APPLICATION N° 29183/95

Roger FRESSOZ and Claude ROIRE v/FRANCE

DECISION of 26 May 1997 on the admissibility of the application

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Article 6, paragraph 2 of the Convention *Conviction of journalist and Publishing Director for handling stolen photocopies of a company president's tax notices obtained through a breach of the duty of professional confidentiality by an unidentified civil servant Question whether the persons concerned were presumed innocent (Complaint declared admissible)*

Article 10, paragraph 2 of the Convention *Conviction of journalist and Publishing Director for handling stolen photocopies of a company president's tax notices obtained through a breach of the duty of professional confidentiality by an unidentified civil servant (Complaint declared admissible)*

Article 26 of the Convention

Exhaustion of domestic remedies

a) A person who has raised in substance, before the national courts the complaints he or she makes before the Commission, has exhausted domestic remedies The applicant may, instead of invoking a precise provision of the Convention, raise equivalent arguments before the national authorities

b) This provision must be applied with some degree of flexibility and without excessive formalism

Six month time-limit

a) The six month period has a double aim: to ensure legal certainty and to provide the persons concerned with sufficient time to evaluate the desirability of submitting an application to the Commission and to decide on the content thereof

b) The six month time limit is a rule which must be interpreted and applied in a given case in such a manner as to ensure effective exercise of the right of individual petition

c) As regards complaints not included in the application itself, the running of the six month period is not interrupted until the date on which the complaint is first submitted to the Commission

d) The six month period begins to run on the day after the date on which the final domestic decision was given orally in public. Here, final domestic decision pronounced on 3 April 1995: compliance with six-month time limit as application introduced on 4 October 1995

e) In the case of a complaint under Article 6 para. 2, applicants must have access to the text of the judgment they are challenging so that they can construct their arguments

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THE FACTS

The applicants are French citizens living in Paris. The first applicant, who was born in 1921, is a journalist and former Publishing Director of the weekly publication *Le Canard Enchaîné*. The second applicant, who was born in 1939, is a journalist on *Le Canard Enchaîné*.

The applicants were represented before the Commission by Ms Claire Waquet, a member of the *Conseil d'Etat* and Court of Cassation Bar, and by Ms Christine Courregé, a lawyer practising in Paris.

The facts, as submitted by the parties, may be summarised as follows.

A *Particular circumstances of the case*

In September 1989, a major industrial dispute arose within the Peugeot motor company over pay rises claimed by the workforce and refused by the management, led by Mr Jacques Calvet, the company President.

On 27 September 1989, the weekly satirical paper, *Le Canard Enchaîné*, published an article by the second applicant giving details of Mr Calvet's salary taken from photocopies of his income tax notices for the years 1986 to 1988. The figures quoted were official ones, calculated by the tax authorities for the purpose of assessing the amount of tax due The paper printed a facsimile of part of each tax notice, showing the amounts received by Mr Calvet by way of emoluments and salary.

The article revealed Mr Calvet's salary, which amounted to 1,523,980 French francs (FRF) in 1986 as against FRF 1,786,171 in 1987 (that is, an increase of 17%) and FRF 2,223,747 in 1988 (that is, an increase of 24% in one year or 45.9% over two years). The headline was: "Calvet turbo-charges his salary", with the subtitle: "His tax forms say more than he does. The boss of Peugeot has awarded himself a 45.9% rise over two years."

In the article, the journalist stated that the tax documents had "come into his hands by chance"

On 2 October 1989, Mr Calvet filed a criminal complaint against person or persons unknown, together with an application to join the proceedings as a civil party claiming damages, with the senior investigating judge attached to Paris *tribunal de grande instance*. Mr Calvet submitted that the events in question must have involved the unlawful removal and/or possession of the originals or copies of documents normally kept by the tax authorities and amounted to the offences of misappropriation of deeds or documents by a public servant, breach of the duty of professional confidentiality, misappropriation of documents for the time needed to reproduce them and handling stolen documents.

