

EUROPEAN COURT OF HUMAN RIGHTS

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Press release issued by the Registrar

CHAMBER JUDGMENT ORBAN AND OTHERS v. FRANCE

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Orban and Others v. France* (application no. **20985/05**).

The Court held unanimously that there had been a **violation of Article 10** (freedom of expression) of the European Convention on Human Rights on account of the applicants' conviction for, among other offences, publicly defending war crimes, following publication of the book *Services Spéciaux Algérie 1955-1957* ("Special Services: Algeria 1955-1957").

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicants 33,041 euros (EUR) in respect of pecuniary damage and EUR 5,000 for costs and expenses. The Court considered that the finding of a violation of Article 10 constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants. ([The judgment is available only in French.](#))

1. Principal facts

The applicants are Olivier Orban and Xavier de Bartillat, two French nationals who were born in 1944 and 1954 respectively and live in Paris, and the company Editions Plon, which has its registered office in Paris. At the relevant time Mr Orban and Mr de Bartillat were chairman and managing director respectively of Editions Plon.

In May 2001 the applicant company published a book entitled *Services Spéciaux Algérie 1955-1957* ("Special Services: Algeria 1955-1957"), in which its author, General Aussaresses, a former member of the special services, described torture and summary executions carried out during the war in Algeria. An initial print run of some 25,000 copies was followed by several reprints.

The inside cover described the author as "a Free French veteran" who had been "dispatched by General de Gaulle on the most delicate secret operations". It went on to state that "it was in Algeria that Paul Aussaresses ... was called on to carry out his most painful mission" and that "while his name [was] still unknown to the public at large, this former Free French parachutist ... was already regarded as a living legend within the tightly closed circles of the special services". The author's account was preceded by a "publisher's foreword" which stated, in particular: "We felt it was important to publish this account by a little-known but central figure in this conflict".

In June 2001 the Paris public prosecutor summoned Olivier Orban, Xavier de Bartillat and General Aussaresses to appear before the Paris Criminal Court to answer charges of publicly defending war crimes in the case of Mr Orban, and aiding and abetting that offence in the

cases of Mr de Bartillat and General Aussaresses. The summons referred to several extracts from the book.

In a judgment of 25 January 2002 the court found the defendants guilty. It imposed fines of EUR 15,000 on each of the applicants and a fine of EUR 7,500 on General Aussaresses. It further awarded, among other things, EUR 1 in damages to each of the three associations that had joined the proceedings as civil parties (the *Ligue des Droits de l'Homme* (Human Rights League), the *Mouvement contre le Racisme et pour l'Amitié des Peuples* (Movement against Racism and for Friendship between Nations) and the association *Action des Chrétiens pour l'Abolition de la Torture* (Christian Action for the Abolition of Torture)). The applicant company, for its part, was declared civilly liable.

The judgment was upheld on appeal by a judgment of 25 April 2003 in which the Paris Court of Appeal, referring to certain extracts from the book, concluded that the author's aim had been to persuade readers of the legitimacy and inevitability of the torture and summary executions carried out during the war in Algeria. The court noted in particular that, while the author had claimed to be aware that his had been a "difficult task", to have been acting out of duty and to have had no choice in the matter, and had expressed the hope that young army officers would never have to do what he had been obliged to do for his country in Algeria, he had nonetheless not repudiated his past. The Court of Appeal also stressed that, notwithstanding their "very short 'foreword'", the publishers had not in any sense sought to distance themselves from the text, but on the contrary had glorified the author by describing him as a "living legend" and referring to his mission as "his most painful".

In December 2004 the Court of Cassation dismissed an appeal by the applicants on points of law.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 2 June 2005.

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

Peer **Lorenzen** (Denmark), *President*,
Rait **Maruste** (Estonia),
Jean-Paul **Costa** (France),
Karel **Jungwiert** (Czech Republic),
Renate **Jaeger** (Germany),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco), *judges*,

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

3. Summary of the judgment²

Complaints

Relying on Article 10, the applicants complained about their conviction.

