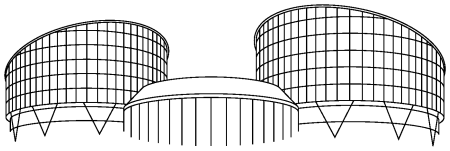

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF UNIFAUN THEATRE PRODUCTIONS LIMITED AND OTHERS v. MALTA

(Application no. 37326/13)

JUDGMENT

STRASBOURG

15 May 2018

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Unifaun Theatre Productions Limited and Others v. Malta,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Ganna Yudkivska, *President,*
Vincent A. De Gaetano,
Paulo Pinto de Albuquerque,
Egidijus Kūris,
Iulia Motoc,
Carlo Ranzoni,
Marko Bošnjak, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 20 February and 20 March 2018,

Delivers the following judgment, which was adopted on that last date:

PROCEDURE

1. The case originated in an application (no. 37326/13) against the Republic of Malta lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Unifaun Theatre Productions Limited, a Limited Liability Company, registered in Malta ("the first applicant"), and four Maltese nationals, Mr Adrian Buckle ("the second applicant"), Mr Christopher Gatt ("the third applicant"), Ms Maria Pia Zammit ("the fourth applicant") and Mr Mikhail Acopovich Basmadjian ("the fifth applicant"), on 28 May 2013.

2. The applicants were represented by Dr I. Refalo, Dr S. Grech and Dr M. Zammit Maempel, lawyers practising in Valletta. The Maltese Government ("the Government") were represented by their Agent, Dr P. Grech, Attorney General.

3. The applicants alleged that the complete ban on the production of the play "Stitching", which they considered was not in accordance with the law, did not pursue a legitimate aim and was not necessary in a democratic society. The measure was thus contrary to Article 10 of the Convention.

4. On 29 March 2016 the Chamber to which the case was allocated decided that the complaint concerning Article 10 was to be communicated to the Government and the remainder of the application was declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant, Unifaun Theatre Productions Limited, is a limited liability company which produces theatrical performances in Maltese theatres. The second and third applicants are the two directors of the company. The fourth applicant is the artistic director of the theatrical production known as "Stitching", a play written by the Scottish playwright Anthony Neilson, originally published in 2002 in the United Kingdom by the publishing house Metheun Drama. The fifth as well as the third applicants are two actors engaged to perform in the mentioned production (as Stu and Abby, the main characters).

A. Background to the case

6. In October 2008, the first applicant, via the second applicant, decided to produce the play Stitching for the theatre audiences in Malta, and proceeded to obtain the necessary performance licence from the author and his agent. The relevant authorisation was granted to the first applicant by the author and agent of the production following the payment of a fee.

7. On 23 December 2008 the first applicant lodged an application with the Board for Film and Stage Classification ("the Board"), in order for a rating certificate to be issued in terms of the Stage Regulations (see Relevant domestic law). The relevant fee was paid and a clean copy of the script submitted.

8. At the same time, the first applicant entered into a reservation agreement with a theatre for eight dates between 13 February and 1 March 2009 and hired the third, fourth and fifth applicants in connection with the services for such play.

9. On 20 January 2009 the Board issued a certificate (no. 0000043), which was received by the applicants on an unspecified date, stating that the play had been examined by its chairperson (T.F.) and that it was decided that it was "Banned – Banned and disallowed". No reasons were provided for the decision. Before this Court the Government submitted a further classification certificate with the same conclusion, also dated 20 January 2009, which stated that the classifier was T.F., as well as C.X., A.M. and D.M. (the latter names added by means of an asterisk). The applicants submitted that they had never received the certificate submitted by the Government. The Government explained that the latter certificate was an internal document.

10. On 23 January 2009 the first applicant, via the second applicant, sent an email, followed by a telephone call, to the chairperson of the Board enquiring about the decision. No reasons were provided by the chairperson.

