COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

CASE OF GINIEWSKI v. FRANCE

(Application no. 64016/00)

JUDGMENT

STRASBOURG

31 January 2006

FINAL

31/04/2006

In the case of Giniewski v. France,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

András Baka, *President*,
Jean-Paul Costa,
Rıza Türmen,
Karel Jungwiert,
Mindia Ugrekhelidze,
Antonella Mularoni,
Elisabet Fura-Sandström, *judges*,
and Sally Dollé, *Section Registrar*,

Having deliberated in private on 7 June 2005 and 10 January 2006,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 64016/00) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Austrian national, Mr Paul Giniewski ("the applicant"), on 13 December 2000.

2. The applicant was represented by Arnaud Lyon-Caen, Françoise Fabiani, Frédéric Thiriez, a law firm authorised to practise in the *Conseil d'Etat* and the Court of Cassation. The French Government ("the Government") were represented by their Agent, Mrs E. Belliard, Director of Legal Affairs at the Ministry of Foreign Affairs.

3. The Government of Austria, having been informed by the Registrar of their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 (a) of the Rules of Court), indicated in a letter of 29 June 2005 that they did not intend to avail themselves of that right.

4. The applicant alleged that there had been a violation of his right to freedom of expression within the meaning of Article 10 of the Convention.

5. The application was allocated to the Second Section of the Court (Rule 52 § 1). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. On 1 November 2001 and 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

7. By a decision of 7 June 2005, the Chamber declared the application admissible.

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

9. By letters of 15 June 2005, transmitted through the Registry, the Court requested the parties to submit, if they so wished, supplementary information and observations. It also asked the applicant's representative to submit his claims for just satisfaction under Article 41 of the Convention by 9 September 2005.

10. On 20 September 2005, no request for an extension of the time allowed having been received by the Court, the applicant filed further observations and his claims for just satisfaction. As these had been filed outside the time-limit, the President of the Chamber decided, under Rule 38 § 1, not to include them in the case file.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The proceedings

11. The applicant was born in 1926 and lives in Paris. He explained that he sought in all of his work to promote a rapprochement between Jews and Christians.

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

13. In its issue of 4 January 1994, the newspaper *Le quotidien de Paris* published an article written by the applicant, entitled "The obscurity of error" concerning the papal encyclical "The Splendour of Truth" ("*Veritatis Splendor*"), which had been published at the end of 1993.

14. On 18 March 1994 the association General Alliance against Racism and for Respect for the French and Christian Identity (*Alliance générale contre le racisme et pour le respect de l'identité française et chrétienne* (AGRIF)) brought proceedings before the Paris Criminal Court against Mr P. Tesson, publishing director of the newspaper, the applicant and the newspaper *Le quotidien de Paris*, as author, accomplice and the entity civilly liable respectively, alleging that, through publication of the above-mentioned article, they had made racially defamatory statements against the Christian community, an offence punishable under section 32, second paragraph, of the Freedom of the Press Act of 29 July 1881. In particular, they referred to the following passages:

"The Catholic Church sets itself up as the sole keeper of divine truth ... It strongly proclaims the fulfilment of the Old Covenant in the New, and the superiority of the latter ...

... Many Christians have acknowledged that scriptural anti-Judaism and the doctrine of the 'fulfilment' [*accomplissement*] of the Old Covenant in the New led to anti-Semitism and prepared the ground in which the idea and implementation [*accomplissement*] of Auschwitz took seed."

15. By a judgment of 4 October 1994, the Criminal Court dismissed the objections of invalidity raised by the applicant and, *inter alia*, committed the case for trial. By a judgment of 8 March 1995, the Criminal Court found established the offence of publicly defaming a group of persons on the ground of membership of a religion, in this case the Christian community. The publishing director and the applicant were both ordered to pay a fine of 6,000 French francs (FRF).

