European Court of Human Rights: Case of Hachette Filipacchi Associés (Paris-Match) v. France

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Shortly after the Prefect of Corsica, Claude Erignac, was murdered in Ajaccio in February 1998, an issue of the weekly magazine *Paris-Match* featured an article entitled " *La République assassinée* " (The murdered Republic). The article was illustrated by a photograph of the Prefect's body lying on the road, facing the camera. The widow and children of Prefect Erignac sought injunctions against several companies, including the publishing company of *Paris-Match* , Hachette Filipacchi Associés. They contended that publication of the photograph of the bloodied and mutilated body of their relative was not information, which could possibly be useful to the public, but was prompted purely by commercial considerations and constituted a particularly intolerable infringement of their right to respect for their privacy. The urgent applications judge issued an injunction requiring the Hachette Filipacchi company to publish at its own expense in *Paris-Match* a statement informing readers that Mrs. Erignac and her children had found the photograph showing the dead body of Prefect Erignac deeply distressing. A few days, later the Paris Court of Appeal upheld the injunction, noting, among other considerations, that publication of the photograph, while Prefect Erignac's family were still mourning his loss, and given the fact that they had not given their consent, constituted a gross intrusion in their grief, and accordingly of the intimacy of their private life. It ruled that such a photograph infringed human dignity and ordered the Hachette Filipacchi company to publish at its own expense in *Paris-Match* a statement informing readers that the photograph had been published without the consent of the Erignac family, who considered its publication an intrusion in the intimacy of their private life. On 20 December 2000, the *Cour de Cassation* (Supreme Court) dismissed an appeal on points of law by the applicant company.

Relying on Article 10, the publishing house of *Paris-Match* complained before the European Court of Human Rights regarding the injunction requiring it to publish, on pain of a coercive fine, a statement informing readers that the photograph had been published without the consent of the Erignac family.

The Court considered that the obligation to publish a statement amounted to an interference by the authorities in the company's exercise of its freedom of expression. The Court noted that the practice of requiring publication of a statement was sanctioned by a long tradition of settled French case-law and was

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regarded by the French courts as “one of the ways of making good damage caused through the press”. It considered that this case-law satisfied the conditions of accessibility and foreseeability required for a finding that this form of interference was “prescribed by law” within the meaning of Article 10 § 2 of the Convention.

The Court also considered that the interference complained of had pursued a legitimate aim (the protection of the rights of others) and it noted that the rights concerned fell within the scope of Article 8 of the Convention, guaranteeing the right to respect for private and family life. The crucial question that the Court had to answer was whether the interference had been “necessary in a democratic society”, within the framework of duties and responsibilities inherent in the exercise of freedom of expression. In this respect, the Court reiterated that the death of a close relative and the ensuing mourning, which were a source of intense grief, must sometimes lead the authorities to take the necessary measures to ensure respect for the private and family lives of the persons concerned. In the present case, the offending photograph had been published only a few days after the murder and after the funeral. The Court considered that the distress of Mr. Erignac’s close relatives should have led journalists to exercise prudence and caution, given that he had died in violent circumstances which were traumatic for his family, who had expressly opposed publication of the photograph. The result of the publication, in a magazine with a very high circulation, had been to heighten the trauma felt by the victim’s close relatives in the aftermath of the murder, so that they were justified in arguing that there had been an infringement of their right to respect for their privacy.

The Court also considered that the wording of the statement *Paris-Match* had been ordered to publish, revealed the care the French courts had taken to respect the editorial freedom of *Paris-Match* . That being so, the Court considered that of all the sanctions which French legislation permitted, the order to publish the statement was the one which, both in principle and as regards its content, was the sanction entailing the least restrictions on the exercise of the applicant company’s rights. It noted that the Hachette Filipacchi company had not shown in what way the order to publish the statement had actually had a restrictive effect on the way *Paris-Match* had exercised and continued to exercise its right to freedom of expression.

The Court concluded that the order requiring *Paris-Match* to publish a statement, for which the French courts had given reasons which were both “relevant and sufficient”, had been proportionate to the legitimate aim it pursued, and therefore “necessary in a democratic society”. Accordingly, the Court held by five votes to two that there had been no violation of Article 10 of the European Convention on Human Rights. The two dissenting judges expressed their firm disagreement with the finding of the majority in two separate dissenting opinions, annexed to the judgment.

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Arrêt de la Cour européenne des Droits de l'Homme (première section), affaire Hachette Filipacchi Associés c. France, requête n° 71111/01 du 14 juin 2007

Judgment by the European Court of Human Rights (First Section), case of Hachette Filipacchi Associés v. France, Application no. 71111/01 of 14 June 2007

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