

# **Judicial Developments in Media Case Law in France in 2015: About Apology and Incitement to Discrimination**

(and what to expect in 2016...)

# French legal references: www.legifrance.gouv.fr

The screenshot shows the Legifrance website interface for searching judicial jurisprudence. The browser address bar displays `www.legifrance.gouv.fr/initRechExpJuriJudi.do`. The page header includes the Legifrance logo and the text "LE SERVICE PUBLIC DE LA DIFFUSION DU DROIT". A navigation menu at the top lists "Accueil", "Droit français", "Droit européen", "Droit international", "Traductions", and "Bases de données". The current page is titled "Recherche experte dans la jurisprudence judiciaire".

**Critères de recherche**

**Décision**

Numéro d'affaire  Ex: 06-81988

Date de décision: Jour , Mois , Année  (1)

Période de (1) à (2): Jour , Mois , Année  (2)

**Étendue de la recherche**

**Cour de cassation**

Décisions de la Cour de cassation  
 Décisions publiées au bulletin  
 Décisions non publiées au bulletin

Nature de la décision: -- Toutes les décisions --

Numéro au bulletin  Ex: 219 Année

Formation: -- Toutes les formations --

Décision attaquée: -- Toutes les décisions --

Lieu de la décision attaquée

Date de la décision attaquée: Jour , Mois , Année

**Juridictions d'appel**

Arrêts des Cours d'appel

Siège de la cour: -- Toutes les cours --

**Juridictions du premier degré**

Décisions des juridictions du premier degré

Type de juridiction: juridictions --

Siège de la juridiction


**Informations**

- Contenu
- Mise à jour

**Recherche connexe**

- Recherche simple dans la jurisprudence judiciaire

**Lien connexe**

  
Le site de la Cour de cassation (Nouvelle fenêtre)  
Le site de la Cour de cassation

The taskbar at the bottom shows several open PDF files, including "3034355\_pieces\_10\_a\_...", "3034221\_piece\_9\_Nu...", "3034166\_Piece\_8\_Nu...", "3034093\_Pieces\_1\_a\_...", "ord TA Nantes 27 fév...", and "ord ref TA Nantes 27...". The system tray shows the time as 20:33 on 01/03/2015.

**Wearing a tee-shirt could virtually bring your mum and uncle to prison (2 months imprisonment suspended and 4,000 € fine)**



# Why ?

**Article 24 of the statute about freedom of the press (29th July 1881):**

**Apology of crime** as *“such words on the tee-shirt show in a favourable way the terrorist attack of September 11. Such a fact is beyond the limits ruled by article 10, as Mr. BEGOUR used a young child to promote criminal acts, which characterizes the offence of apology of crime defined by article 24 of the statute of July 29 th, 1881.”*

# Now

## Article 421-2-5 of the Criminal Code

Created by [LOI n°2014-1353 du 13 novembre 2014 - art. 5](#)

Direct incitement to terrorism or public apology of such act should bring to 5 years imprisonment and 75,000 € fine.

Those penalties reach 7 years imprisonment and 100,000 € fine when using an on line service.

# About Dieudonne (Mr M'BALA M'BALA)

We had a judgment on the **18th of March, 2015** about the humorist, Dieudonne.

He told after the terrorist attack, instead of “I am CHARLIE”, “I feel like Charlie COULIBALY” (name of one of the terrorist) and was prosecuted for apology of terrorism.

The prosecutor called for a fine of 30,000 € and imprisonment if not paid as the humorist had already been convicted for racist speech.

The maximum penalty is 7 years imprisonment and a fine of 100,000 € (art. 421-2-5 of the Penal Code).

# The Judgment

Guilty of apology for terrorism

2 months imprisonment suspended

i.e prison if there is a new offense

Proliferation of association as plaintiffs but only 2 were admissible:

Association of Victims of terrorism

Association Lawyers without borders

1 € damages and 1,000 € for legal costs

# A demonstration for the boycott of Israeli products brings fine and damages





# Article 24 of the 1881 statute

**Court of Appeal of Colmar (a former German city...and the birthplace of Bartholdi)**

People were convicted to fines (1,000 €) and global damages for all the plaintiffs (12,000 €) for provocation to discrimination linked to origin and national membership.

**Why?**

# Court of Appeal Judgment

*“[p]rovocation to discrimination is not covered by freedom of speech as it constitutes a positive act of rejection, by incitement to discriminate between people, excluding one category because of its nationality: the producers of Israel.”*

# Cour de cassation 20th October, 2015

The highest judiciary court noticed:

- People were inside the shop when the police came;
- They were distributing leaflet "*Palestine will live, boycott Israel*", "*buying Israeli products legitimates crimes in Gaza*", "*Israel murderer, Carrefour accomplice*" naming the trademarks linked to Israel.

# The High Court Solution: Judgment Confirmed

*“Freedom of speech, guaranteed by article 10 of the European Convention of Human Rights, **can be restricted by paragraph 2 of this article** when those measures, as in the case, are necessary in a democratic society, for the prevention of disorder or crime and the protection of the rights of others.”*

# Remarks

## **In one hand:**

Article 24 is too wide for freedom of speech. We should limit it to direct incitement to hatred and violence as a European case law.

## **On the other hand:**

Freedom of speech should respect freedom of the consumer and freedom of the shopkeeper.

# How do we deal with intrusion inside the shop ? Freedom of expression vs Free trade & free consumer



We can think that Europe remembers: **“Deutsche, wehrt euch, Kauft nicht bei Juden”** (“**Germans, stand up, do not buy from Jews**”)



Bundesarchiv, Bild 183-R70355  
Foto: o. Ang. | 1933

# History Makes the Law

## Before the Nuremberg Laws, Jewish shops were boycotted





# Necessary in a Democratic Society

For the European Court of Human Rights, it means:

- A pressing social need;
- A proportionate measure to the aim pursued

But we have to notice that **article 17 of the ECHR is now invoked**

# **ECHR 20 October, 2015**

## **M'BALA M'BALA**

Dieudonné M'Bala M'Bala had sought to **deflect Article 10 from its real purpose** by using his right to freedom of expression for ends which were **incompatible with the letter and spirit of the Convention** and which, if admitted, would contribute to the destruction of Convention rights and freedoms.

Consequently, **the Court found that under Article 17 of the Convention, Dieudonné M'Bala M'Bala was not entitled to the protection of Article 10.** It followed that the application had to be dismissed as being incompatible with the provisions of the Convention, in accordance with Article 35 §§ 3 (a) and 4 (admissibility criteria).

# **What shall we watch out for in 2016 ?**

The trend of case law will certainly be the same if the statutes are not changed.