

Press release issued by the Registrar

CHAMBER JUDGMENT IN THE CASE OF CHAUVY AND OTHERS v. FRANCE

The European Court of Human Rights has today notified in writing a judgment¹ in the case of *Chauvy and Others v. France* (application no. 64915/01). The Court held unanimously that there had been **no violation of Article 10** (freedom of expression) of the European Convention on Human Rights.

(The judgment is available only in French.)

1. Principal facts

The three applicants in this case are the journalist and writer, Gérard Chauvy, who is a French national, born in 1952, living in Villeurbanne; the publishing company Albin Michel, whose registered office is in Paris; and the company's president, Francis Esmenard, a French national who was born in 1936 and lives in Paris.

In 1997 Editions Albin Michel published a book by Mr Chauvy entitled *Aubrac–Lyons 1943* relating the events surrounding the arrest by Klaus Barbie of the main leaders of the Resistance in Caluire, among whom were Jean Moulin, General de Gaulle's delegate in France and leader of the French Resistance, and Raymond Aubrac, a member of a Resistance movement. The truth about the Caluire arrest is still not established. One resistance fighter, René Hardy, was accused and tried as "the traitor", but was not convicted.

The book in question presented the event through the "Aubracs' prism", and, according to the author, put to the test the "official truth as related in depth *inter alia* by Mr and Mrs Aubrac in the media and in a film glorifying their role". The book had an appendix containing the so-called "testament Barbie", which was the latter's memoir to the judge investigating his activities with regard to the Lyon resistance fighters. Mr Chauvy concluded in his book that there was no documentary evidence to support the accusation of betrayal levelled by Klaus Barbie at Raymond Aubrac, but that at the end of the study it could be observed that "the accounts given were sometimes fanciful". There followed two pages of questioning which cast doubt on Raymond Aubrac's innocence.

Raymond and Lucie Aubrac instituted proceedings against the applicants for libel. In a judgment of 2 April 1998 the Paris *tribunal de grande instance* convicted them of criminal

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.

libel against the Aubracs in their capacity as members of a recognised Resistance movement. The court ordered Mr Chauvy to pay a fine of 100,000 French francs (FRF) (15,244.90 euros (EUR)) and Mr Esmenard a fine of FRF 60,000 (EUR 9,146.94) and ordered them, jointly and severally, together with Editions Albin Michel, to pay the Aubracs FRF 200,000 (EUR 30,489.80) each in damages. The court dismissed the request for the book to be destroyed, but ordered the publication of an announcement in five periodicals and the insertion in each copy of the book of a warning in the same terms as the announcement. It also declared Editions Albin Michel civilly liable.

The judgment was upheld on appeal. An appeal on points of law by the applicants was dismissed on 27 June 2000.

2. Procedure and composition of the Court

The application was lodged on 13 December 2000 and declared partly admissible on 23 September 2003.

Judgment was given by a Chamber of 7 judges, composed as follows:

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

and also Lawrence **Early**, *Deputy Section Registrar*.

3. Summary of the judgment¹

Complaints

The applicants submitted, under Article 10 of the Convention, that their conviction had infringed their right to freedom of expression. They complained that the legal provisions that had been applied had been over-extended, and were unforeseeable and inaccessible, and that the penalty had thus not been “prescribed by law”. They complained further that the penalties imposed were disproportionate.

Decision of the Court

Article 10 of the Convention

The applicants’ conviction amounted to an interference with the exercise of their freedom of expression. That interference had been in accordance with the 29 July 1881 and 5 January 1951 Acts, both of which had been the subject of consistent interpretation by the Court of Cassation. Journalists and publishers could not have been unaware of the law applicable to the present case. Accordingly, at least the publisher and the publishing company, who were

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

professional book publishers, should have been aware of the applicable law and case-law in the field and could have obtained legal advice from specialists in the area. They had been in a position to assess the risks incurred in publishing such a book and to draw the author's attention to the risks of prosecution if the book were published as written.

The Court noted further that the measure in question had undeniably had a legitimate aim: to protect the Aubracs from damage to their reputation.

The quest for historical truth was an integral part of freedom of expression. The Court considered that it was not its task to settle the substantive historical issue, which was part of an ongoing debate among historians and even public opinion about the events and their interpretation. However, in order to determine whether the measure in question had been "necessary in a democratic society" the Court had to balance the public interest in knowing the circumstances of Jean Moulin's arrest against the requirement of protecting the reputation of Mr and Mrs Aubrac, who had themselves been major figures of the Resistance.

The Court noted that the French courts had undertaken a thorough and very detailed examination of the book in question, and particularly of the presentation of the facts and arguments, before convicting the applicants of criminal libel against the Aubracs. The Court found that their conviction had been based on relevant and sufficient grounds. In that connection it was satisfied that the conclusion that the content of the book in question had not complied with the essential rules of historical method and had made particularly serious insinuations had been based on proper evidence and reasoning.

With regard to the penalties imposed, the Court noted that the courts had not ordered the destruction of the book or banned publication. Furthermore, the fines imposed on the applicants and the damages were relatively modest and appeared justified in the light of the circumstances of the case. Lastly, the publication of an announcement in five periodicals and the insertion in each copy of the book of a warning in the same terms as the announcement did not appear to be unsuitable measures or over restrictive of the freedom of expression.

Consequently, the Court considered that the interference with the applicants' freedom of expression had not been disproportionate to the legitimate aim pursued.

Judge Thomassen expressed a concurring opinion, which is annexed to the judgment.

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 by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. Since 1 November 1998 it has sat as a full-time Court composed of an equal

number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments. More detailed information about the Court and its activities can be found on its Internet site.