

Ruling no 26 of 6 January 2021 (19-21.718) – Cour de cassation (*Court of cassation*) - First Civil Chamber
-ECLI:FR:CCAS:2021:C100026

Freedom of expression and presumption of innocence: “balancing of rights” approach in the light of ECHR case law.

Only the french version is authentic

Protection of individual rights

Dismissal

Appellant(s): Mr A... X...

Respondent(s): Mandarin Production, simplified joint-stock company under French law, and others

Facts and Procedure

1. According to the ruling under appeal (Paris, 26 June 2019), rendered in interim proceedings, and the associated productions, Mr X... was indicted on 27 January 2016, on the charge of sexual offences against minors. These charges were allegedly committed between 1986 and 1991 while he was a priest in the diocese of Lyon. He also testified as ‘assisted witness’ (*temoin assisté*) in relation to rapes allegedly committed during the same period.

2. By an act of 31 January 2019, he had served the companies Mandarin Production, Mars Films and France 3 Cinéma with a summons to summary proceedings. This was done specifically for the purpose of obtaining an injunction to suspend the 20 February 2019 scheduled broadcast of the film “*Grâce à Dieu*” through any media, until a final court decision was issued as to his guilt.

Reviewing plea

On the eighth part of the plea , appended hereafter

3. Pursuant to Article 1014, Section 2, of the Civil Procedure Code, it is not necessary to have a specially reasoned decision on this objection, which is clearly not of a nature to warrant quashing the ruling.

On the other parts of the plea,

Statement of plea

4. Mr X... objects to the ruling to dismiss his request, whereas:

“1°/ The right to freedom of expression must be exercised with respect of the presumption of innocence. When ruling that the measure of temporary suspension of the broadcasting of the film Grace à Dieu was disproportionate, the Court itself had noted that it “necessarily had the consequence of presenting the charges on which A... X... has been indicted, in such a way that the veracity of the acts appears unquestionable”. The Court also did not note any reason that would justify a need for the film maker to undermine Mr X...’s presumption of innocence. Likewise, the Court did not note the existence of any risk that the requested suspension would block debate in the general interest, to which the film contributed. Despite the foregoing, the cour d’appel (Court of Appeal) violated Article 9-1 of the Civil Code, as well as Article 6, § 2, and Article 10, § 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

2°/ Everyone is entitled to the presumption of innocence, which implies not being publicly presented as a guilty person. In this case, the cour d’appel (Court of Appeal) expressly noted that in the film Grâce à Dieu, the acts attributed to Mr X... were presented as real and certain. However, the cour d’appel (Court of Appeal) noted that a message appears at the end of the film, in an attempt to counteract this serious violation of the presumption of innocence. The message states that “Father X... is considered innocent until proven guilty” and that “no trial date has been set”, which “informs viewers of the actual legal and judicial context”, without taking into account the particular impact of a film compared to that of a written message appearing a few seconds on the screen. Due to this, the cour d’appel (Court of Appeal) violated Article 9-1 of the Civil Code and Article 6, § 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

3°/ Everyone is entitled to the presumption of innocence, which includes not being publicly presented as a guilty person. The cour d’appel (Court of Appeal) ruling in this way resulted in its disregarding the seriousness of the infringement of Mr X...’s presumption of innocence as the subject of the film. The film “is not a documentary on the upcoming trial” and recounts “the experiences of victims who accuse the priest, who express their suffering and who fight against paedophilia within the church”. Despite noting that this choice had the precise effect of presenting Mr. X... as unquestionably guilty, the ruling of the cour d’appel (Court of Appeal) violated Article 9-1 of the Civil Code and Article 6, § 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

4°/ The violation of a person’s right to the presumption of innocence is not diminished if made from a partially fictional creative work presenting a real person without reserve as being guilty of acts that are the subject of criminal proceedings. The cour d’appel (Court of Appeal) ruling in this way resulted in disregarding the seriousness of the infringement of Mr X...’s presumption of innocence on the fact that the film “Grâce à Dieu” begins by showing a message stating “this film is a work of fiction, based on real events”, also informing the public that it is a creative work, without noting that Mr.

X...’s guilt would be clearly presented and identified by the viewer as fictitious. Despite noting the foregoing, the ruling of the cour d’appel (Court of Appeal) violated Article 9-1 of the Civil Code and Article 6, § 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

5°/ Publicly expressing a bias that assumes a person being criminally prosecuted is guilty bears the inherent risk of influencing the court in that jurisdiction, regardless of the composition of that court. The cour d’appel (Court of Appeal) had noted that “if the case were to be referred to another court, it would go before a tribunal correctionnel (Criminal Court), where professional magistrates are required to make abstraction of any media pressure. This way the film’s subject matter would not infringe on the right to a fair trial.” In noting the foregoing, the cour d’appel (Court of Appeal) violated Article 9-1 of the Civil Code and Article 6, § 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