11. On 25 January 2009 the first applicant, via its legal counsel, sent a letter to the chairperson requesting a reconsideration of the decision in terms of Regulation 47 (1) of the Stage Regulations.

12. By means of a letter of 29 January 2009 the Board informed the first applicant, via the latter's legal counsel, that the original decision was reconfirmed. The letter contained no reasons and did not list the names of the persons who had been involved in the review.

13. On 31 January 2009 another letter was sent to the first applicant by the chairperson. It enclosed a document dated 30 January 2009 addressed "to whom it may concern", which had been deposited with the Commissioner of Police, containing the reasons why the production was banned, namely:

> "1. Blasphemy against the State Religion – pages 10 and 17
>
> 2. Obscene contempt for the victims of Auschwitz – page 29
>
> 3. An encyclopaedic review of dangerous sexual perversions leading to sexual servitude – pages 33, 34 and several others
>
> 4. Abby's eulogy to the child murderers Fred and Rosemary West – page 35
>
> 5. Reference to the abduction, sexual assault and murder of children – page 36
>
> In conclusion, the play is a sinister tapestry of violence and perversion where the sum of the parts is greater than the whole. The Board feels that in this case the envelope has been pushed beyond the limits of public decency."

14. On 2 February 2009 the applicants filed a judicial protest against the chairperson, in her personal capacity and as Chairperson of the Board, the Commissioner of Police and the Attorney General claiming that the actions of the Board were illegal in so far as they constituted a violation of Article 39 of the Maltese Constitution and Article 10 of the Convention. They considered the defendants responsible for any damage suffered.

15. By 14 February 2009 (the day following what had to be the first performance date), no reply was received to the mentioned judicial protest. In consequence, the applicants called a press conference explaining the situation, noting that they were adhering to the law but that they were determined to perform the play at some stage.

16. In the evening of the same day, the applicants and their legal counsel were summoned for questioning at the Police Headquarters. The applicants were sternly warned by a police inspector that they would face immediate arrest if they attempted to stage the play.

17. Rehearsals for the production carried on unabated. According to the applicants around two hundred persons watched the rehearsals and none of them found the play objectionable.

18. The Board's decision was not revoked and an invitation to the Chairperson to attend a rehearsal (as members of the Board sometimes did in connection with other performances) remained unanswered.

B. Constitutional redress proceedings

19. On 3 March 2009 the applicants instituted constitutional redress proceedings complaining that they had suffered a breach of Article 10 of the Convention. They also claimed damage and redress. Complaining under Article 6 they claimed that they did not have a fair hearing before the Board for Film and Stage Classification in so far as they had no hearing and no possibility to make submissions, nor were any reasons for the decision ever communicated to them. They also relied on the relevant provisions of the Maltese Constitution.

20. By a decree of 20 October 2009 the court rejected a request for the production to be shown behind closed doors to the court and the defendants.

21. During these proceedings the court heard several witnesses which it classified as (i) those who acted in the play and had thus read the script and performed it in rehearsals, (ii) persons who watched the rehearsals but did not read the script and (iii) the defendants who read the script but did not watch the rehearsal.

22. The court heard the applicants, four witnesses (who had watched the rehearsals) produced by the applicants, namely, P.M. a consultant psychiatrist, J.S. an educator, child psychologist and actress, K.D. a tourism marketing executive and actor, a priest who was a former film classifier for the Archdiocese of Malta, as well as the author of the play. The latter testified that the play had been performed uninterruptedly in all parts of the world and extensively in Europe, during which time it had collected a number of awards.

