European Court of Human Rights: Case of Tourancheau and July v. France (affaire *Libération*)

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Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy

In 1996, the French newspaper *Libération* published an article focusing on a murder case in which adolescents were involved. The criminal investigation was still pending when the article was published and two suspects, a young man, B. and his girlfriend, A., had been under investigation. The article in *Libération,* written by Patricia Tourancheau, reproduced extracts from statements made by A. to the police and the investigating judge, and comments from B. contained in the case file. On the basis of section 38 of the Freedom of Press Act of 29 July 1881, criminal proceedings were brought against Tourancheau and against the editor of *Libération*, Serge July. Section 38 of the 1881 Press Act prohibits the publication of any document of the criminal proceedings until the day of the court hearing. Both the journalist and the editor were found guilty and were each ordered to pay a fine of FRF 10,000 (approximately EUR 1,525). Their conviction was upheld on appeal and by the French Supreme Court, although payment of the fine was suspended. In the meantime, A. had been sentenced to eight years' imprisonment for murder and B. had received a five-year prison sentence for failure to assist a person in danger.

In its judgment of 24 November 2005, the Strasbourg Court has come to the conclusion that the conviction of Tourancheau and July was not to be considered as a violation of Art. 10 of the Convention. The Court noted that section 38 of the 1881 Press Act defined the scope of the legal prohibition clearly and precisely, in terms of both content and duration, as it was designed to prohibit publication of any document relating to proceedings concerning serious crimes or other major offences until the day of the hearing. The fact that proceedings were not brought systematically on the basis of section 38 of the 1881 Act, the matter being left to the discretion of the public prosecutor's office, did not entitle the applicants to assume that they were in no danger of being prosecuted, since being professional journalists they were familiar with the law. They had therefore been in a reasonable position to foresee that the publication of extracts from the case file in the article might subject them to prosecution. In the Court's view, the reasons given by the French courts to justify the interference with the applicants' right to freedom of expression had been “relevant and sufficient” for the purposes of Article 10 para. 2 of the Convention. The courts had stressed the damaging consequences of publication of the article for the protection of the reputation and rights of A. and B., for their right to be presumed innocent and for the authority

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and impartiality of the judiciary, referring to the possible impact of the article on the members of the jury. The Court took the view that the applicants' interest in imparting information concerning the progress of criminal proceedings and the interest of the public in receiving such information, were not sufficient to prevail over the considerations referred to by the French courts. The European Court further considered that the penalties imposed on the applicants were not disproportionate to the legitimate aims pursued by the authorities. In those circumstances, the Court held that the applicants' conviction had amounted to an interference with their right to freedom of expression which had been “necessary in a democratic society” in order to protect the reputation and rights of others and to maintain the authority and impartiality of the judiciary. It therefore held that there had been no violation of Article 10. The Cypriot, Bulgarian, Croatian and Greek judge formed the smallest possible majority (4/3 decision).

The judges Costa, Tulkens and Lorenzen (France, Belgium and Denmark) expressed a joint dissenting opinion, in which they argued why the conviction of the applicants is to be considered a clear violation of the freedom of expression. Neither the breach of the presumption of innocence, nor the possible impact on the members of the jury are considered pertinent arguments in this case in order to legitimise the interference in the applicants' freedom of expression. According to the joint dissenting opinion, journalists must be able to freely report and comment on the functioning of the criminal justice system, as a basic principle enshrined in the Recommendation of the Committee of Ministers 2003 (13) on the provision of information through the media in relation to criminal proceedings. Referring to the concrete elements reported in the newspaper's article and its context, the dissenting judges conclude that there is no reasonable and proportional relation between the imposed restrictions and the legitimate aim pursued. According to the dissenting judges Article 10 of the Convention has been violated.

Arrêt de la Cour européenne des Droits de l'Homme (première section), affaire Tourancheau et July c. France, requête n° 53886/00 du 24 novembre 2005

Judgment by the European Court of Human Rights (First Section), case of Tourancheau and July v. France, Application no. 53886/00 of 24 November 2005

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