On 5 October 1989, the public prosecutor requested the investigating judge to open an investigation into allegations of theft, breach of the duty of professional confidentiality, unlawful removal of deeds or documents by a public servant and handling stolen goods.

On 25 October 1989, the Minister for the Budget also filed a criminal complaint, together with an application to join the proceedings as a civil party claiming damages, against person or persons unknown for unlawful removal of government documents and breach of professional confidentiality On 11 December 1989 the public prosecutor requested that a further investigation be opened

An analysis of the computer reference number on the photocopied documents in the second applicant's possession revealed that they were photocopies of that part of the tax notices which is kept by the tax authorities and not intended to leave their premises.

An inspection of the premises confirmed that the locks on the cupboards containing the documents had not been forced and that the alarm protecting the premises outside working hours had not gone off.

The person or persons responsible for unlawfully removing the documents from the tax authorities' premises could not be identified and so no one was ever charged under that head.

On 8 March 1991, the applicants were charged with handling copies of tax notices obtained through a breach of professional confidentiality, unlawful removal of deeds or documents and theft

Numerous witnesses were questioned An examination of the original of Mr Calvet's tax notice for 1988 revealed a palm-print belonging to the Divisional Director of Taxes However, it was asserted that this person had called up the relevant tax file on 27 September 1989 at the request of the Head of the Revenue and the Director of Taxes for the *département*

The first applicant stated that he had seen the extracts from the tax notices which were printed in the paper for the first time just before personally passing the article for press He acknowledged that, as a general rule, passing copy for press was the responsibility of the editor's personal assistant, who "consults the editor in difficult cases, and, in the last resort," the Publishing Director

The second applicant stated that he had been sent the photocopies of the tax notices anonymously He added that he had checked with various persons to ensure that they were "genuine"

On 20 December 1991, the public prosecutor filed a report recommending that no one should be charged with the offences of theft or breach of the duty of professional confidentiality, that the charges against the first applicant should be dropped, and that the second applicant should be committed for trial before the Criminal Court on charges of handling photocopies of Mr Calvet's tax notices obtained through a breach of the duty of professional confidentiality by an unidentified tax official

On 27 January 1992, the investigating judge ordered that, as the culprit had not been identified, the proceedings for theft and breach of professional confidentiality should be discontinued The judge committed both applicants for trial before the Criminal Court on charges of handling confidential information concerning Mr Calvet's income obtained through a breach of professional confidentiality by an unidentified tax official, and of handling stolen photocopies of tax notices relating to Mr Calvet

There were two limbs to the applicants' defence first, that section 42 of the Freedom of the Press Act of 29 July 1881, which deals with the criminal liability of Publishing Directors, did not apply to the first applicant's case, and secondly, that the offences in question, defined in section 460 of the Criminal Code were not made out in their case

In a judgment of 17 June 1992, Paris Criminal Court acquitted the applicants, holding that the principal offences - of theft and breach of the duty of professional confidentiality - had not been made out because it had proved impossible to identify those responsible or to establish the circumstances in which they had been committed, so that the offence of handling the fruits of those offences could not be made out either

The court held as follows

" .. the fact that the status and professional functions of the source of the leak are unknown therefore rules out any possibility of proving one of the essential elements of the offence of breach of the duty of professional confidentiality.

Consequently, there is no formal proof that this offence was committed, so that the charge against the defendants of handling the fruits of a breach of professional confidentiality is not made out ... .

In particular, it has not been shown that the person who originally copied the documents had any unlawful intention or had such an intention at the time of taking the documents

Hence, without the need to make further reference to the numerous unanswered questions as to how these documents found their way into Mr Roire's hands, we find that the elements of the offence of theft have not been sufficiently established

Unless it can be precisely established that, in the first place, an act defined as a serious crime [*crime*] or major offence [*délit*] was committed, and its elements can be made out, the prerequisite for an offence of handling is lacking, and the defendant must be acquitted."

The public prosecutor and civil parties claiming damages appealed against this judgment.

