

## **French approach: Responsibility Facts v. Opinion**

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Freedom of expression was first recognised by the Declaration of the Rights of Man and of the Citizen in 1789. Almost a century later, Press Freedom was established by the Act of 29 July 1881, and is still guaranteed today. According to the Article 19 “there is no law in France against holding opinions. Opinions as such are never punishable. On the contrary, individual freedom of opinion is protected against encroachment, either by the Administration or by private individuals.” However, the distinction between statements of fact and of value judgment is not made clear in the relevant texts or general jurisprudence.

“The right to freedom of opinion and expression is a fundamental right that safeguards the exercise of all other rights and is a critical underpinning of democracy. As international human rights courts have stressed, it is applicable not only to information or ideas that are favourably received but also for those that offend, shock or disturb.” (per Agnes Callamard, Article 19). A similar approach was adopted by the European Court of Human Rights (‘ECtHR’) in their judgement in *Fressoz & Roire v. France* (1999). The case concerned an industrial dispute at Peugeot in September 1989 where the employers refused to raise employees’ salaries. *Le Canard enchaîné* published an article about salary increases awarded to Mr Jacques Calvet, the company’s Director, and included extracts from Mr Calvet’s last three tax returns. Mr Calvet sued the journalists for the publication of his tax returns, which had been obtained in breach of confidence by one of his agents. The national courts accepted this claim, and found against the journalists. However, the journalists took the case to Strasbourg, where the ECtHR found that Article 10 of the European Convention of Human Rights (‘ECHR’) had been violated. The Court affirmed that the Article 10 protected ideas even if they shock, worry the State or a part of the population.

Moreover, Article 29 of the Press Freedom Act makes a distinction between offensive and inoffensive defamation. While inoffensive defamation (that which is called defamation in French law) is based on an untrue specific allegation, offensive defamation, 'injure', is constituted by a mere offensive expression directed at another person. These offences obviously limit the expression of one’s opinion. However, to be constituted there must be a guilty intention, the comment must have been publicised, and the victim must be easily identifiable. In France like in

many countries, the defendant has to prove that the facts were true in order not to be found liable for defamation. This reverse-burden is obviously worrying for those wishing to protect expression. However, more worrying, is that both of these offences have criminal implications. Decriminalisation is becoming more popular, and would remove a significant obstacle to freedom of expression - though more issues will remain to be addressed.