16. The Criminal Court found the AGRIF's civil application admissible and ordered the publishing director and the applicant, jointly and severally, to pay the association one franc in damages and FRF 7,000 in application of Article 475-1 of the Code of Criminal Procedure. In addition, the court ordered that its decision be published, at the defendants' expense up to FRF 10,000, in a national newspaper. In its judgment, it stated, *inter alia*:

"The Catholic Church, which is described as holding, exclusively and in error, divine truth, is accused of proclaiming its attachment to the doctrine of the fulfilment of the Old Covenant in the New Covenant, a doctrine that was reaffirmed in the encyclical 'The Splendour of Truth'. It is also stated that anti-Judaism in the Scriptures and this doctrine of fulfilment 'led to anti-Semitism and prepared the ground in which the idea and implementation of Auschwitz took seed'.

Thus, according to the author of the text, not only the idea, but even the implementation of the massacres and horrors committed at Auschwitz, the symbol of the Nazi extermination camps, was a direct extension of one of the core doctrines of the Catholic faith, namely the doctrine of the fulfilment of the Old Covenant in the New, and thus directly engages the responsibility of Catholics and, more generally, Christians.

Such a statement clearly undermines the honour and character of Christians and, more specifically, the Catholic community, and is covered by the provisions of section 32, second paragraph, of the [Freedom of the Press Act] of 29 July 1881.

... the causal link between membership of a religion and the events imputed by the impugned remarks is certainly present in this case: it is because they adhere to a religion that has allegedly displayed anti-Semitism in its past and because they acknowledge the status of the papal encyclical and the doctrine of fulfilment asserted in it that Christians and Catholics are accused of bearing some responsibility for the Auschwitz massacres.

... Even if the defendant was entitled to condemn Christianity's historical anti-Semitism and to alert the reader to any new expression or resurgence of that sentiment, by pointing out that, historically, the various Christian churches have

sometimes accepted or even encouraged the idea of 'the teaching of contempt' with regard to the Jewish people, who are described as deicidal, he nevertheless had no right, when the new papal encyclical was published reaffirming the doctrine of 'fulfilment', to use extreme terms and, through a process of generalisation, to hold the Catholic community responsible for the Nazi massacres at Auschwitz.

The witnesses questioned at the hearing, at the defendant's request and in support of his allegation of good faith, all claimed that Nazism, a racist and biological doctrine, was totally unconnected to the historical anti-Semitism of Christians and the doctrine of 'fulfilment', which concerns the full realisation of the law of God's old alliance with his people in the new alliance born of Christ's sacrifice.

Finally, the confusion made between, on the one hand, Christian anti-Semitism and the encyclical 'The Splendour of Truth', which Mr Giniewski furthermore refrained from commenting on during the hearing, and, on the other hand, the persecution of the Jews in Auschwitz, reflects personal animosity on the part of the defendant and resentment towards the Christian community which lack good faith, since the disputed statements go well beyond theoretical and theological discussion.

In this regard, the Court notes the deliberate use of the same word '*accomplissement*' to describe the organisation of the massacres in Auschwitz and the doctrine reaffirmed by the Pope in his encyclical.

It follows from these elements as a whole that proof of the defendant's good faith has not been provided."

17. The applicant appealed. In a judgment of 9 November 1995, the Paris Court of Appeal upheld, in so far as it concerned the applicant, the judgment of 4 October 1994 and overturned the judgment of 8 March 1995. The Court of Appeal acquitted the applicant and dismissed the civil party's claims against him. In particular, it held that:

"... in his article, Paul Giniewski criticises the encyclical 'The Splendour of Truth' for, in essence, enshrining within the body of theological principles the doctrine of the 'fulfilment' of the Old Covenant in the New, a doctrine he considered to contain the seeds of anti-Semitism; this criticism is expressed unambiguously in the penultimate paragraph of the article ...;

... the contention in Paul Giniewski's statements may be summarised as follows: certain principles of the Catholic religion are tainted with anti-Semitism and contributed to the Holocaust;

... the Court is fully aware of the reactions such an article could evoke within the Catholic community, even if the author claims to be reflecting the opinion of 'many Christians';

... nonetheless, ... in criticising the encyclical 'The Splendour of Truth' so strongly, Paul Giniewski opened a discussion that was both theological and historical on the scope of certain religious principles and on the origins of the Holocaust; given that it concerns exclusively doctrinal debate, the argument put forward by this author is not, as a matter of law, a specific fact that could amount to defamation ..."

