



Defamation claims against Patrick de Carolis and France 3 were upheld in breach of their right to freedom of expression

In today's **Chamber** judgment¹ in the case of [de Carolis and France Télévisions v. France](#) (application no. 29313/10) 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 an accusation of defamation brought by Saudi Prince Turki Al Faisal on account of a documentary on the France 3 television channel concerning complaints lodged by families of the victims of the 11 September 2001 attacks.

Mr de Carolis and the journalist who made the documentary were found guilty of public defamation against an individual, Prince Turki Al Faisal, who had joined the proceedings as a "civil party". The court declared the TV channel France 3 civilly liable for the damage caused.

The Court found, after a detailed examination, that the way in which the subject was dealt with did not contravene the standards of responsible journalism. As regards the sanctions, the fine to which Mr de Carolis had been sentenced and the civil liability finding against France 3 were a disproportionate interference with their right to freedom of expression which was not necessary in a democratic society.

Principal facts

The applicants are Patrick de Carolis, a French national who was born in 1953 and lives in Paris (France), and the company France Télévisions. Mr de Carolis was chairman of the national television channel France 3, now succeeded in its rights by France Télévisions, based in Paris.

On 8 September 2006 the channel France 3 broadcast a documentary entitled "11 September 2001: the prosecution case", which investigated why there had still been no trial five years after the events of "9/11". It focused on the complaints lodged by families of the victims of the attacks and the proceedings against over one hundred individuals suspected of having helped and funded al-Qaeda. The investigations by the journalist who made the report highlighted the claimants' concerns and their fears that the trial might be jeopardised by the economic links between their countries and Saudi Arabia.

Prince Turki Al Faisal bin Abdul Aziz Al Saud ("Prince Turki Al Faisal") was also interviewed as part of the documentary. He was the target of complaints from the victims' relatives, who accused him of having assisted and financed the Taliban when he had been head of the intelligence service in Saudi Arabia.

On 7 December 2006 Prince Turki Al Faisal brought defamation proceedings in the Paris Criminal Court against Mr de Carolis as director of the television channel, as well as the journalist in question and the company France 3, relying on five excerpts from the documentary.

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.

In a judgment of 2 November 2007 the Paris Criminal Court found Mr de Carolis and the journalist who had made the report guilty of public defamation of an individual, namely Prince Turki Al Faisal, who had joined the proceedings as a civil party. It also held France 3 civilly liable. The court found that some of the remarks criticised the Prince for giving material and financial support to al-Qaeda at a time when that organisation's terrorist projects were no longer in doubt, thus suggesting that his personal liability was engaged in the 9/11 attacks. The implication was that only diplomatic considerations, not the weakness of the charges against him, could explain the impunity from which he had benefited. Moreover, the court noted that the defendants had not offered to prove the veracity of the offending remarks, but had invoked the defence of good faith. It found that the legitimacy of the documentary was not at issue, in view of the importance of the 9/11 attacks and their consequences. The court also took the view that the journalist had been entitled to make particular reference to the evidence against Prince Turki Al Faisal in view of his status and his duties as director of the intelligence service, and lastly that the seriousness of the documentary as a whole could not be called into question.

However, the court added that the journalist was not exempt from the basic duty of prudence and objectivity which applied to the reporting of accusations that had not yet been examined by a court, regardless of the importance of the subject and the Prince's high status, and even if the intention was to denounce possible diplomatic considerations.

The Paris Court of Appeal upheld that judgment on 1 October 2008. As regards the appellants' defence of good faith, the court took the view that the legitimate aim of imparting information was not in doubt, that the documentary appeared serious and that it did not reveal any personal animosity against the Prince. However, it found that the journalist should have demonstrated prudence and objectivity, because she had referred to extremely serious accusations which had not yet been examined by a court of law.

The Court of Cassation, on 10 November 2009, dismissed an appeal on points of law by the applicants, finding that the Court of Appeal had correctly assessed the meaning and scope of the offending remarks and had rightly rejected the defence of good faith.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicants complained of a violation of their right to freedom of expression.

The application was lodged with the European Court of Human Rights on 6 May 2010.