In response to the appeal, the applicants repeated the grounds of defence which they had raised before the Criminal Court

In a judgment of 10 March 1993, Paris Court of Appeal reversed the judgment and found the applicants guilty of handling photocopies of Mr Calvet's tax notices obtained through a breach of the duty of professional confidentiality by an unidentified tax official

The Court of Appeal held that the principal offence of violation of the duty of professional confidentiality was made out once it was established that no one but a tax official could have had access to the documents in question, removed them and sent them to *Le Canard Enchaîné*

Further, the Court of Appeal held that the *actus reus* and *mens rea* of the offence of handling the fruits of a breach of professional confidentiality were present: in the case of the second applicant, in his capacity as the author of the article, because of the checks he had carried out in order to assure himself of the authenticity - and thus the provenance - of the tax notices; and in the case of the first applicant, in his capacity as Publishing Director of the paper, since he, and not the editor's personal assistant, had been asked to pass the article for press.

The Court of Appeal held as follows

" the result of the investigations show that only a tax official, familiar with the department, could have leaked the documents, since no outside party had requested Jacques Calvet's file and that file was found, on the morning of 27 September 1989, in its normal condition, with the documents filed according to the particular practice of Chaillot Tax Office It is certain that a third party, someone who was not a civil servant or was from outside the tax department, could not - without attracting attention - have taken documents filed in two separate places in the file, photographed or photocopied them and put them back in exactly the right place, given that the file is kept in a metal cupboard in a locked room to which there is no access without proof of authorisation

Contrary to the lower court, we therefore hold that, in this case, it has been established that the offence of breach of the duty of professional confidentiality was committed, and that it does not matter that the culprit has not been identified

Claude Roire told the investigating judge that the photocopies of Jacques Calvet's tax notices were sent to him anonymously at the paper, in an envelope addressed to him personally He confirmed that he had questioned various people in order to ensure that they were indeed copies of genuine tax notices

Claude Roire's article containing a reproduction of the documents in question was submitted to Roger Fressoz, the Publishing Director of *Le Canard Enchaîné*, who, personally, passed it for press

Roger Fressoz told the investigating judge that he had not seen the extracts from Jacques Calvet's tax notices until that moment He explained that - as a general rule - copy is passed for press by the editor's personal assistant, who consults the editor in difficult cases and, in the last resort, himself

The offence of handling the fruits of a breach of professional confidentiality was committed, in the instant case, by the publication of documents obtained in breach of the provisions of section L 103 of the Tax (Procedures) Code and section 378 of the Criminal Code, and it was committed by Claude Roire and Roger Fressoz given that, in the light of the nature of the documents and of the checks which Claude Roire says he carried out, the defendants must have known that those documents came from a tax file Moreover, this explains why the article was passed for press by Roger Fressoz, the Publishing Director, and not the editor's personal assistant or the editor It is worth recalling that, although Roger Fressoz was not the person to whom the documents were sent, he saw them before giving, personally, the authorisation to publish the artice reproduc ing extracts from them Therefore, both the *actus reus* and the *mens rea* of the

offence of handling the fruits of a breach of the duty of professional confidentiality are present in his case as well as in that of the author of the article, Claude Roire

The Court of Appeal sentenced Mr Fressoz to a fine of FRF 10,000 and Mr Roire to a fine of FRF 5,000 and ordered them, jointly and severally, to pay Mr Calvet the sum of FRF 1 by way of damages for non pecuniary damage

The applicants appealed to the Court of Cassation on a point of law The first applicant submitted that the conditions laid down in sections 6 and 42 of the Act of 29 July 1881, under which he would be criminally liable in his capacity as Publishing Director, were not met in his case Both applicants argued that the elements of the offence of which they had been convicted, as defined in the applicable domestic law, including sections 5, 6 and 42 of the 1881 Act, were not made out in their case

On this point, they argued, first, that Mr Calvet's income was not a matter to which a duty of professional confidentiality applied, so that there could not have been a breach of such a duty They pointed out that the Court of Appeal had not shown how the *actus reus* and *mens rea* of the offence of handling namely possession or control of the thing in question and knowledge that it was obtained unlawfully - were made out in their case