18. The AGRIF appealed on points of law. In a judgment of 28 April 1998, the Court of Cassation quashed the judgment of the Paris Court of Appeal, "but only in so far as it concerned the civil action, all other provisions being expressly upheld". It remitted the case to the Orléans Court of Appeal. The Court of Cassation stated:

> "... by ruling in this way, although the impugned statements imputed incitement to anti-Semitism and responsibility for the massacres committed at Auschwitz to the Catholic community, the Court of Appeal did not give a legal basis to its decision;
>
> The judgment falls to be quashed, but only in respect of the civil action ..."

19. In a judgment of 14 December 1998, the Orléans Court of Appeal, ruling on the civil claims and following the Court of Cassation's analysis, upheld the judgments of 4 October 1994 and 8 March 1995 in so far as they concerned the applicant. The Court of Appeal made a new award of FRF 10,000 to the AGRIF on the basis of Article 475-1 of the Code of Criminal Procedure. It also ordered that the following statement be published, at the defendant's expense, in a national newspaper of the civil party's choice:

> "By a judgment of 14 December 1998, the Orléans Court of Appeal ordered Paul GINIEWSKI, journalist, to pay the General Alliance against Racism and for Respect for the French and Christian Identity (AGRIF) 1 FRANC (one) in damages, on the ground that he had committed the offence of public defamation against a group of persons on account of their membership of a religion, in the instant case the Christian community, through his publication of ... an article entitled 'As regards the Encyclical "The Splendour of Truth", The obscurity of error...' ".

20. In its judgment, the Court of Appeal noted, *inter alia*:

> "... The defendant is wrong in denying that he accused Catholics and, more generally, Christians of being responsible for the Nazi massacres; it is of little importance that this responsibility is viewed in a more or less long-term perspective, given the use of the expression 'prepared the ground';
>
> It emerges, after analysis of the documents submitted, that neither the Pope nor the [Catholic] Church of France alleges the direct responsibility of Catholics in the extermination at Auschwitz;
>
> Thus, on account of their membership of a religion, Christians are indeed victims of the offence of defamation;
>
> ... the virulence of the article's general tone, the parallel made between the 'doctrine of fulfilment' and the 'implementation of Auschwitz' and even the use of this last word, which is sufficient in itself to evoke both genocide and the extermination of opponents of the Nazi regime, rule out the possibility of the author's good faith ..."

21. The applicant appealed on points of law. As part of the single argument set out in support of his appeal, he referred to Article 10 of the Convention and claimed that his objective and sincere statements had not

been unnecessarily polemical and malicious and that they had not therefore failed to meet the requirements of good faith.

22. On 14 June 2000 the Court of Cassation dismissed the appeal on points of law on the following grounds:

> "... the Court of Cassation is satisfied from the wording of the judgment appealed against and analysis of the evidence in the case file that the Court of Appeal, in ruling that the defendant was excluded from the benefit of a finding of good faith, relied on grounds which were sufficient and free of contradictions, answered the submissions made to it and analysed the particular circumstances relied on by the defendant ..."

B. The article

23. The published article read:

"As regards the encyclical 'The Splendour of Truth'

The obscurity of error...

John Paul II's new encyclical, 'The Splendour of Truth', concerns the basis of moral theology from the perspective of Catholic teaching. It is intended to provide the faithful with answers to the questions put to Jesus by a young man in a New Testament parable: What good thing shall I do, that I may have eternal life?

