

Press release issued by the Registrar

**CHAMBER JUDGMENT IN THE CASE OF
COLOMBANI AND OTHERS v. FRANCE**

The European Court of Human Rights has today notified in writing a judgment¹ in the case of *Colombani and Others v. France* (application no. 51279/99).

The Court held unanimously that there had been a **violation of Article 10** (freedom of expression) of the European Convention on Human Rights. Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicants 4,096.46 euros (EUR) for pecuniary damage and EUR 21,852.20 for costs and expenses.

1. Principal facts

The applicants are two French nationals living in Paris, Jean-Marie Colombani and Eric Incyan, who were born in 1948 and 1960 respectively, and the company Le Monde.

In its issue of 3 November 1995 the newspaper *Le Monde*, of which Mr Colombani is the publishing director, published an article by Mr Incyan about a confidential version of a report by the Geopolitical Drugs Observatory (*OGD*) on drug production and trafficking in Morocco. The report had been compiled at the request of the Commission of the European Communities following Morocco's application for membership of the European Union and a version of it was published in 1994 with the names of the drug traffickers edited out. It stated, among other things, that the volume and expansion of cannabis production there "made Morocco a serious contender for the title of the world's leading hashish exporter".

A summary of Mr Incyan's article appeared on the front page of the newspaper under the headline "Morocco: the world's leading hashish exporter" and the main article was sub-headed "A confidential report casts doubt on King Hassan II's entourage". It questioned the avowed determination of the Moroccan authorities, and principally the King, to combat the increase in drug-trafficking on Moroccan soil.

On 23 November 1995 the King of Morocco lodged an official application with the French Minister for Foreign Affairs for criminal proceedings to be brought against the newspaper *Le Monde*. Mr Colombani and Mr Incyan were prosecuted under section 36 of the Law of 29 July 1881 for insulting a foreign head of state. They were acquitted by the Paris Criminal Court on 5 July 1996, which held that the journalist had acted in good faith, pursued a legitimate aim and cited a report whose reliability was undisputed.

1. Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its Protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

The King of Morocco and the public prosecutor appealed against that decision. The Paris Court of Appeal held that the desire to draw the public's attention to the responsibility of the King's royal entourage and the King's tolerance of that situation had been inspired by malicious intent. It also criticised the journalist for failing to check that his facts were accurate and up to date, and found that the facts of the case taken as a whole showed a lack of good faith. It consequently convicted the applicants of insulting a foreign head of state, sentenced them to a fine of 5,000 French francs (FRF) and ordered them to pay King Hassan II FRF 1 in damages and FRF 10,000 under Article 475-1 of the Code of Criminal Procedure. It also ordered *Le Monde* to publish particulars of the convictions. The applicants appealed to the Criminal Division of the Court of Cassation, which dismissed their appeal on 20 October 1998, after finding that their comments had been offensive and maliciously aimed at drawing the reader's attention to the King personally.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 19 April 1999 and declared partly admissible on 4 September 2001.

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

András **Baka** (Hungarian), *President*,
Jean-Paul **Costa** (French),
Gaukur **Jörundsson** (Icelandic),
Karel **Jungwiert** (Czech),
Volodymyr **Butkevych** (Ukrainian),
Wilhelmina **Thomassen** (Dutch),
Mindia **Ugrekhelidze** (Georgian), *judges*,

and also Sally **Dollé**, *Section Registrar*.

3. Summary of the judgment¹

Complaint

Relying on Article 10 of the European Convention of Human Rights, the applicants complained of an infringement of their freedom of expression.

Decision of the Court

Article 10

After reaffirming the importance of the role played by the press in a democratic society, the Court found that the applicants' convictions amounted to an interference with the exercise of their right to freedom of expression. It noted that the French courts had based their decisions on the provisions of the Law of 29 July 1881 on the Freedom of the Press and had pursued a legitimate aim, namely, the protection of the reputation or rights of others, that person being, in the case before the Court, the King of Morocco.

1. This summary by the Registry does not bind the Court.

As to whether the interference was justified and necessary in a democratic society, the Court noted, firstly, that public opinion, in particular in France, had a legitimate interest in being informed of the Commission of the European Communities' assessment of the problems relating to drug-production and drug-trafficking in a country that was seeking admission to the European Union. The Court reiterated that in order to enjoy Article 10 protection journalists had to act in good faith on an accurate factual basis and to provide reliable and precise information in accordance with the ethics of journalism. It noted in that connection that the content of the *OGD*'s report was not disputed and that the allegations it contained could legitimately be regarded as credible. It considered that when contributing to a public debate on issues that raised legitimate concerns the press had in principle to be able to rely on official reports without being required to carry out its own separate investigations. The Court considered that it was reasonable for *Le Monde* to have relied on the report without checking its accuracy.

The Court further noted that, unlike defendants in defamation proceedings, persons accused of insulting foreign heads of state were not entitled to defend themselves by adducing evidence that the allegations were true. Prosecution for that offence was a disproportionate means of protecting the reputation or rights of others, even when the persons concerned were heads of state or of government.

In addition, since the Paris tribunal de grande instance's judgment of 25 April 2001, the domestic courts had been inclined to recognise that the offence under section 36 of the Law of 29 July 1881, as construed by the courts, infringed freedom of expression as guaranteed by Article 10. They thus appeared to accept that it was not necessary in a democratic society for that section to be used to pursue the aim, particularly since heads of state or ordinary citizens against whom insulting remarks had been made or whose honour or reputation had been damaged had a sufficient criminal remedy in the form of prosecution for defamation or for proffering insults, both of which offences were proportionate to the aim pursued.

The Court also noted that the application of section 36 of the Law of 29 July 1881 was liable to confer on heads of state a special status that derogated from the general law and could not be reconciled with modern practice and political conceptions, since its effect was to afford them immunity from criticism solely because of their function or status, irrespective of whether the criticism was justified. In the Court's view, that privilege went beyond what was necessary to achieve the objective.

The Court consequently found that, because of the special nature of the protection afforded by the relevant provision of the Law on the Freedom of the Press, the offence of insulting foreign heads of state was liable to infringe freedom of expression without meeting a "pressing social need" capable of justifying a restriction of that type. It considered that there was no reasonable relationship of proportionality between the restrictions imposed on the applicants' freedom of expression and the legitimate aim pursued.

The Court accordingly held, unanimously, that there had been a violation of Article 10.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.