The applicants also complained that the principle of the presumption of innocence had been breached in their case, invoking Article 7 of the Declaration of the Rights of Man and Article 7 of the Convention They argued that the Court of Appeal had worked on the mere supposition that the source of the leaked tax notices was a tax official, whereas the culprit had not been identified and the possibility of the document having come into the possession of someone not bound by a duty of professional confidentiality could not be ruled out The first applicant in particular claimed that the judgment under appeal had not established that he had the necessary *mens rea* for the offence, but had convicted him solely on the grounds of his position as the Publishing Director and as the person who had passed the article for press

In a judgment of 3 April 1995, the Court of Cassation dismissed the appeal, holding that the Court of Appeal's findings - first, that the removal of the tax notices from the premises of the tax authorities constituted an offence, and, secondly, that the applicants had known that those documents had been obtained unlawfully - fell within the exclusive jurisdiction of the tribunals of fact

The Court of Cassation held as follows

The grounds [of the Court of Appeal's judgment] following as they do from findings of fact which are not subject to review by the Court of Cassation, show that the judges of appeal, having established that the defendants knowingly had

in their possession or control documents obtained through a breach of professional confidentiality contrary to section L. 103 of the Tax (Procedures) Code, did not misdirect themselves in law as alleged by the defendants

In particular, the Court of Appeal cannot be held to have misinterpreted section 460 of the Criminal Code then in force, in which the only offence defined is that of handling stolen goods, since, although it found the applicants guilty of handling photocopies, it rightly dismissed the charge of handling information, on which the journalists were committed for trial before the Criminal Court

It is true that information, of whatever kind and whatever its source, is not covered by either section 460 or section 321(1) of the Criminal Code which came into force on 1 March 1994, so that, if applicable - that is, if it were published, and that publication were challenged by the persons concerned - the only issues it would raise would be under those legal provisions specifically concerning the freedom of the press or of audiovisual communication "

The applicants were informed of the dismissal of their appeal in a letter from the Principal State Counsel at Paris Court of Appeal, dated 5 May 1995

B *Relevant Domestic Law*

Press Freedom Act (Law of 29 July 1881)

Section 5 provides "Any newspaper or periodical may be published without prior authorisation or the payment of any security, following a declaration "

Section 6 provides "All press publications must have a Publishing Director "

Section 42 provides that Publishing Directors "are liable to be punished as principals for serious crimes and major offences committed through the press"

Section L. 103 of the Tax (Procedures) Code

"The duty of professional confidentiality, as defined in section 378 of the Criminal Code, applies to everyone whose duties or powers require them to take any action concerning the assessment, inspection or recovery of, or disputes over, any taxes, duties, imposts or levies referred to in the General Tax Code Any information obtained in the course of these operations shall be confidential "

Section 460 of the old Criminal Code

"Anyone who knowingly handles any goods (or any part thereof) taken, misappropriated or obtained by means of a serious crime (*crime*) or major offence (*délit*) shall be liable to between three months' and five years' imprisonment and/or a fine of between FRF 10,000 and FRF 2,500,000 or an increased fine of up to half the value of the goods handled where this would exceed FRF 2,500,000

COMPLAINTS

1 The applicants submit that their conviction by the Court of Appeal, which was upheld by the Court of Cassation, constitutes a violation of the freedom of expression as guaranteed by Article 10 of the Convention

They claim that the Court of Appeal and the Court of Cassation infringed the right to freedom of expression in two ways first, by using tax officials' duty of confidentiality against journalists, and secondly, by punishing journalists for publishing information which had been verified and which was accompanied by proof of its veracity

2 In their further submissions, dated 4 October 1995, the applicants allege that the principle of the presumption of innocence guaranteed by Article 6 para 2 of the Convention has been breached in their case