Unfortunately, from the point of view of other religions and from the Jewish perspective, the Pope's text is based on two types of assertion:

1. The Catholic Church sets itself up as the sole keeper of divine truth and assumes the 'duty' of disseminating its doctrine as the sole universal teaching.

2. It strongly proclaims the fulfilment of the Old Covenant in the New and the superiority of the latter, a doctrine which propagates 'the teaching of contempt' for the Jews, long since condemned by Jules Isaac as an element in the development of anti-Semitism.

According to John Paul II, 'the task of authentically interpreting the word of God ... has been entrusted only to those charged with the Church's living Magisterium', which is consequently empowered to state that some theological and even philosophical affirmations are 'incompatible with revealed truth'. The Catholic Church is said to possess 'a light and a power capable of answering even the most controversial and complex questions'.

Non-Catholics are viewed with disdain: '... whatever goodness and truth is found in them is considered by the Church as a preparation for the Gospel.'

The passing away of Jewish religious tradition is asserted with the same arrogance.

The Law, which the Church labels 'old', merely prefigures Christian perfection. The Mosaic Decalogue is 'a promise and sign of the New Covenant'. Jesus is the 'new Moses'. The Law of Moses is only a 'figure of the true law', 'an image of the truth'.

Moses came down from Mount Sinai carrying 'tablets of stone' in his hands. The apostles carried 'the Holy Spirit in their hearts'. Christian law is 'written not with ink but with the Spirit of the living God, not on tablets of stone but on tablets of human hearts'. The prescriptions imparted by God in the Old Covenant 'attained their perfection in the New'.

For the old law was incomplete. Admittedly, it had a pedagogical function. But it was unable to give the 'righteousness' it demanded: only the new law gives grace, it 'is not content to say what must be done', but also gives the power to 'do what is true'.

We find here ideas which were already explored in the voluminous 'Catechism of the Catholic Church' of 1992. As in that unfortunate catechism, a few arrows are also fired, in line with Catholic tradition, at the Pharisees. The faithful are called to take 'great care ... not to allow themselves to be tainted by the attitude of the Pharisee', which, in our day, is expressed in adapting the moral norm to one's own capacities and personal interests, that is, in rejecting the very idea of a moral norm.

One must wonder how Catholics and the Catholic religious authorities would 'appreciate' an equivalent Jewish attack on the New Covenant.

One must also wonder how the Polish pontiff reconciles his encyclical with the exhortation in the 'Ten Points of Seelisberg' and with the requirement envisaged in the first draft of the declaration on the Jews at Vatican II, calling on Christians not to teach anything that would vilify the Jews and their doctrine.

Many Christians have acknowledged that scriptural anti-Judaism and the doctrine of the 'fulfilment' [*accomplissement*] of the Old Covenant in the New led to anti-Semitism and prepared the ground in which the idea and implementation [*accomplissement*] of Auschwitz took seed.

No consideration is given to this by the Holy See in 1993. In proclaiming the splendour of truth, it perseveres in obscurity and error."

C. The general context

24. The applicant's statements contribute to a recurrent debate of ideas between historians, theologians and religious authorities. The two most recent Popes, John Paul II and Benedict XVI, as well as the hierarchy of the Catholic Church, have discussed the possibility that the manner in which the Jews are presented in the New Testament contributed to creating hostility against them. In particular, reference is made to the "Declaration of Repentance of the Church of France" of 30 September 1997, which emphasises the Church of France's historical responsibility towards the Jewish people; the speech given on 31 October 1997 by John Paul II during a colloquy on the "Roots of Anti-Judaism in the Christian Environment"; or, more recently, the book *The Jewish People and their Sacred Scriptures in the Christian Bible*, published in 2001 by the Pontifical Biblical Commission under the direction of Cardinal Joseph Ratzinger – in its

preface, the latter writes with regard to the Shoah that "in the light of what has happened, what ought to emerge now is a new respect for the Jewish interpretation of the Old Testament".