23. The author described the play as follows:

> "A couple called Stewart and Abby, a very normal couple but however a couple who find themselves in relationship difficulties, there have been betrayals, they're wondering whether to continue with their relationship. Abby discovers that she is pregnant by Stewart and so a large part of the play is concerned with them discussing whether or not to have the child. Ultimately they decide to have the child but they decide to do so in order to save their relationship, one might say for somewhat impure motives, they feel that having this child will keep them together. However their relationship continues to disintegrate and at one point during a fight they are having between themselves when their attention is diverted elsewhere, the child is involved in an accident and then dies. Obviously this is a huge trauma for them and they are driven apart. They come back together again sometime later, maybe a year later and meet and for them their relationship is not quite finished and they come back together in their grief because they are the only other people who understand the depths of their grief. When they come together they can only do so in a perverted fashion, where Abby actually poses as a prostitute. She wants to make their sexual relationship a matter of commerce in order to distance herself from the emotions.
>
> What then ensues is a very violent and dark relationship, a kind of a punishment of themselves, confessions of their guilt. Eventually Abby is tipped into clinical mental illness and performs an act of self-mutilation which she believes will restore her to a virginal state, and that is what finally blows apart their relationship. In a final coda Stewart meets Abby sometime later when she has obviously received treatment for her

mental illness and has in fact converted to Christianity and both of them decide to go their separate ways."

24. He further testified as follows:

"(Concerning pornographic references) I would not for instance have used real pornographic pictures. I felt that that would be needlessly offensive for people however another director might chose to do so. ...

(Concerning women in Auschwitz walking towards death) it should not be an unfamiliar concept that in their grief that couple confess to thoughts, to feelings that they feel guilty about. The play to some extent is about life and about death. When he talks about masturbating and using as his material pictures of women from Auschwitz, this is something that occurs when he is a small child, this occurs when he is a very young child. He says that it is the first time that he masturbated which would imply that it is reasonably early. At that time of life a young man is completely concerned with procreation, with the creation of life and he understands nothing of death, of mortality. So in fact that is what actually that phrase is about, the fact that he is confessing, he is saying I knew nothing about death, I did not look at the atrocity of life, I saw only the nudity. So it's actually nothing to do with Auschwitz, it's to do with sexual urges and it's to do with him, you know small children don't understand Auschwitz.

(In reply to a court's question concerning the swearing/blasphemy (*daagħa*)) well that's not a concept that ever crossed my mind. I'm not a religious person.

(Domestic court's question - Does the script allow the director to put aside certain references to things that could be described by people as hard? Will the text lose by the director leaving it out?) I dare say that a director could remove one or two swear words but that would all have to be taken on the case by case basis, but largely speaking I would say they would suffer yes because there is a reason why every line is in every one of my plays. There's a reason for it and I'm happy to stand here and justify them all day.

(Domestic court's question - As far as Stitching is concerned an omission by the director could affect the whole performance?) Yes absolutely."

25. P.M., a consultant psychiatrist, stated that in his opinion the play was a love story which unfortunately turned very badly. He explained that following the death of their son through their own negligence, the main characters had a relationship based on various fantasies, until the female character became mentally ill. It was a sad story, with however a redeeming feature, in that the two finally manage to get back a balance in their life. He testified that there was nothing pornographic in the story and the bad language was in the context of the emotions being felt by the couple.

26. J.S., a child psychologist, stated that in her opinion the play concerned a tragedy of a couple going through a crisis, which reached its peak when their son had died in an accident. She explained that the couple tried to connect in ways which were not necessarily conventional. She considered that it was a sensitive play that called for a mature audience. In reply to a court's question concerning a specific part of the text, J.S. replied that she was not shocked because she could not dissociate her female gender from her being a psychologist.

27. The priest (who saw the rehearsal but did not read the script) considered that he would have classified it for wise adults (*bil-għaqal*). He explained that when a person was suffering she or he "may lose it" and enter into areas which decent people may object to. However, in his view that was the human reality. When one was ready to study illnesses and the suffering of people who were going through pain one must be democratic and tolerant and give society the chance to understand those not living normally.

28. K.D. (who saw the rehearsal but did not read the script) testified that most of the dialogue was between two people who had certain hang-ups and inter personal problems, and who in a quest to get closer, nearly started a competition between them as to who was the more outrageous. Nevertheless, in his view, at some point one could tell that they were flirting with each other despite them being outrageous.