Decision of the Court

Article 10

The Court considered that the applicants' conviction amounted to interference with their right to freedom of expression. The interference had been prescribed by French law and had pursued the legitimate aim of preventing disorder or crime. The Court stressed above all that it was not for it to rule on the constituent elements of the offence of publicly defending war crimes, its role being confined to ascertaining whether the applicants' conviction on account of the publication of the book in question could be said to have been "necessary in a democratic society".

On the question whether the interference had been "necessary in a democratic society", the Court observed first of all that the authorities had had only a limited margin of appreciation, circumscribed by the interest of a democratic society in enabling the press to impart information and ideas on all matters of public interest and guaranteeing the public's right to receive them. Those principles also applied to the publication of books in so far as they concerned matters of public interest.

The Court took the view that the Court of Appeal's finding that the author's aim had been to persuade readers of the legitimacy and inevitability of the torture and summary executions carried out during the war in Algeria was not decisive for assessment of the facts at issue in relation to Article 10. It regarded the book in question above all as a witness account by a former special services officer who had served in Algeria, a "central figure in the conflict" who had been directly involved in practices such as torture and summary execution in the course of his duties. The publication of a witness account of this kind unquestionably formed part of a debate on a matter of public concern which was of singular importance for the collective memory. The account, which was lent gravitas by the rank of its author, who had become a general, supported one of the conflicting theories in the debate, defended by the author, to the effect that such practices had not only existed but had had the blessing of the French authorities. In the Court's view, the fact that the author had not taken a critical stance with regard to these horrifying practices and that, instead of expressing regret, he had claimed to have been acting in accordance with the mission entrusted to him, formed an integral part of that witness account. Accordingly, there had been no justification for the Court of Appeal's criticism of the applicants, in their capacity as publishers, for not distancing themselves from the general's account.

Furthermore, the Court failed to discern in what sense describing General Aussaresses's mission in Algeria as "his most painful" was tantamount to glorifying him or the events related by him. As to the use of the expression "living legend" to describe the general, it did not regard that either as an attempt to glorify him. Quite apart from the fact that the term was open to varying interpretations, some of them negative, it clearly referred to the general's reputation "within the tightly closed circles of the special services" at the time he had been sent to Algeria.

The Court also observed that although the author's statements had not lost their capacity to bring back memories of past suffering, the lapse of time meant that it was not appropriate to judge them with the same degree of severity that might have been justified ten or 20 years earlier. In that connection the Court reiterated that freedom of expression within the meaning of Article 10 was applicable not only to "information" or "ideas" regarded as inoffensive or as a matter of indifference, but also to those that offended, shocked or disturbed. Accordingly, penalising a publisher for having assisted in the dissemination of a witness account written by a third party concerning events which formed part of a country's history would seriously hamper contribution to the discussion of matters of public interest and should not be envisaged without particularly good reason.

The Court further reiterated that the nature and severity of the penalties imposed also had to be taken into consideration in assessing whether the interference had been proportionate. Olivier Orban and Xavier de Bartillat had each been ordered to pay a fine of EUR 15,000, a sum that was, to say the least, high, and which was twice as much as the fine imposed on the author of the statements at issue.

Accordingly, the Court concluded that the reasons given by the French courts were not sufficient to persuade it that the applicants' conviction had been "necessary in a democratic society". It therefore held that there had been a violation of Article 10.

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.

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.

² This summary by the Registry does not bind the Court.

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Voorhoof:

In a recent judgment the Court was of the opinion that to persuade readers of a book of the legitimacy and inevitability of torture and summary executions in times of war during an important period in history, is not a decisive factor to exclude these statements from protection under Article 10 of the Convention. In the Court's view, the fact that the author of the book had not taken a critical stance with regard to these horrifying practices and that, instead of expressing regret, he had claimed to have been acting in accordance with the mission entrusted to him, formed an integral part of a witness account that unquestionably formed part of a debate on a matter of public concern which was of singular importance for the collective memory about an important period in a country's history. **Accordingly, penalising a publisher for having assisted in the dissemination of such a witness account would seriously hamper contribution to the discussion on matters of public interest. As the Court in this case did not consider the content of the book as a glorification of war crimes, it came to the conclusion that the French courts had violated Article 10 of the Convention by convicting the publisher of the book.**