II. RELEVANT DOMESTIC LAW

25. The relevant sections of the Freedom of the Press Act of 29 July 1881 provide as follows:

Section 29

"It shall be defamatory to make any statement or allegation of a fact that damages the honour or reputation of the person or body of whom the fact is alleged. The direct publication or reproduction of such a statement or allegation shall be an offence, even if expressed in tentative terms or if made about a person or body not expressly named but identifiable by the terms of the impugned speeches, shouts, threats, written or printed matter, placards or posters.

It shall be an insult to use any abusive or contemptuous language or invective not containing an allegation of fact."

Section 32
(Prior to amendment by Order no. 2000-916 of 19 September 2000, Article 3 (Official Gazette of 22 September 2000, in force from 1 January 2002))

"Defamation of an individual by one of the means set forth in section 23 shall be punishable by a fine of FRF 80,000.

Defamation by the same means of a person or group of people on the ground of their origin or their membership or non-membership of a specific ethnic group, nation, race or religion shall be punishable by a term of imprisonment of one year and a fine of FRF 300,000 or one of those penalties only.

Where a conviction is secured for one of the offences listed in the preceding paragraph the court may also order:

1. the decision to be posted up or displayed in accordance with Article 131-35 of the Criminal Code."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

26. The applicant alleged that his conviction under sections 29 and 32, second paragraph, of the Freedom of the Press Act of 29 July 1881 had

given rise to a violation of Article 10 of the Convention, the relevant parts of which provide:

> "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 ..."

A. The parties' submissions

1. The applicant

27. The applicant considered that his conviction for the publication of the impugned article amounted to an unlawful interference with his right to freedom of expression. He disagreed with the interpretation given to his article in the decisions of the domestic courts. In his view, the text criticised the attitude of the Catholic Church as the self-proclaimed "sole keeper of divine truth". He had subsequently wished to demonstrate that the doctrine of supremacy expressed through the primacy given to the New Covenant, in that its consequence had been the belittling of the Old Covenant passed between God and the Jewish people, had cast opprobrium on the latter group and had contained the seeds of the anti-Semitism without which Auschwitz could not have occurred. The impugned article did not claim that the Catholic Church's doctrine was intrinsically anti-Semitic, but that "scriptural anti-Judaism" had led to anti-Semitism, a not insignificant nuance. Short of resorting to a caricatured and simplistic summary, the applicant could not therefore be accused of having imputed responsibility for the crimes committed at Auschwitz to the Catholic Church. He added that the domestic courts had systematically extrapolated his statements to Christianity as a whole, even though they had referred only to the Catholic Church.

28. The applicant further challenged the claim that, since the impugned article concerned a sensitive religious matter, his freedom of expression could be subjected to stricter control. He considered that the circumstances of his case were different from those analysed by the Court in its judgments in *Wingrove v. the United Kingdom* (25 November 1996, *Reports of Judgments and Decisions* 1996-V) and *Otto-Preminger-Institut v. Austria* (20 September 1994, Series A no. 295-A). In the instant case, the issue was not one of assessing the form of his article but only the idea, which had been set out in it without animosity or a desire to harm. He stated that, in his capacity as a historian and experienced journalist, he had sought only to

contribute to the discussion on the origins of anti-Semitism and the extermination of the Jews, and thus to take part in a public debate. While he accepted that his point of view was not shared by all, including the AGRIF, he nonetheless considered that his article had contributed to an essential debate. While he was aware that his text could have offended or shocked some readers, he nevertheless considered that, having regard to the factors outlined above, he should not have been convicted, as this had not been "necessary in a democratic society".

29. Finally, the matter of the pecuniary penalties was not the subject matter of these proceedings, which essentially concerned a dispute regarding the very principle of his conviction.

