

No. 3685
No. V 08-86.806 F-D
CI/SH
June 23, 2009
The Honorable Justice Joly, Presiding Justice
Republic of France

In the Name of the French People

The Court of Cassation, Criminal Affairs Division, at its public hearing held at the Palace of Justice in Paris, handed down the following ruling on June 23, 2009, ruling on the appeal brought by Le Comité de bienfaisance et de secours aux palestiniens (CBSP) against the ruling handed down by the Paris Court of Appeals, 11th section, on October 1, 2008, which acquitted defendant Stanley Samuels on charges of conspiracy to publicly defame a private party.

The Court, ruling after hearing the report read aloud by Justice Finidori, oral arguments delivered by counsel Copper-Royer of the law offices of Ortsceidt, Attorneys at Law admitted to the Court of Cassation Bar, and the recommendations of Mr. Mouton, the Attorney-General;

Considering the appellant's and defendant's briefs filed;

With respect to the first cause for appeal, based on a violation of Articles 23(1), 32(1) and 35 of the Act of July 29, 1881, Article 93-3 of Act No. 82-652 of July 29, 1982, Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Section 593 of the [French] Criminal Procedure Code, failure to provide grounds and lack of legal basis;

“In that the appellate court ruling being appealed reproduced defamatory statements cited in the indictment, which Stanley Samuels made against the organization Le Comité de bienfaisance et de secours aux palestiniens and, affirming the lower court decision, acquitted Stanley Samuels on the grounds that he had made the statements in good faith.

On the grounds that the appellate court and the lower court both found that it had been shown that the goal being pursued was legitimate and that the defendant could not be accused of harboring personal animosity against the CBSP; furthermore, based on the large number of exhibits produced by Stanley Samuels and which formed the basis of his conviction, the investigation was thorough; hence, based on the exhibits produced, the court found that it had been repeatedly reaffirmed that since December 27, 2001 and September 12, 2003, Hamas has been considered a terrorist organization as defined in EU legislation and in French law and that, while it is also the case that investigations carried out by the Office of the District Attorney in Nancy resulted in charges being dropped, these investigations were carried out in 2001 and 2002, well before the positions taken by democratic countries; so, the governments of the United States, Australia and Canada, respectively in August, September and November 2003 put the CBSP on the list of

organizations “specifically identified with global terrorists”; the U.S. State Department therefore froze the organization’s assets; it has not been disputed that starting in August 2003 the Central Bank of Lebanon questioned private banks about organizations tied to Hamas, among which the CBSP was cited; in October 2003, the Financial Crime Unit conducted an investigation; the press release was backed by a report that was forwarded to the Interior Minister who denounced, among other things, acts of anti-Semitism, UOIF’s ties with the Muslim Brothers and Sheik Qaradawi, an ideologue with ties to Hamas, who had authorized “human bombs” and reminded people of the United States government’s decision to freeze the assets of individuals and organizations, including the CBSP, as recalled hereinabove, designated as supplying financial support to the terrorist group; the Interior Minister had therefore not been in a position to have already conducted an investigation of allegations made in said report; in the final analysis, as Director of International Relations of the Simon Wiesenthal Center Europe which was founded to combat anti-Semitism throughout the world, Stanley Samuels had information constituting a sufficient factual basis to make the statements in controversy, which, when contextualized, are understood to be a call for the Interior Minister to carry out a wide-scale investigation of the CBSP, and do not overstep the bounds of what is acceptable free speech guaranteed under domestic law and international conventions”;

1) The attributed defamatory statements assume the culpable intent of the person who made them; the justification that the defendant made the statements in good faith can legally be accepted by the lower court judges only if there is probative evidence of a thorough prior investigation which the defendant claimed to have performed; by considering that the thoroughness of the investigation carried out by Stanley Samuels resulted from the number of exhibits produced and which formed the basis of his conviction, the appellate court failed to show a legal basis for its decision with regard to the statutes referred to in the cause for appeal;

2) The justification that the defendant made the statements in good faith can be accepted only if the statements considered defamatory are the result of a thorough investigation, based on a sufficient number of reliable materials, which was conducted with a view to analysis and critical thought; by holding, based on a limited number of materials, that the defendant’s statements were supported by materials constituting a sufficient factual basis when making the statements in controversy, without characterizing either the reliability of such materials or whether the information had been distorted, or whether the prior investigation had been conducted with a view to analysis and critical thought, the appellate court failed to show a legal basis for its decision with regard to the statutes referred to in the cause for appeal;

3) Outrageous speech precludes any good faith; the statements to the effect that [through the] Comi de bienfaisance et de secours aux palestiniens, a French organization that funds terrorism and which is banned in the United States, the UOIF raises funds for the families of Hamas suicide terrorists, a campaign masked under the slogan “For just 50 euros, you can sponsor an orphan in Palestine”, which is not something that is politically controversial, are offensive speech that preclude good faith; hence, by accepting the

justification that the defendant had made the statements in good faith, the appellate court judges violated the statutes referred to in the cause for appeal;

With respect to the second cause for appeal, based on a violation of Articles 23(1), 32(1) and 35 of the Act of July 29, 1881, Article 93-3 of Act No. 82-652 of July 29, 1982, Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Section 593 of the [French] Criminal Procedure Code, failure to provide grounds and lack of a legal basis;

“In that the appellate court ruling being appealed reproduced defamatory statements cited in the indictment, which Stanley Samuels made against the organization Le Comité de bienfaisance et de secours aux palestiniens and, affirming the lower court decision, acquitted Stanley Samuels on the grounds that he had made the statements in good faith.