They argued that, in order to establish that the offence of handling documents obtained through a breach of the duty of professional confidentiality had been committed, the courts dealing with the case should have shown that the documents had in fact been removed and sent to them by someone bound by that duty They point out, however, that the identity of that person has never been established, so that the courts could not rely on a breach of the duty of professional confidentiality The Court of Appeal simply affirmed that it is certain that an outsider could not have had access to the documents in question, without establishing why this was certain, and, thus, found that the offence of handling had been made out on the basis of a mere presumption, without having established that the documents reproduced had been removed and leaked by a person subject to the duty of professional confidentiality

The first applicant also complains that intention - an essential element of the offence of handling in French law was found to exist in his case simply on the basis that he, in his capacity as Publishing Director of the paper had passed the article for press, something which, according to him, in no way proves that he knew that the document had been obtained unlawfully

He explains that the title of Publishing Director is a specific concept created by the 1881 Press Freedom Act According to this Act, the Publishing Director is presumed liable for any criminal offences arising out of the exercise of freedom of

expression (such as defamation or insult) On the other hand the Publishing Director is not presumed liable for so-called general-law offences (such as handling or theft) committed through an organ of the press In such cases, the prosecution must prove who actually committed the offence, instead of being able to rely, as in the case of defamation or insult, on the presumption that the guilty party is the Publishing Director

THE LAW

1 The applicants submit that their conviction by the Court of Appeal, which was upheld by the Court of Cassation, constitutes a violation of their right to freedom of expression as enshrined in Article 10 of the Convention, which provides as follows

> 1 Everyone has the right to freedom of expression This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers
>
> 2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society for the protection of the reputation or rights of others for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary

a The respondent Government raise a preliminary objection to the effect that domestic remedies have not been exhausted They consider that the applicants never raised either expressly or in substance, the issue of freedom of expression before the national courts, despite the fact that such a claim is admissible, and that it has not been shown that it had no prospect of success

According to the Government, the provisions of the Act of 29 July 1881 relied on by the applicants in their appeal to the Court of Cassation bear no relation to the freedom of communication or protection of the freedom of information, being concerned only with the legal requirements for press-publishing (a prior declaration and the appointment of a Publishing Director) and with the persons liable for serious crimes and major offences committed through the press (that is, first and foremost, the Publishing Director)

The Government point out that the applicants referred only to Article 7 of the Declaration of the Rights of Man of 1789 and not to Article 11 which proclaims the freedom of communication

According to the Government, the arguments raised by the applicants in their appeal to the Court of Cassation did not seek to claim that a strict application of the rules concerning handling offences would inevitably lead to a violation of the right to freedom of expression The Court of Cassation, for its part, did not see itself as ruling on the limits of the freedom of information when holding that the correct charge was

that of handling stolen goods, not stolen information It confined itself to defining the scope of section 460 of the old Criminal Code, which dealt with the offence of handling stolen goods, and to responding to one of the appellants' arguments Therefore, the Court of Cassation was not asked to rule on the limits of the freedom of information

Still according to the Government, the applicants confined themselves to arguing that they could not lawfully be convicted, since the offences with which they were charged could not be made out, because one or more of the requisite elements was not present On the other hand, they did not attempt to show whether in the alternative, implicitly or incidentally that there was a contradiction between their conviction and the right to freedom of expression

The applicants reply that they did raise, before the Court of Cassation, their allegation of a violation of Article 10 of the Convention

They invoked the Act of 29 July 1881 which lays down the principle of the freedom of the press and defines what restrictions of that freedom are permissible According to the applicants, that Act is a French version of the principles enshrined in Article 10

In the first ground of appeal the first applicant argued that the trial courts were not entitled to convict him, in his capacity as a Publishing Director within the meaning of the Act of 29 July 1881, of a general law handling offence but only of one of the offences specifically referred to in the above-mentioned Act

The second ground of appeal was concerned with the limits of the right to freedom of information, with the applicants arguing that a general-law offence such as handling could not have the effect of limiting such a right They submitted that Mr Calvet's tax notices did not fall within the domain of confidential information They argued that journalists could not lawfully be convicted of handling information" the publication by a journalist of information received from a person bound by a duty of confidentiality could not constitute a criminal offence They disputed the Court of Appeal's assessment of the necessary *mens rea* for the offence in the case of journalists or Publishing Directors

