# [FR] Shelved documentary and defamation - abuse of right confirmed

**IRIS 2019-4:1/15**

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Vivendi, which owns Canal Plus and whose majority shareholder is Vincent Bolloré, sued a journalist who co-authored a television documentary entitled “Evasion fiscale, enquête sur le Crédit Mutuel” (“Tax evasion -, investigation into Crédit Mutuel”). Initially due to be broadcast on Canal Plus in May 2015, the documentary was finally shown five months later on France 3. While Canal Plus claimed that it had not broadcast the programme for author-exclusivity reasons, the journalist said that the programme had been shelved on account of the relationship between the President of Canal Plus and the President of Crédit Mutuel, who had been implicated in the documentary. The journalist claimed in various press articles that the programme had been censored; a few months later, the media reported that its co-authors had lodged a complaint against Vincent Bolloré for interfering with freedom of expression and abusing his power by allegedly pulling the documentary from the Canal Plus schedule.

Citing Article 1240 of the Civil Code, the businessman sued the journalist for EUR 750 000 on account of what he considered to constitute defamation, gross negligence (through the violation of his obligations as a journalist), and harassment.

Turning first to the defamation accusations (which were based on allegedly repeated, extreme and unobjective statements) and the lodging of the complaint, the court, in its judgment of 6 March 2019, decided that the statements in question could not be considered to be defamatory in the sense of Article 1240 of the Civil Code. They had not been limited to criticism of products and services, but had rather criticised Vivendi as a legal entity, which decided, in this instance, not to act on the basis of the Law of 29 July 1881, which provided remedies for violations of the freedom of expression. The court firstly pointed out that when information concerned a subject of general interest and had a sufficient factual basis, the disclosure of that information was covered by the right to freedom of expression, which included the right to freedom of criticism and could not be regarded as unlawful as long as the acceptable limits of freedom of expression were respected. Secondly, the court ruled that the alleged violation by a journalist of his or her ethical obligations (lack of objectivity, intention to harm), could not, in the circumstances, constitute an offence under Article 1240 of the Civil Code. Unless the specific conditions of defamation were met, breaches of the freedom of

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expression could only be remedied on the basis of the Law of 29 July 1881. Thirdly and lastly, the court held that, under Article 222-33-2 of the Criminal Code, a legal entity could not claim to be the victim of harassment in the sense of these provisions. Furthermore, the alleged acts of harassment in this case could not give rise to a claim for damages on the basis of Article 1240 of the Civil Code since no evidence of a wrongful act (as defined under civil liability law) had been provided. The court accordingly ruled that the criteria for defamation had "clearly" not been met and that Vivendi had, in this case, acted extremely recklessly by claiming civil damages on the basis of an investigation undertaken by a journalist and statements which had not been publicly disseminated before the publication, whereas any violations of the freedom of expression could, in principle, only be repaired on the basis of the Law of 29 July 1881. It had abused its right and was therefore ordered to pay EUR 8 000 to the defendant.

Vincent Bolloré is also believed to have initiated six libel procedures concerning 60 passages from the book "Vincent tout puissant", published in January 2018 and co-written by the journalist.

### *TGI de Paris (17e ch. civ.), 6 mars 2019 - SA Vivendi c/N. Vescovacci*

*Paris regional court (17th civil chamber), 6 March 2019 - SA Vivendi v N. Vescovacc.*

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