2. The Government

30. The Government did not deny that the applicant's conviction constituted an "interference" in the exercise of his right of freedom of expression, and that that interference was "prescribed by law", namely sections 29 and 32 of the Freedom of the Press Act of 29 July 1881.

31. Nonetheless, the Government considered that the complaint under Article 10 of the Convention was unfounded.

32. In the first place, the interference in question pursued one of the legitimate aims provided for in paragraph 2 of Article 10 of the Convention, namely the protection of the reputation or rights of others, in that the applicant's conviction was intended to protect Christians from defamation.

33. In particular, the Government submitted that the interference was "necessary in a democratic society". The applicant's conviction satisfied the criteria of necessity and proportionality which emerged from the Court's case-law, having regard to the margin of appreciation which was to be allowed to the national authorities in this matter.

34. In this connection, the Government considered, firstly, that the grounds on which the domestic courts had based their decisions had been "relevant and sufficient", since the applicant's conviction had been pronounced following a thorough and careful analysis of the disputed statements.

35. As to the proportionality of the conviction in relation to the legitimate aim pursued, the Government submitted that the applicant's statements had been directed against a large group of people, namely the Christian community, through a national newspaper, and were of a particularly serious nature. In addition, although the Government recognised that, in principle, the States' margin of appreciation was limited in cases concerning freedom of expression with regard to political speech or matters of serious public concern, they nevertheless considered that this same margin of appreciation could prove wider in relation to attacks on religious convictions (they referred, in particular, to *Wingrove*, cited above). It followed that the applicant should have taken greater care in wording his

article. This was all the more so in that the impugned passage did not constitute a value judgment but referred to a fact, the truth of which could be proved or disproved. The article clearly affirmed the responsibility of the Catholic Church, and therefore of its members, in the extermination of the Jews by the Nazi regime. Thus, the applicant had not expressed an opinion but had "laid a charge" against the Christian community.

36. In the alternative, the Government considered that the applicant's statements, if they were to be construed as constituting a value judgment, had gone beyond the stage of participation, however controversial, in a historical debate, and represented a defamatory confusion, consisting in attributing to the Catholic Church part of the responsibility for one of the most heinous crimes in history.

37. Finally, the Government emphasised the limited pecuniary nature of the penalty imposed on the applicant and concluded that the domestic courts had been careful to strike a fair balance between, on the one hand, freedom of expression and, on the other, respect for the rights of others.

B. The Court's assessment

38. The impugned conviction undoubtedly amounted to an "interference" in the exercise of the applicant's freedom of expression. Such an interference infringes the Convention if it does not satisfy the requirements of paragraph 2 of Article 10. It should therefore be determined whether it was "prescribed by law", whether it pursued one or more of the legitimate aims set out in that paragraph and whether it was "necessary in a democratic society" to achieve those aims.

1. "Prescribed by law"

39. It was common ground that the interference was "prescribed by law", namely by sections 29 and 32, second paragraph, of the Freedom of the Press Act of 29 July 1881, as worded at the material time (see paragraph 25 above). The Court is of the same opinion.

2. Legitimate aim

40. The Court notes that the aim of this interference was to protect a group of persons from defamation on account of their membership of a specific religion, in this case the Christian community. This aim corresponds to that of the protection of "the reputation or rights of others" within the meaning of paragraph 2 of Article 10 of the Convention. It is also fully consonant with the aim of the protections afforded by Article 9 to religious freedom (see, *mutatis mutandis*, *Wingrove*, cited above, § 48).

41. Whether or not there was a real need for protection of the Christian community, as asserted by the domestic courts and the Government, or

whether, as the applicant argues, the impugned article is confined to criticism of the Catholic Church alone, and of the papal encyclical "The Splendour of Truth", requires an analysis of the grounds relied on by the domestic authorities to justify the interference and therefore of the requirement that it be "necessary in a democratic society", examined below.