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

Angelika **Nußberger** (Germany), *President*,
Ganna **Yudkivska** (Ukraine),
André **Potocki** (France),
Faris **Vehabović** (Bosnia and Herzegovina),
Síofra **O'Leary** (Ireland),
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia),

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

Decision of the Court

Article 10 (freedom of expression)

The Court found that the judgment against the applicants, which had constituted an interference with the exercise of their right to freedom of expression, was prescribed by law, namely by Articles 23, 29 and 32 of the Law of 29 July 1881. It acknowledged that the interference pursued a legitimate aim under Article 10 of the Convention, namely the protection of the reputation or rights of others.

In finding against the applicants, the Court of Appeal had focused on certain excerpts from the documentary. It had taken the view that the journalist had not been particularly prudent or genuinely objective, because she had referred to extremely serious accusations, and the possibility for the person concerned to deny those accusations was no more than apparent and was even misleading.

The Court first observed that the facts reported had concerned a subject of general interest. The first-instance court had indeed recognised the legitimacy of the documentary. The Court also then noted that Prince Turki Al Faisal held an eminent position in the Kingdom of Saudi Arabia. He had exercised official duties, first as head of the Saudi intelligence service, then as his country's ambassador to the USA. The Court reiterated that the limits of permissible criticism were wider when it came to civil servants acting in a public capacity in the course of their official duties than in the case of ordinary private persons. In view of both those factors, the State's margin of appreciation had been particularly limited.

As regards the offending excerpts from the documentary, the Court observed that it was necessary to make a distinction between statements of fact and value judgments. It took the view that, even though the documentary had mentioned certain precise facts, the impugned statements had amounted more to value judgments than to mere statements of fact.

The Court then examined whether the "factual basis" for the value judgments was sufficient. It noted that there had been complaints from the families of the 9/11 victims. The domestic court had expressly referred to the nature of the proceedings and the spectacular means deployed to gather evidence. The Court found, moreover, that the first-instance court had also taken the view that it was legitimate to look into the responsibilities of Prince Turki Al Faisal as he had been director of the intelligence service of Saudi Arabia and had provided assistance to Osama bin Laden at the time of the Soviet invasion of Afghanistan; the documentary had also concerned the emergence and development of al-Qaeda and its leader. The domestic courts had also concluded that the documentary appeared serious. The Court then noted that the diplomatic immunity enjoyed by Prince Turki Al Faisal after his appointment as ambassador had indeed been relied upon in the proceedings leading to US judicial decisions exclusively dealing with that protection and the possibility of lifting it. In view of the foregoing, the factual basis was therefore sufficient in the Court's view.

As to the wording used, the Court noted that the documentary had merely relayed the content of the complaints filed by relatives of the 9/11 victims. It found that the journalist had distanced herself from the various testimony by using the conditional tense and by referring to the "presumed support" of Prince Turki Al Faisal for Osama bin Laden. The Court then attached weight to the journalist's consultation of the various protagonists, especially Prince Turki Al Faisal himself. Even though they had refused to accept the journalist's invitation, the US lawyers acting for Prince Turki Al Faisal had been given the possibility of commenting on the subject, as had Richard Armitage, former US Deputy Secretary of State from 2001 to 2005, who had testified clearly in favour of the Prince. The journalist had also interviewed specialists and US officials, asking them to express their views and freely analyse the matter. The documentary as broadcast – accused as it was of only presenting the case for the prosecution – was in fact illustrating the reality of such weighted evidence in the proceedings; the journalist had not therefore sought to deceive the public.

The Court therefore concluded that the way in which the subject had been dealt with did not contravene the standards of responsible journalism.

As regards the sanctions imposed, the Court found that the sentencing of Mr de Carolis to a fine and the finding that France 3 was civilly liable could be regarded as a disproportionate interference with the applicants' right to freedom of expression and that it was not necessary in a democratic society. There had thus been a violation of Article 10 of the Convention.

Article 41 (Just satisfaction)

The Court held that France was to pay the applicants 11,500 euros (EUR) in respect of pecuniary damage and EUR 30,000 in respect of non-pecuniary damage.

The judgment is available only in French.

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Press contacts

echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Denis Lambert (tel: + 33 3 90 21 41 09)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Nina Salomon (tel: + 33 3 90 21 49 79)

Inci Ertekin (tel: + 33 3 90 21 55 30)

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.