



The use of a transcribed telephone conversation for disciplinary purposes was subject to effective judicial scrutiny and did not entail a breach of the Convention

In today's **Chamber** judgment¹ in the case of [Terrazzoni v. France](#) (application no. 33242/12) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 8 (right to respect for private life and correspondence) of the European Convention on Human Rights.

The case concerned the use, in the context of disciplinary proceedings against a judge, of the transcript of a telephone conversation that had been intercepted by chance in criminal proceedings in which the judge had not been involved.

The Court found in particular that the interference complained of had been in accordance with the law and had been aimed at establishing the truth both in relation to the initial criminal proceedings against F.L. – an individual known to the police and the owner of the telephone line being tapped – and in relation to the ancillary criminal proceedings concerning the judge, Ms Terrazzoni.

The Court observed that the telephone-tapping operation had been ordered by a judge and carried out under his supervision, and that the telephone conversation had been transcribed subsequently in the context of a preliminary investigation, at the request of a judge and under the latter's supervision.

The Court noted, firstly, that Ms Terrazzoni had been given several opportunities to present her account of the telephone conversation in question, and, secondly, that she could have requested that the transcript of the conversation be excluded from the disciplinary proceedings; lastly, the *Conseil d'État* had examined her ground of appeal concerning the lawfulness of the telephone tapping. The Court therefore concluded that there had been effective scrutiny capable of limiting the interference in question to what was necessary in a democratic society.

Principal facts

The applicant, Dominique Terrazzoni, is a French national who was born in 1962 and lives in Toulon. She was appointed as a judicial officer by a decree of 14 December 1988. In July 2000 she took up a position at the Toulon District Court, and then became a judge at the Toulon *tribunal de grande instance* (TGI) in January 2008.

On 6 September 2008, pursuant to letters rogatory issued by an investigating judge of the Nice TGI in connection with a criminal investigation concerning drugs offences, a telephone conversation was intercepted between Ms Terrazzoni and F.L., an individual known to the police and the owner of the line being tapped.

Having been informed of the content of that conversation, the Principal Public Prosecutor at the Aix-en-Provence Court of Appeal alerted the public prosecutor at the Marseilles TGI and 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.

President of the Aix-en-Provence Court of Appeal. The latter summoned Ms Terrazzoni to appear before him on 29 October 2008. He informed her of the telephone tapping, summarised the content of her remarks and questioned her about the nature of her relations with F.L., the content of their conversation and the proceedings which they had mentioned.

The President informed the Judicial Services Department of the Ministry of Justice of Ms Terrazzoni's conduct. On 7 November 2008 the Minister of Justice requested the National Legal Service Commission (CSM) to suspend Ms Terrazzoni temporarily from duty. By decision of 18 December 2008 the CSM temporarily suspended Ms Terrazzoni from her duties at the Toulon TGI pending a final decision in the disciplinary proceedings. Ms Terrazzoni lodged an appeal on points of law which was declared inadmissible by the *Conseil d'État*.

On 20 February 2009 the Justice Minister referred Ms Terrazzoni's case to the CSM. Ms Terrazzoni submitted grounds of nullity in relation to the administrative disciplinary proceedings, concerning in particular the conduct of the administrative investigation and the admissibility in evidence of the tapped telephone conversation.

On 5 May 2010 the CSM imposed on Ms Terrazzoni the penalty of compulsory retirement. By decree of 30 August 2010 the French President ordered Ms Terrazzoni's removal from office. In February 2011 the Director of Judicial Services dismissed an appeal lodged by Ms Terrazzoni. The *Conseil d'État* declared inadmissible an appeal on points of law by Ms Terrazzoni against the CSM's decision.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private life and correspondence), Ms Terrazzoni complained of the tapping and transcription of the telephone conversation in question and of the use of the corresponding reports in the disciplinary proceedings, in the absence of the safeguards linked to her judicial status or of any opportunity to obtain a review of the lawfulness of the telephone tapping.

The application was lodged with the European Court of Human Rights on 9 May 2012.

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

Angelika **Nußberger** (Germany), *President*,
 Erik **Møse** (Norway),
 André **Potocki** (France),
 Yonko **Grozev** (Bulgaria),
 Síofra **O'Leary** (Ireland),
 Gabriele **Kucsko-Stadlmayer** (Austria),
 Lətif **Hüseynov** (Azerbaijan),

and also Milan **Blaško**, *Deputy Section Registrar*.

Decision of the Court

Article 8

The Court observed that the interference in question had been "in accordance with the law" within the meaning of Article 8 § 2 of the Convention. In the light of Articles 100 et seq. of the Code of Criminal Procedure, Ms Terrazzoni could have foreseen that her remarks were liable to be intercepted when the conversations of one of her contacts were being monitored. If those remarks gave grounds to suppose that she had been involved in an offence, they could be transcribed and the resulting record could be used in the context of criminal or disciplinary proceedings.

As to the purpose and necessity of the interference, the Court considered that it had been aimed at establishing the truth both in relation to the initial criminal proceedings against F.L. and in relation to the ancillary criminal proceedings concerning Ms Terrazzoni. The interference had therefore pursued the aim of preventing disorder. The continuation of the interference by means of the use of the conversation in question in the context of the disciplinary proceedings against Ms Terrazzoni had pursued the same legitimate aim.

The Court observed that in the present case the interception complained of had resulted from the tapping of F.L.'s telephone line rather than that of Ms Terrazzoni. The fact that Ms Terrazzoni was a judge had not been known at the time. The special procedural safeguards to which she claimed entitlement had subsequently been applied as soon as her status had been discovered. The Court saw no evidence in the present case of abuse of process or of any abuse consisting in tapping F.L.'s telephone as an indirect means of listening in on Ms Terrazzoni's conversations.

The Court noted that the telephone tapping had been ordered by a judge and carried out under the latter's supervision and that the conversation of 6 September 2008 had been transcribed subsequently in connection with a preliminary investigation, at the request of a judge and under his supervision.

While there was no basis for finding that the telephone tapping had been reviewed by the courts in the context of the criminal proceedings against F.L., the Court noted that Ms Terrazzoni had been given an opportunity to present her account of the telephone conversation in question to the President of the Aix-en-Provence Court of Appeal, and on several subsequent occasions to the Judicial Services Inspectorate in the context of the administrative investigation, to an investigator in the criminal proceedings and, lastly, to the rapporteur appointed by the CSM in the context of the disciplinary investigation.

The Court further noted that Ms Terrazzoni had been notified of the letters rogatory ordering the tapping of F.L.'s telephone. These had enabled the CSM to conclude that the tapping operation had been carried out in the course of criminal proceedings not involving Ms Terrazzoni and that the evidence had been added to the case file in the proper manner and had been the subject of adversarial argument. Lastly, in the context of Ms Terrazzoni's appeal on points of law, the *Conseil d'État* had examined her ground of appeal concerning the lawfulness of the telephone tapping and had considered that it was not such as to warrant admitting the appeal.

The Court therefore held that there had been no violation of Article 8.

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.