42. Consequently, the contested interference pursued a legitimate aim in the light of paragraph 2 of Article 10 of the Convention.

3. "Necessary in a democratic society"

43. As the Court has stated on many occasions, freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb (see *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24). As paragraph 2 of Article 10 recognises, however, the exercise of that freedom carries with it duties and responsibilities. Amongst them – in the context of religious opinions and beliefs – may legitimately be included an obligation to avoid as far as possible expressions that are gratuitously offensive to others and thus an infringement of their rights, and which therefore do not contribute to any form of public debate capable of furthering progress in human affairs (see, *mutatis mutandis*, *Otto-Preminger-Institut*, cited above, § 49; *Wingrove*, cited above, § 52; and *Gündüz v. Turkey*, no. 35071/97, § 37, ECHR 2003-XI).

44. In examining whether restrictions on the rights and freedoms guaranteed by the Convention can be considered "necessary in a democratic society", the Court has consistently held that the Contracting States enjoy a certain but not unlimited margin of appreciation (see *Wingrove*, cited above, § 53). The absence of a uniform European conception of the requirements of the protection of the rights of others in relation to attacks on their religious convictions broadens the Contracting States' margin of appreciation when regulating freedom of expression in relation to matters liable to offend intimate personal convictions within the sphere of morals or religion (see *Otto-Preminger-Institut*, cited above, § 50; *Wingrove*, cited above, § 58; and *Murphy v. Ireland*, no. 44179/98, § 67, ECHR 2003-IX). It is, in any event, for the European Court to give a final ruling on the restriction's compatibility with the Convention and it will do so by assessing in the circumstances of a particular case, *inter alia*, whether the interference corresponded to a "pressing social need" and whether it was "proportionate to the legitimate aim pursued" (see, *mutatis mutandis*, *Wingrove*, cited above, § 53).

45. In the instant case, the Court notes at the outset, like the Paris Court of Appeal, whose judgment was partially quashed, that the applicant's

article essentially accuses the encyclical "The Splendour of Truth" of enshrining among theological principles the so-called doctrine of the "fulfilment" of the Old Covenant in the New, and the superiority of the latter. According to the impugned article, this doctrine contains the seeds of the anti-Semitism which fostered the idea and implementation of the Holocaust.

46. According to the domestic courts, especially the Orléans Court of Appeal, whose judgment was upheld by the Court of Cassation, this amounts to accusing "Catholics and, more generally, Christians of being responsible for the Nazi massacres". It followed, again according to the Court of Appeal, that Christians were therefore victims of the offence of defamation on account of their religious beliefs.

47. The Court cannot accept these arguments.

48. It notes, firstly, that the action for defamation brought against the applicant was lodged by an association, the General Alliance against Racism and for Respect for the French and Christian Identity. It is not for the Court to comment on whether this group is representative, nor on its task of defending the Catholic Church or Christianity in general. Nor is it the role of the Court, short of taking the place of the domestic courts, to evaluate whether the article in question directly undermined the complainant association or the interests it seeks to defend.

49. The Court further observes that, although the applicant's article criticises a papal encyclical and hence the Pope's position, the analysis it contains cannot be extended to Christianity as a whole, which, as pointed out by the applicant, is made up of various strands, several of which reject papal authority.

50. The Court considers, in particular, that the applicant sought primarily to develop an argument about the scope of a specific doctrine and its possible links with the origins of the Holocaust. In so doing he had made a contribution, which by definition was open to discussion, to a wide-ranging and ongoing debate (see paragraph 24 above), without sparking off any controversy that was gratuitous or detached from the reality of contemporary thought.