According to the applicants, the Court of Cassation did pronounce on the limits of journalists' right to information, holding that - as a matter of principle - a distinction must be made between the information itself (the handling of which cannot constitute an offence under the general law) and the physical means whereby that information is communicated (whose publication may constitute the general-law criminal offence of handling stolen goods')

The Commission recalls that Article 26 of the Convention must be applied with some degree of flexibility and without excessive formalism , it is sufficient that the complaints intended to be made subsequently before the Convention organs should be raised at least in substance and in compliance with the formal requirements and time limits laid down in domestic law" (see *inter alia*, Eur Court HR, Castells v Spain judgment of 23 April 1992, Series A no 236, p 19, para 27)

The applicants rely on Article 10 of the Convention in two respects tax officials' duty of confidentiality should not be used against journalists, and journalists should not be punished for publishing information which they have verified and which is accompanied by proof of its veracity

The Commission considers that the applicants did raise these issues before the Court of Cassation They submitted, first, that Mr Calvet's income was not a confidential matter, so that publishing that information could not have constituted a breach of the duty of confidentiality, secondly, that information, which could not be physically taken, could not form the subject matter of a handling offence, and, finally, that the Court of Appeal had found them guilty of handling stolen goods, not on the grounds that they had had possession or control of such information but simply because they had divulged it by way of 'publication'

The Commission notes that the applicants relied on the Press Freedom Act of 29 July 1881, claiming that several of its provisions had been breached This leads the Commission to conclude that they submitted a ground of appeal based on domestic law which was equivalent or similar to pleading Article 10 of the Convention The applicants were claiming the right, in their capacity as journalists, to publish a copy of a tax notice sent to them anonymously, which is manifestly a right inherent in the freedom to impart information in the specific case of journalists The Commission infers from this that the applicants did raise the question of freedom of expression Thus the Court of Cassation was invited to rule on the scope of journalists' right to information and did so in the final ground of its judgment, by setting out the distinction between the law applying to information itself and that applying to the physical means of imparting that information (see especially the Castells v Spain judgment op cit p 192, para 30) Therefore, the Commission considers that the present case is distinguishable from that of Ahmet Sadik v Greece, in which the applicant had merely defended himself against the charge against him (Eur Court HR, judgment of 15 November 1996, to appear in Reports of Judgments and Decisions 1996-I, para 33)

The applicants also relied on the right to be presumed innocent, a complaint which is closely linked to the alleged violation of Article 10 of the Convention Moreover the Court of Cassation did not distinguish between these arguments when making the distinction referred to above (see the Castells v Spain judgment, op cit , p 20, end of para 30)

No doubt the reason why the appeal failed is to be found in the limited jurisdiction of the Court of Cassation, which hears appeals on points of law only and cannot review findings of fact, which are the exclusive jurisdiction of the trial courts The main thrust of the Court of Cassation judgment was to define the legal principles applicable to the publication of confidential information

In these circumstances, the Commission considers that the objection of non-exhaustion of domestic remedies must be rejected

b On the merits, the Government submit that the complaint is manifestly ill-founded They acknowledge that the applicants' conviction constitutes an interference within the meaning of Article 10 para 1 of the Convention However, they argue that that interference was prescribed by law (sections 460 of the old Criminal Code and L 103 of the Tax (Procedures) Code) and was necessary for the protection of the reputation or rights of others and "for preventing the disclosure of information received in confidence ' within the meaning of Article 10 para 2

According to the Government, the conviction pursued the legitimate aim, first, of protecting Mr Calvet's reputation, since the information published concerned the amount of his earnings in his capacity as the president of a company involved in a pay dispute

Secondly, the conviction aimed to prevent the disclosure of confidential information, covered by the duty of professional confidentiality to which tax officials are subject pursuant to section L 130 of the Tax (Procedures) Code

The Government went on to argue that the interference was necessary ' in a democratic society to achieve these aims

