European Court of Human Rights: Case of Dupuis and Others v. France

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In a judgment of 7 June 2007, the European Court of Human Rights expressed the unanimous opinion that the French authorities have violated the freedom of expression of two journalists and a publisher (Fayard). Both journalists were convicted for using confidential information published in their book *Les Oreilles du President* (The Ears of the President). The book focused on the "Elysée eavesdropping operations", an illegal system of telephone tapping and record-keeping, orchestrated by the highest office of the French State and directed against numerous figures of civil society, including journalists and lawyers. The French Courts found the two journalists, Dupuis and Pontaut, guilty of the offence of using information obtained through a breach of the confidentiality of the investigation, or of professional confidentiality. It was also argued that the publication could be detrimental to the presumption of innocence of Mr. G.M., the deputy director of President Mitterrand's private office at the time of the events, who was placed under formal investigation for breach of privacy under suspicion of being the responsible person for the illegal telephone tapping.

The ECHR observed that the subject of the book concerned a debate of considerable public interest, a state affair, which was of interest to public opinion. The Court also referred to the status of Mr. G.M. as a public person, clearly involved in political life at the highest level of the executive wherein the public had a legitimate interest in being informed about the trial, and in particular, about the facts dealt with or revealed in the book. The Court found it legitimate that special protection should be granted to the confidentiality of the judicial investigation, in view of the stakes of criminal proceedings, both for the administration of justice and for the right of persons under investigation to be presumed innocent. However, at the time the book was published, the case had already been widely covered in the media and it was already well known that Mr. G.M. had been placed under investigation in this case. Hence, the protection of the information on account of its confidentiality did not constitute an overriding requirement. The Court also questioned whether there was still an interest in keeping information confidential when it had already been at least partly made public and was likely to be widely known, having regard to the media coverage of the case. The Court further considered that it was necessary to take the greatest care in assessing the need to punish journalists for using information obtained through a breach of the confidentiality of an investigation or of professional confidentiality when those journalists are contributing to a public debate of such

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importance, thereby playing their role as “watchdogs” of democracy. According to the Court, the journalists had acted in accordance with the standards governing their profession as journalists: the impugned publication was relevant, not only to the subject matter, but also to the credibility of the information supplied. Lastly, the Court underlined the fact that the interference with freedom of expression might have a chilling effect on the exercise of that freedom - an effect that the relatively moderate nature of the fine, as in the present case, would not sufficiently negate. As the conviction of the two journalists had constituted a disproportionate interference with their right to freedom of expression, it was therefore not necessary in a democratic society. Accordingly, there has been a violation of Article 10 of the Convention.

Arrêt de la Cour européenne des Droits de l’Homme (troisième section), affaire Dupuis et autres c. France, requête n° 1914/02 du 7 juin 2007

Judgment by the European Court of Human Rights (Third Section), case of Dupuis and others v. France, Application no. 1914/02 of 7 June 2007

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