

Information Note on the Court's case-law No.

February 1997

De Haes and Gijssels v. Belgium - 19983/92

Judgment 24.2.1997

Article 10

Article 10-1

Freedom of expression

Freedom to impart information

Judgment against journalists for defamation of *magistrats*: *violation*

Article 6

Civil proceedings

Article 6-1

Fair hearing

Equality of arms

Fairness of the proceedings against the journalists: *violation*

[This summary is extracted from the Court's official reports (Series A or Reports of Judgments and Decisions). Its formatting and structure may therefore differ from the Case-Law Information Note summaries.]

I. ARTICLE 10 OF THE CONVENTION

Judgment complained of amounted to an "interference" with applicants' exercise of their freedom of expression, had been "prescribed by law" and had pursued at least one of the legitimate aims referred to in Article 10 § 2 (protection of reputation or rights of others).

Regard being had to seriousness of allegations, applicants had not failed in their professional obligations by publishing what they had learned about the case of the notary X – the information published had not been put in doubt by the judges and Advocate-General who had brought the defamation proceedings, except in one instance.

Essentially, the journalists had been found liable for having made unproved statements about the private life of the judges and Advocate-General who had brought proceedings and for having concluded from these that they had not been impartial in their handling of the case in question.

Distinction between facts and value judgments – judgment complained of related not so much to the allegations reported as to the comments which those had inspired the journalists to make – alleged political sympathies could be regarded

as potentially lending credibility to the idea that they were not irrelevant to the decisions being criticised – allusion to past history of father of one of the judges unacceptable but only one of the elements in the case.

Accusations against the judges and Advocate-General amounted to an opinion – comments severely critical but proportionate to the stir and indignation caused by the matters alleged – necessity of interference not shown, except as regards allusion to past history of father of one of the judges.

Conclusion: violation (seven votes to two).

II. ARTICLE 6 § 1 OF THE CONVENTION

In order to deny that there had been any basis for the journalists' argument, the judges and Advocate-General who had brought proceedings had referred to the content of the case they had themselves dealt with and of the judgments delivered by them or with their aid.

Journalists' legitimate concern not to risk compromising their sources of information by lodging themselves the documents whose production they had sought – articles had contained such a wealth of detail that it could not have been reasonably supposed, without further inquiry, that the authors had not had at least some relevant information available to them.

The proceedings brought against the applicants had related solely to whether they had been entitled to express themselves as they had – in order to answer that question, it was sufficient to produce documents likely to prove or disprove truth of applicants' allegations – outright rejection of application for production of documents had put journalists at a substantial disadvantage *vis-à-vis* the plaintiffs – breach of principle of equality of arms – unnecessary to examine the other complaints raised under Article 6 § 1.

Conclusion: violation (unanimously).

III. ARTICLE 50 OF THE CONVENTION

- A. Pecuniary damage: claim allowed.
- B. Non-pecuniary damage: judgment afforded sufficient just satisfaction.
- C. Costs and expenses: reimbursement.

Conclusion: respondent State to pay specified sums to the applicants (unanimously).