

Press release issued by the Registrar

**CHAMBER JUDGMENT
LEROY v. FRANCE**

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Leroy v. France* (application no. 36109/03).

The Court held unanimously that there had been

- **no violation of Article 10** (freedom of expression) of the European Convention on Human Rights in respect of the applicant's conviction for complicity in condoning terrorism;
- a **violation of Article 6 § 1** (right to a fair hearing within a reasonable time) of the Convention on account of the failure to communicate to the applicant the reporting judge's report to the Court of Cassation.

Under Article 41 (just satisfaction), the Court concluded unanimously that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by Mr Leroy and awarded him 1,000 euros (EUR) for costs and expenses. (The judgment is available only in French.)

1. Principal facts

The applicant, Denis Leroy, is a French national who was born in 1966 and lives in Bayonne (France). He is a cartoonist, and works in this capacity for various local publications, including the Basque weekly newspaper *Ekaitza*, which has its head office in Bayonne.

The case concerned the applicant's conviction for complicity in condoning terrorism, following the publication of a drawing which concerned the attacks of 11 September 2001.

On 11 September 2001 the applicant submitted to *Ekaitza*'s editorial team a drawing representing the attack on the twin towers of the World Trade Centre, with a caption which parodied the advertising slogan of a famous brand: "We have all dreamt of it... Hamas did it". The drawing was published in the newspaper on 13 September 2001. In its next issue, the newspaper published extracts from letters and emails received in reaction to the drawing.

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Following publication of the drawing, the Bayonne public prosecutor brought proceedings against the applicant and the newspaper's publishing director on charges of complicity in condoning terrorism and condoning terrorism.

In January 2002 the court convicted them of these charges and ordered them to pay a fine of EUR 1,500 each, to publish the judgment at their own expense in *Ekaitza* and two other newspapers and to pay costs. In September 2002 the Pau Court of Appeal upheld the judgment of the first-instance court. In particular, it held that "by making a direct allusion to the massive attacks on Manhattan, by attributing these attacks to a well-known terrorist organisation and by idealising this lethal project through the use of the verb 'to dream', [thus] unequivocally praising an act of death, the cartoonist justifies the use of terrorism, identifies himself through his use of the first person plural ("We") with this method of destruction, which is presented as the culmination of a dream and, finally, indirectly encourages the potential reader to evaluate positively the successful commission of a criminal act."

The Court of Cassation dismissed the main part of an appeal on points of law lodged by the applicant.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 12 November 2003.

Judgment was given by a Chamber of seven judges, composed as follows:

Peer **Lorenzen** (Danish), *President*,
Jean-Paul **Costa** (French),
Volodymyr **Butkevych** (Ukrainian),
Renate **Jaeger** (German),
Mark **Villiger** (Swiss),
Isabelle **Berro-Lefèvre** (Monegasque),
Mirjana **Lazarova Trajkovska** (citizen of "the former Yugoslav Republic of Macedonia"),
judges,

and also Claudia **Westerdiek**, *Section Registrar*.

3. Summary of the judgment¹

Complaints

Relying on Article 10 (freedom of expression), Mr Leroy complained about his conviction for complicity in condoning terrorism. In addition, he complained under Article 6 § 1 (right to a fair trial) that the proceedings in the Court of Cassation had been unfair.

Decision of the Court

Article 10

¹ This summary by the Registry does not bind the Court.

The Court considered that the applicant's conviction amounted to an interference with the exercise of his right to freedom of expression. This interference was prescribed by French law and pursued several legitimate aims, having regard to the sensitive nature of the fight against terrorism, namely the maintenance of public safety and the prevention of disorder and crime. It remained to be determined whether this interference was "necessary in a democratic society".

The Court noted at the outset that the tragic events of 11 September 2001, which were at the origin of the impugned expression, had given rise to global chaos, and that the issues raised on that occasion were subject to discussion as a matter of public interest.

The applicant complained that the French courts had denied his real intention, which was governed by political and activist expression, namely that of communicating his anti-Americanism through a satirical image and illustrating the decline of American imperialism. The Court, however, considered that the drawing was not limited to criticism of American imperialism, but supported and glorified the latter's violent destruction. In this regard, the Court based its finding on the caption which accompanied the drawing, and noted that the applicant had expressed his moral support for those whom he presumed to be the perpetrators of the attacks of 11 September 2001. Through his choice of language, the applicant commented approvingly on the violence perpetrated against thousands of civilians and diminished the dignity of the victims.

Although the domestic courts had not taken the applicant's intentions into account, they had examined whether the context of the case and the public interest justified the possible use of a measure of provocation or exaggeration. In this respect, it had to be recognised that the drawing had assumed a special significance in the circumstances of the case, as the applicant must have realised. He submitted his drawing on the day of the attacks and it was published on 13 September, with no precautions on his part as to the language used. In the Court's opinion, this factor - the date of publication - was such as to increase the applicant's responsibility in his account of, and even support for, a tragic event, whether considered from an artistic or a journalistic perspective. In addition, the impact of such a message in a politically sensitive region, namely the Basque Country, was not to be overlooked; the weekly newspaper's limited circulation notwithstanding, the Court noted that the drawing's publication had provoked a certain public reaction, capable of stirring up violence and demonstrating a plausible impact on public order in the region.

Consequently, the Court considered that the grounds put forward by the domestic courts in convicting the applicant had been "relevant and sufficient".

In conclusion, having regard to the modest nature of the fine imposed on the applicant and the context in which the impugned drawing had been published, the Court found that the measure imposed on the applicant had not been disproportionate to the legitimate aim pursued. Accordingly, there had not been a violation of Article 10.

Article 6 § 1

Reiterating its constant case-law on this matter, the Court concluded that there had been a violation of Article 6 § 1 on account of the failure to communicate to the applicant the report by the reporting judge. The Court further held that it was not necessary to examine separately

the complaint alleging a failure to provide information as to the date of the hearing before the Court of Cassation.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.