



Q & A

Morice v. France,

Grand Chamber judgment of 24 April 2015

This document is a tool for the press, issued in the context of notification of the above judgment. It does not bind the Court.

1. How can the Grand Chamber have found a violation of Article 10 when the Chamber decided that the limits of admissible criticism by lawyers vis-à-vis the judiciary had been exceeded?

➤ Nature of the examination by the Grand Chamber

The Grand Chamber has the task of deciding **afresh, fully and freely**, on the complaints raised in the cases referred to it. Where a case is sent to the Grand Chamber after a Chamber judgment, the work of the Chamber and the Grand Chamber are by definition different; the first worked from a blank page, while the second must necessarily take a position on a judgment already delivered.

The questions raised thus lead to an in-depth examination by the Grand Chamber, within which the debate evolves in relation to the Chamber's findings, particularly having regard to the observations of the parties, whether in writing or in oral argument during the hearing, and bearing in mind that the composition of the bench will be different (17 judges instead of 7 in the Chamber).

It is thus understandable that the Grand Chamber may decide differently, in terms of the approach followed, its reasoning or its findings. *Lautsi v. Italy* is one example, among others, where the [Chamber](#) and the [Grand Chamber](#) came to different conclusions.

➤ Key points in the *Morice* Grand Chamber judgment

The Grand Chamber focussed on the aspects of its case-law that had to be brought together in this case but between which there might be some conflict; in particular: the applicant's status as lawyer, the existence of a debate on a matter of public interest, and the authority of the judiciary. In weighing up the various interests at stake, it takes account of the whole background to the case.

(1) The Grand Chamber first considered to which type of situation (and therefore to which case-law) the *Morice* case related: The exercise by a lawyer of his clients' defence? The imparting of information on a matter of public interest? These questions are important to ascertain the legal context and the extent of the protection afforded by Article 10.

After dismissing the idea that Mr Morice had intervened as a lawyer in the context of his task of defending a client (§ 149), the Grand Chamber noted that his remarks were part of a debate on a matter of public interest (as they referred to the functioning – or rather the alleged shortcomings – of the justice system; see §§ 150 ff.).

Accordingly, **the existence of a “debate on a matter of public interest” in the present case warrants a higher degree of protection of freedom of expression** (and thus the authorities have a narrower power of discretion – or margin of appreciation – in restricting such freedom).

(2) Turning to the assessment of the remarks themselves, the Court must define their nature: its case-law traditionally considers that in the case of **value judgments**, unlike statements of fact, such remarks do not require proof of their truth; however, it will then ascertain whether they have a “sufficient factual basis” (and if not whether they are “misleading” or constitute a “gratuitous attack”).

In the present case, the applicant's remarks did correspond to a value judgment, in view of the general tone of the remarks and the context in which they were made, corresponding mainly to an overall appraisal of the investigating judges' conduct during the investigation. The Grand Chamber established that the remarks had not been gratuitously insulting but had a sufficient factual basis (see press release). And given that they were value judgments in the context of a debate on a matter of public interest – the functioning of the justice system – the applicant was entitled, in accordance with the Court's case-law, to enjoy greater protection of his freedom of expression.

(3) The Grand Chamber then carried out an **in-depth examination of the whole background** to the case and the weighing up of the various interests at stake, to ascertain whether or not the applicant's conviction was compatible with the Convention.

2. Does this judgment represent an evolution in the Court's position on lawyers' freedom of speech?

No. The Court noted in the judgment that the question here was that of the **lawyer's freedom of expression outside the courtroom and not in defence of a client**.

The Court simply restated that, in such a situation, a lawyer should be able to draw the public's attention to possible shortcomings in the justice system (§ 167).

The Grand Chamber judgment **does not therefore afford any new right to the lawyer**; it merely reiterates that lawyers have a special role in the administration of justice and must be able to point to any problems in the system which they are in a good position to observe.

3. Isn't this judgment likely to encourage lawyers to over-criticise the justice system? What about maintaining respect for the courts and the judges, who are prevented from responding by a duty of discretion?

The Grand Chamber expressly took these different points into account, examining them specifically.

The judgment confirms the Court's existing case-law without adding to it. It does **not give lawyers any new rights**.

The Court's case-law was already protective of freedom of expression, particularly where there was a debate on a matter of public interest, as in the present case. The Grand Chamber reiterates the longstanding and settled case-law to the effect that Article 10 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" (§ 124).

Criticism of the judiciary is therefore permissible, to a certain extent (§§ 168 to 170). In the present case the Grand Chamber also observed that the applicant's conviction did not contribute in any way to protecting the judiciary (§§ 169 and 170).

The applicant's observations, particularly those concerning the specific context of this case and the fact that Mr Morice's remarks were value judgments which had a sufficient "factual basis" led the Grand Chamber to dismiss any risk in this connection.

The Grand Chamber, however, emphasised the **importance of maintaining the authority of the judiciary and of ensuring relations based on mutual consideration and respect between the various protagonists of the justice system**.

4. The European Court of Human Rights has held against France for a lack of impartiality of the Court of Cassation in this case. Will this judgment change the way in which the composition of its bench is decided?

That is not for the Court to decide (the member States assume the consequences of the Court's judgments at the execution stage¹). That being said, the circumstances noted in this case refer

¹ Les arrêts de Grande Chambre sont définitifs (article 44 de la Convention).

specifically to the question of the prior information about the court's composition that is given to the party in question (§ 90), or to that of a judge's replacement should it appear necessary.

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