On the grounds that the appellate court and the lower court both found that it had been shown that the goal being pursued was legitimate and that the defendant could not be accused of harboring personal animosity against the CBSP; furthermore, based on the large number of exhibits produced by Stanley Samuels and which formed the basis of his conviction, the investigation was thorough; hence, based on the exhibits produced, the court found that it had been repeatedly reaffirmed that since December 27, 2001 and September 12, 2003, Hamas has been considered a terrorist organization as defined in EU legislation and in French law and that, while it is also the case that investigations carried out by the Office of the District Attorney in Nancy resulted in the charges being dropped, these investigations were carried out in 2001 and 2002, well before the positions taken by democratic countries; so, the governments of the United States, Australia and Canada, respectively in August, September and November 2003 put the CBSP on the list of organizations “specifically identified with global terrorists”; the U.S. State Department therefore froze the organization’s assets; it has not been disputed that starting in August 2003 the Central Bank of Lebanon questioned private banks about organizations tied to Hamas, among which the CBSP was cited; in October 2003, the Financial Crime Unit conducted an investigation; the press release was backed by a report that was forwarded to the Interior Minister who denounced, among other things, acts of anti-Semitism, UOIF’s ties with the Muslim Brothers and Sheik Qaradawi, an ideologue with ties to Hamas, who had authorized “human bombs” and reminded people of the United States government’s decision to freeze the assets of individuals and organizations, including the CBSP, as recalled hereinabove, designated as supplying financial support to the terrorist group; the Interior Minister had therefore not been in a position to have already conducted an investigation of allegations made in said report; in the final analysis, as Director of International Relations of the Simon Wiesenthal Center Europe which was founded to combat anti-Semitism throughout the world, Stanley Samuels had information constituting a sufficient factual basis to make the statements in controversy, which, when contextualized, are understood to be a call for the Interior Minister to carry out a wide-scale investigation of the CBSP, and do not overstep the bounds of what is acceptable free speech guaranteed under domestic law and international conventions”;

1) The statements in controversy, accusing the appellant of funding terrorism by engaging in fund raising under the cover of providing humanitarian aid to orphans of Palestine, when, given the covert nature of the activities that the appellant is alleged to have, this would betray the trust and generosity of donors kept in the dark about the actual use of the funds, does not constitute a value judgment given in a debate; it was a statement of fact that must necessarily be based on an irrefutable factual basis supported by a body of objective materials, the source of which is indisputable, reflecting facts or a specific and concurring body of evidence, suggesting the credibility of the statements in controversy or the defamatory allegations; thus, by acquitting the defendant on the grounds that the statements were made in good faith, considering that they were a value judgment supported by a sufficient factual basis to make the statements in controversy and finding that they did not overstep the bounds of what is acceptable free speech, the appellate court violated the statutes referred to in the cause for appeal;

2) Assuming that the statements in controversy do constitute a value judgment, in order to constitute an objective assertion for the purposes of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, they must be supported by a sufficient factual basis; by considering that the number of exhibits produced which supported the defendant's conviction constituted a sufficient factual basis for the statements in controversy to constitute an objective assertion for the purposes of Article 10 of the aforementioned convention, the appellate court violated the statutes referred to in the cause for appeal;

The causes for appeal taken together as a whole;

Whereas the holding of the appellate court ruling being appealed allows the Court of Cassation to ensure that the appellate court, on grounds that address the issues on which it was seized, did, in a manner that was neither deficient nor contradictory, set forth the particular circumstances alleged by the defendant and enunciate the facts on which it based its justification that the defendant had made the statements in good faith;

Hence it follows that the grounds for appeal must be rejected;

And whereas the ruling is lawful in its form;

ON THESE GROUNDS,

The Court of Cassation,

REJECTS the appeal;

Finds inadmissible the motion brought, under Section 616-1 of the [French] Criminal Procedure Code, by Le Comité de bienfaisance et de secours aux palestiniens;

So ordered and judged by the Court of Cassation, Criminal Affairs Division, at its public hearing on the date set forth hereinabove;

The following persons were present at the trial hearing and during the deliberations (as required under Section 567-1(1) of the [French] Criminal Procedure Code): the Honorable Justice Joly, Presiding Justice, the Honorable Justice Finidori, Reporting Justice, the Honorable Justice Anzani;

Mrs. Randouin, Court Clerk.

In witness whereof, this ruling was signed by the Presiding Justice, the Reporting Justice and the Court Clerk.

(court's certified copy stamp + clerk's signature)

The Clerk