European Court of Human Rights: Morice v. France (Grand Chamber)

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The Grand Chamber has overruled an earlier finding of non-violation of the right to freedom of expression of a lawyer (Chamber, Fifth Section, 11 July 2013). With an extensively elaborated reasoning, the Grand Chamber unanimously came to the conclusion that the applicant lawyer's conviction for the defamation of two investigative judges violated Article 10 of the Convention. It found that the lawyer, Morice, had expressed value judgments in the newspaper Le Monde with a sufficient factual basis and that his remarks concerning a matter of public interest had not exceeded the limits of the right to freedom of expression.

The judgment refers to the specific status of lawyers that gives them a central position in the administration of justice as intermediaries between the public and the courts. As a result, lawyers play a key role in ensuring that the courts, whose mission is fundamental in a State based on the rule of law, enjoy public confidence. This, however, does not exclude lawyers from the right to freedom of expression, in particular to comment in public on the administration of justice, provided that their criticism does not overstep certain bounds. Those bounds lie in the usual restrictions on the conduct of members of the Bar, with their particular reference to "dignity", "honour" and "integrity" and to "respect for ... the fair administration of justice".

The judgment analyses more concretely (a) the applicant's status as a lawyer, (b) the contribution to a debate on a matter of public interest, (c) the nature of the impugned remarks, (d) the specific circumstances of the case and (e) the sanctions imposed. As regards (a) the applicant's status as a lawyer, the Court reiterated its case-law to the effect that a distinction had to be drawn depending on whether the lawyer was speaking inside or outside the courtroom. Remarks made in the courtroom remained there and thus warrant a high degree of tolerance to criticism, especially since the lawyer's freedom of expression may raise questions as to his client's right to a fair trial: the principle of fairness thus also militates in favour of a free and even forceful exchange of argument between the parties. In the present case however the Court stated that it did not see how Morice's statements could have directly contributed to his task of defending his client. The Court also took the view that lawyers cannot be equated with journalists. It stated that their respective positions and roles in society are intrinsically different. Regarding (b) the contribution to a debate on a matter of public interest, the Court took the view that the impugned remarks published in

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Le Monde concerned a high-profile case that created discussion about the functioning of the judiciary. As such, a context of a debate on a matter of public interest calls for a high level of protection of freedom of expression, while only a particularly narrow margin of appreciation is left to the domestic authorities, leading to a strict scrutiny by the European Court as to whether the interference at issue can be justified as being necessary in a democratic society. As regard (c) on the nature of the impugned remarks, the Court was of the opinion that they were more value judgments than pure statements of fact, reflecting mainly an overall assessment of the conduct of the investigating judges in the course of the investigation. Furthermore, the remarks had a sufficient factual basis and could not be regarded as misleading or as a gratuitous attack on the reputation or the integrity of the two investigative judges. With regard to (d) and the specific circumstances of the case, the Grand Chamber reiterated that lawyers cannot be held responsible for everything appearing in an interview published by the press or for actions by the press. Furthermore, the Grand Chamber stated its opinion that Morice's statements could not be reduced to the mere expression of personal animosity, as their aim was to reveal shortcomings in the justice system. According to the Court, "a lawyer should be able to draw the public's attention to potential shortcomings in the justice system; the judiciary may benefit from constructive criticism". The Grand Chamber also considered that respect for the authority of the judiciary cannot justify an unlimited restriction on the right to freedom of expression. Although the defence of a client by his lawyer must be conducted not in the media, but in the courts of competent jurisdiction, involving the use of any available remedies, the Grand Chamber accepted that there might be "very specific circumstances" justifying a lawyer making public statements in the media, such as in the case at issue. The Court found that Morice's statements were not capable of undermining the proper conduct of the judicial proceedings and that his conviction could not serve to maintain the authority of the judiciary. Finally, with regard to (e) on the imposed sanction, the Court referred to its findings on many occasions that interference with freedom of expression may have a chilling effect on the exercise of that freedom, especially in cases of criminal defamation. In view of the foregoing, the Grand Chamber reached the conclusion, unanimously, that there has been a violation of Article 10 of the Convention.

Judgment by the Grand Chamber of the European Court of Human Rights, case of Morice v. France, Appl. no. 29369/10 of 23 April 2015

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