Restrictions on the freedom of expression must be looked at in the light of the duties and responsibilities of the persons concerned this is what justifies imposing a duty of discretion on public servants (see No 11389/85, Dec 3 5 88, D R 56, p 127 and Eur Court HR, Hadjianastassiou v Greece, judgment of 16 December 1992, Series A no 252) Similarly, the Commission found the conviction of a journalist who had published a confidential parliamentary document justified by the fact that, in the light of his work, the applicant had the duty and responsibility to be aware of the confidential nature of the document (see No 10343/83, Dec 6 10 83 Z v Switzerland, D R 35 p 224)

According to the Government, the applicants' conviction was proportionate to the aims pursued, since the offence of handling stolen photocopies would not have been made out had the applicants simply published the information relating to Mr Calvet's income, without also publishing a facsimile of the tax notices In that case, they could, admittedly, have been prosecuted for criminal defamation committed through the press but the Court of Cassation allows journalists to publish proof of the truth of their assertions, and thus to defend themselves against the charge of criminal defamation, even if such proof has been obtained unlawfully, as in the instant case (see *Cass crim* 15 6 93, *Bull crim* No 210) Under those conditions, the applicants could impart the information at their disposal freely

The Government claim that the information published did not bear on a matter of public concern as defined in the case-law (Eur Court HR Thorgeir Thorgeirson v Iceland, judgment of 25 June 1992, Series A no 239) It aimed to undermine Mr Calvet's position and to put him, personally, in a difficult situation given the background of the industrial dispute Moreover, treating the publication of tax notices

as a criminal offence does not deprive the public of any possibility of being informed on the subject: section L. 111 of the Tax (Procedures) Code authorises taxpayers to consult the list of taxable persons in their locality and to find out their taxable income and the amount of tax payable by them.

The applicants dispute this argument. They deny that the information which they published concerning the income of the president of a car company was in any way confidential, claiming that, under French law, publishing information about a person's finances, without any reference to that person's life or personality, is not prohibited by the law on the protection of private life. The same must apply, *a fortiori*, where that person is a public figure playing a part in the economic life of the country. They argue that the information itself was not confidential; the duty of confidentiality in tax matters binds only persons working for the tax authorities.

The applicants argue, further, that the article was not aimed at Mr Calvet's reputation or rights, but at the management of his company, which was involved in an industrial dispute. The debate went beyond Mr Calvet as a private individual: his character, the nature of his job, the importance of the industrial dispute and of the company concerned all lent themselves to public debate.

The applicants claim that their conviction was not justified under Article 10 para. 2 of the Convention. The duty of confidentiality affected only tax officials and not the information itself and thus could not be extended to journalists. They could not have known that the information had been obtained as a result of a breach of professional confidentiality since the domestic courts had not been able to establish this despite a two year investigation. In publishing a facsimile of the tax notices, they were demonstrating the truth of their information and fulfilling their duty as journalists. Moreover, Mr Calvet had not really complained because the facsimile had been published, but because his income had been revealed.

Following a preliminary examination of the parties' arguments, its own case law and that of the Court, the Commission considers that the applicants' complaint raises sufficiently complex issues of law and fact for their determination to require an examination of the merits of the case. Consequently, the complaint cannot be declared manifestly ill founded within the meaning of Article 27 para. 2 of the Convention. No other ground for declaring it inadmissible has been established.

2. In their further submissions dated 4 October 1995, the applicants allege a violation of the principle of the presumption of innocence as guaranteed by Article 6 para. 2 of the Convention.

a. The Government claim that this complaint is inadmissible as out of time. The Court of Cassation gave judgment at a public hearing on 3 April 1995. Thus, on that date, the applicants should have had a sufficiently clear grasp of its content. Moreover, as early as 4 April 1995, the press reported the content of the judgment and indicated that the applicants intended to apply to the Commission. Therefore, the six month period started to run on 3 April 1995, so that the further submissions were out of time.