6°/ The judge’s impartiality requires that the courts should be perceived by the litigants as the only bodies capable of ruling on the guilt of a criminally prosecuted person. The cour d’appel (Court of Appeal) had noted that “if the case were to be referred to another court, it would go before a tribunal correctionnel (Criminal Court), where professional magistrates are required to remove themselves from any media pressure. This way the film’s subject matter would not infringe on the right to a fair trial.” In noting the foregoing, the cour d’appel (Court of Appeal) violated Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, even though the mere act of allowing a public demonstration about the guilt of a criminal defendant before any trial is sufficient enough to undermine the requirement for the judge’s impartiality;

7°/ Everyone has the right to a fair trial. The cour d’appel (Court of Appeal) had held that “releasing the film on the scheduled date would not likely constitute a serious breach of fair process or of the necessity for dispassionate hearings before the criminal judge.” In noting the foregoing, it did not investigate whether the possibility of downloading or acquiring a copy of the film during the trial, was not in itself a potential infringement on Mr X...’s right to a fair trial. By doing so, the cour d’appel (Court of Appeal) deprived its decision of a legal basis with regard to the terms of Article 9-1 of the Civil Code, and Article 6, § 2, and Article 10, § 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms.”

Court’s response

5. According to Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, everyone has the right to a fair trial and everyone charged with an offence shall be presumed innocent until proven guilty according to law.

6. According to Article 10 of this Convention, everyone has the right to freedom of expression, but its exercise may be subject to certain restrictions or penalties prescribed by law which are necessary measures in a democratic society. In particular, these measures include protection of the reputation or rights of others to prevent disclosure of confidential information or to ensure judicial authority and impartiality.

7. Pursuant to Article 9-1 of the Civil Code, even in interim proceedings, the judge may impose all measures that would cease the violation of the presumption of innocence, without prejudice to reparations for damages suffered. Such infringement is deemed to have occurred if the contentious expression is carried out publicly and contains definitive conclusions that assume the guilt of a person who can be identified with respect to acts that are the subject of a judicial investigation or inquiry, or a criminal conviction that is not yet irrevocable (First Civil Chamber, 10 April 2013, appeal no 11-28.406, Bull. 2013, I, no 77).

8. The normative value of the right to the presumption of innocence and the right to freedom of expression is the same. It is up to the judge to weigh these rights against the interests at stake and to favour the solution that best protects the most legitimate interest.

9. This weighing must take into account, in particular, the content of the contentious expression, its contribution to a debate of general interest, the influence it may have on the conduct of the criminal proceedings and the proportionate nature of the requested measure (ECHR, ruling of 29 March 2016, *Bédât v. Switzerland* [GC], no 56925/08).

10. The ruling holds, first of all, that while the film retraces the journey of three people who claim to be victims of sexual acts inflicted by the priest in question when they were scouts, it reports on the denunciation of these acts to the police and the creation of an association that groups other people claiming to be victims of similar acts. It holds that, even though, following several complaints, including those from the main characters in the film, Mr X... has become the subject of a judicial investigation in progress on the day of the film's release in cinemas, it is not a documentary on the upcoming trial. It continued that the film, presented by its author as a work about giving a voice to victims of paedophilia within the Catholic Church, it is part of the discussion of current events concerning the denunciation of such acts within the Church. This makes it part of a debate of general interest which qualifies as freedom of expression, and the infringement on the right to a presumption of innocence must be limited.

11. The ruling then specifies that the film begins with a message stating "*This film is a work of fiction, based on real events,*" informing the audience that it is a creative work, and ends with another message stating "*Father X... is considered innocent until proven guilty. No trial date has been set*". This information at the end of the film appears before the credits. Therefore, all the spectators are informed of this presumption of innocence on the day of the film's release. The ruling notes, via previously established grounds, that the elements set out in the film were already known to the public. It also adds that a possible trial for Mr X... is not even scheduled in the near future and that the right to a fair trial is not infringed for the person in question.

12. It states, finally, that the suspension of the release of the film until the final outcome of the criminal proceedings against Mr X... could obviously allow its release only in several years, under conditions that would result in a serious and disproportionate infringement of the freedom of expression.

13. From these findings and statements, the cour d'appel (*Court of Appeal*) proceeded to balance the interests at stake and assessed the impact of the film and the warnings given to the spectators with regard to the criminal proceedings in progress. Finding that the guilt of the person concerned would not have been assumed before he was judged, the cour d'appel (*Court of Appeal*) was not obliged to proceed with findings invoked by the first and fourth

parts of the plea, nor with requested research referred to it in the seventh part. The cour d'appel (*Court of Appeal*) legally found that suspending the release of the audiovisual work “*Grâce à Dieu*” until a final decision on his guilt was rendered would constitute a disproportionate measure to the interests at stake.

14. It follows that the plea, which is lacking in its third part and irrelevant in the fifth and sixth parts that denounce superfluous grounds, is unfounded for the remaining parts.

ON THESE GROUNDS, the Court:

DISMISSES the appeal;

President: Ms Batut

Reporting judge : Mr Chevalier

Advocate-General: Mr Lavigne

Lawyer(s): SCP Boré, Salve de Bruneton et Mégret - SCP Piwnica et Molinié