercise between Mr Tête’s right to freedom of expression and the right of the CEO of the OL Group (whose reputation was at stake) to respect for his private life. Accordingly, they had not duly examined the necessity of the interference with Mr Tête’s right to freedom of expression.

The Court further noted that the AMF had not taken any action in response to the letter. No proceedings had been instituted against the CEO of the OL Group, nor had the file been forwarded

to the public prosecutor's office. This diminished the potential impact of the remarks contained in the letter on the reputation of the CEO of the OL Group. Furthermore, there was nothing in the case file to suggest that the latter's reputation had suffered permanent damage.

The Court also observed that the letter had been written in a context in which Article 10 of the Convention required a high level of protection of the right to freedom of expression for two reasons, as Mr Tête's remarks had concerned an issue of general concern and had been of a political and campaigning nature. The issue at stake had concerned a major infrastructure project that was liable to entail a high level of public expenditure and to have a considerable environmental impact. The OL Land project had been the subject of wide-ranging debate locally and was highly controversial, as confirmed by the large number of administrative appeals lodged against it. Moreover, the open letter had formed part of Mr Tête's political and campaigning activities.

Furthermore, Mr Tête's open letter had used the interrogative rather than the affirmative form. The fact that an individual's remarks had been worded carefully was a factor to be taken into account in reviewing the proportionality of the interference with the exercise of his or her freedom of expression.

The Court further reiterated that the nature and severity of the sanctions imposed were also relevant factors in assessing whether the interference had been proportionate. In the instant case Mr Tête had been ordered to pay a fine of EUR 3,000. The very fact of imposing a criminal conviction was one of the most serious forms of interference with the right to freedom of expression. In addition, the applicant had been required to pay a sum of EUR 10,000 to cover the costs incurred by the civil parties at first instance and on appeal.

Consequently, the Court was not persuaded that the interference with the exercise of the applicant's right to freedom of expression had been proportionate to the legitimate aim pursued or that the reasons given by the domestic courts in their decisions had been sufficient to justify it. There had therefore been a violation of Article 10 of the Convention.

Just satisfaction (Article 41)

The Court held that France was to pay Mr Tête 10,000 euros (EUR) in respect of pecuniary damage and EUR 10,000 in respect of costs and expenses.

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.