51. By considering the detrimental effects of a particular doctrine, the article in question contributed to a discussion of the various possible reasons behind the extermination of the Jews in Europe, a question of indisputable public interest in a democratic society. In such matters, restrictions on freedom of expression are to be strictly construed. Although the issue raised in the present case concerns a doctrine upheld by the Catholic Church, and hence a religious matter, an analysis of the article in question shows that it does not contain attacks on religious beliefs as such, but a view which the applicant wishes to express as a journalist and historian. In that connection, the Court considers it essential in a democratic society that a debate on the causes of acts of particular gravity amounting to crimes against humanity

should be able to take place freely (see, *mutatis mutandis*, *Lehideux and Isorni v. France*, 23 September 1998, §§ 54-55, *Reports* 1998-VII). Furthermore, it has already had occasion to note that "it is an integral part of freedom of expression to seek historical truth", and that "it is not its role to arbitrate" the underlying historical issues (see *Chauvy and Others v. France*, no. 64915/01, § 69, ECHR 2004-VI).

52. While the published text, as the applicant himself acknowledges, contains conclusions and phrases which may offend, shock or disturb some people, the Court has reiterated on several occasions that such views do not in themselves preclude the enjoyment of freedom of expression (see, in particular, *De Haes and Gijsels v. Belgium*, 24 February 1997, § 46, *Reports* 1997-I). Moreover, the article in question is not "gratuitously offensive" (see *Otto-Preminger-Institut*, cited above, § 49), or insulting (contrast *İ.A. v. Turkey*, no. 42571/98, § 29, ECHR 2005-VIII), and does not incite disrespect or hatred. Nor does it cast doubt in any way on clearly established historical facts (contrast *Garaudy v. France* (dec.), no. 65831/01, ECHR 2003-IX).

53. In these circumstances, the reasons given by the French courts in support of the applicant's conviction cannot be regarded as sufficient to convince the Court that the interference in the exercise of the applicant's right to freedom of expression was "necessary in a democratic society"; in particular, his conviction on a charge of public defamation towards the Christian community did not meet a "pressing social need".

54. As to the proportionality of the interference in issue to the legitimate aim pursued, the Court reiterates that the nature and severity of the penalties imposed are also factors to be taken into account (see, for example, *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 93, ECHR 2004-XI). The Court must also exercise caution when the measures taken or penalties imposed by the national authority are such as to dissuade the press from taking part in the discussion of matters of legitimate public interest (see, *mutatis mutandis*, *Jersild v. Denmark*, 23 September 1994, § 35, Series A no. 298).

55. In the instant case, the applicant was acquitted in the criminal proceedings. In the civil action, he was ordered to pay FRF 1 in damages to the complainant association and, in particular, to publish a notice of the ruling in a national newspaper at his own expense. While the publication of such a notice does not in principle appear to constitute an excessive restriction on freedom of expression (see *Chauvy and Others*, cited above, § 78), in the instant case the fact that it mentioned the criminal offence of defamation undoubtedly had a deterrent effect and the sanction thus imposed appears disproportionate in view of the importance and interest of the debate in which the applicant legitimately sought to take part (see paragraphs 50-51 above).

56. Consequently, there has been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. Under Article 41 of the Convention,

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

58. The Court notes that the applicant did not submit any claim for just satisfaction within the time allowed after the decision on admissibility.

59. According to its settled case-law (see, in particular, *Andrea Corsi v. Italy*, no. 42210/98, 4 July 2002; *Andrea Corsi v. Italy* (revision), no. 42210/98, 2 October 2003; *Willekens v. Belgium*, no. 50859/99, 24 April 2003; and *Mancini v. Italy*, no. 44955/98, ECHR 2001-IX), the Court does not make any award by way of just satisfaction where quantified claims and the relevant documentation have not been submitted within the time-limit fixed for that purpose by Rule 60 § 1 of the Rules of Court.

60. In these circumstances, the Court considers that the applicant has failed to comply with his obligations under Rule 60. As no valid claim for just satisfaction has been submitted, the Court considers that no award should be made in this respect.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 10 of the Convention;
2. *Holds* that it is not necessary to apply Article 41 of the Convention.

Done in French, and notified in writing on 31 January 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

András Baka
President