The applicants acknowledge that they learned the gist of the Court of Cassation's judgment as soon as it was pronounced However, they consider that the six-month period did not start running until they were officially served with the notice of dismissal of their appeal by the Principal State Counsel at Paris Court of Appeal, on 5 May 1995

The Commission notes that, under Article 26 of the Convention, it may only deal with a matter " within a period of six months from the date on which the final decision was taken"

The Commission recalls that, as regards any complaint not included in the application itself, the running of the six-month period is not interrupted until the date on which the complaint is first submitted to the Commission (No 10293/83, Dec 12 12 85, D R 45, p 41)

The purpose of the period laid down in Article 26 of the Convention, apart from its primary objective of safeguarding legal certainty (see No 9587/81, Dec 13 12 82, D R 29, p 228 and No 10089/84, Dec 11 5 88, D R 56, p 40), is to give the applicant sufficient time to evaluate the desirability of submitting an application to the Commission and to decide on the content thereof The rule contained in Article 26 must be interpreted and applied in a given case in such a manner as to ensure to any applicant claiming to be the victim of a violation by one of the Contracting Parties of one of the rights set out in the Convention or its Protocols the effective exercise of the right of individual petition provided by Article 25 of the Convention (see No 22714/93, Dec 27 11 95, D R 83, p 17)

In the instant case, the Commission notes that the final domestic decision was the Court of Cassation judgment given in public on 3 April 1995 It takes the view that, since the applicants had raised an issue under Article 6 para 2 of the Convention, they or the lawyer representing them before the Court of Cassation needed a copy of the written judgment in order to construct their arguments challenging it (see No 9299/81, Dec 13 3 84, D R 36, p 20) There is nothing to suggest that the applicants or their lawyer could start doing this on 3 April 1995, the date on which the judgment was pronounced at a public hearing - which, moreover, they had no obligation to attend (see, *a contrario*, No 5759/72, Dec 20 5 76, D R 6, p 15)

For these reasons, the Commission considers that, in the instant case, the six-month period did not start running on 3 April 1995 but, at the earliest, on 4 April 1995, that is, six months to the day before the complaint was submitted to the Commission on 4 October 1995

It follows that the Government's objection that the complaint was submitted out of time must be rejected

b The Government submit that the complaint is incompatible *ratione materiae* with the provisions of the Convention They argue that the applicants are really seeking to

challenge the grounds of their conviction rather than its validity from the point of view of Article 6 para 2 According to the Government, that Article is essentially concerned with the judge's attitude during the trial and not at all with the submission, taking and assessment of evidence which fall under Article 6 para 1

As regards the merits the Government consider that in any event, the applicants' conviction was well founded and full reasons for it given The Court of Appeal did not rely on inference or presumption but established that the applicants were guilty With regard to the first applicant, the Government consider that the Court of Appeal did not hold him automatically liable simply because he was the Publishing Director, he was convicted for having actively participated in the publication of the relevant article, in two ways having checked the provenance of the tax notices and having passed the article for press in place of the editor's personal assistant, because, as he himself had admitted, it was problematic

The applicants contest this argument They claim that the Court of Appeal convicted them simply on the basis that the source of the tax notices could only be a tax official, without determining that person's identity or - despite a lengthy investigation proving that he or she was indeed subject to a duty of professional confidentiality The first applicant's conviction was based solely on his capacity as the Publishing Director and, hence, was predetermined, with the balance of proof being completely shifted According to the applicants, the Court of Appeal never found as a fact that the first applicant knew that the document had been obtained unlawfully that is through a breach of the duty of professional confidentiality

Following a preliminary examination of the parties' arguments and taking account of its conclusion with regard to Article 10 of the Convention the Commission considers that the applicants' complaint under Article 6 para 2 of the Convention, including the issue of whether it is incompatible *ratione materiae* as claimed by the Government, also raises sufficiently complex issues of fact and law for their determination to require an examination of the merits of the case Consequently this complaint cannot be declared manifestly ill founded within the meaning of Article 27 para 2 of the Convention No other ground for declaring it inadmissible has been established

For these reasons, the Commission, by a majority,

DECI ARES THE APPLICATION ADMISSIBLE, without prejudging the merits