29. The third applicant who was performing as Abby stated that she did not find the play offensive in any way, noting that the emotions were very real and that she felt that it was a love story. She also testified that no pornography was used as props.

30. The applicants also submitted that the script could be purchased and read by any person in Malta, without hindrance.

31. The defendants produced the witness testimony of the members of the Board and other individuals, as explained below.

32. Another priest (who read the script but did not see the play) felt that the script was offensive in various parts and dehumanising. He was annoyed by the blasphemous words and the reference to the Moors murderer, and very annoyed at the reference to the Holocaust. Further, he considered that the woman was being put forward as an object, and while it was possible that it was her choice, he thought she was totally subordinate to the man.

33. T.M. (a member of the Board who only read the script) had no doubt that it would have been better had they watched the theatrical production. He, however, explained that there were instances, such as the one in the present case, where the script was so objectionable, that he did not feel the need to watch it, since the two elements which he objected to (the words concerning Auschwitz and the passage about Fred and Rose Mary West) would always remain objectionable, no matter the way in which they were presented, be it a tragedy or a comedy. They would nonetheless remain offensive to certain sectors of Maltese society or indeed society anywhere. While shock was a legitimate theatrical weapon and may be used repeatedly, one could not offend other people's sensibilities. Both in the case of the holocaust and that of child murders, humanity was at stake, and the relevant passages offended the sense of decency one individual should have towards another.

34. D.M. (a psychologist and member of the Board) found the script barely credible in so far as it was unlikely that a person would go through so many situations one after the other. While perversions did exist, this couple

was being put forward as a normal couple. In his view a normal couple, a couple who went through a normal life experience such as the death of a child, would not react like the characters in the play, who for example, re-enacted a killing which had greatly marked England. Further the scene concerning Auschwitz desecrated the memory of the persons who suffered.

35. Another witness, a retired Chief Justice and professor of law (who only read the script), examined the play from the point of view of public morals. He considered that certain parts of the play were disgusting, such as that describing Auschwitz, and the blasphemous words. He explained that the word "fuck" combined with the word "God" was unacceptable because it offended public morals, not only that of Catholics, but that of half the world. Thus, in his view those parts had to be deleted from the play. The parts concerning sex and sexual perversions, such as the part where the male figure wanted to pay the female figure to allow him to do certain things, disgusted him, but he considered that certain people could accept that.

36. J.C., the member of the board who confirmed on appeal that the play should be banned considered that, apart from other concerns mentioned by other members of the board, it was not justifiable for a couple to do certain things in public just because they were going through a bad patch. It was not acceptable that a woman had to give her vagina to a man to show him she loved him. In his view, if one were to make the appropriate deletions to the script, there would be nearly nothing left, and he could not find anything positive about it.

37. The Chairperson of the Board testified that there were entire scenes which she considered went against morality and were an affront and atrocious attack on human rights and the dignity of the individual. She was shocked and very annoyed by what she considered to be unadulterated pornography where the woman was becoming the man's absolute slave. She considered that the play in its entirety, and not one scene here and there, was objectionable and offensive. The fact that the play ended with the couple possibly deciding to have a baby, did not suffice to hold that the play had a positive message, given the preceding eighty (*sic*) pages.

1. First-instance judgment

38. In an eighty-two-page judgment of 28 June 2010, the Civil Court (First Hall) in its constitutional competence rejected the applicants' claims.

39. The court considered that the second applicant had no further interest than that of the director of the company, thus it sufficed that the company was an applicant, and he, thus, had no victim status in his own capacity. Nevertheless, the artistic directors as well as the actors were victims of the alleged violation, as persons who were giving life to a script by means of their artistic representation - a theatrical performance which was a form of expression for the purposes of Article 10.

40. It rejected the Government's objection as to non-exhaustion of ordinary remedies since the applicants' complaints concerned mainly issues of a constitutional and conventional nature, and thus were best dealt with by the courts of constitutional jurisdiction. For the purposes of the present case, the applicants were complaining of a human rights violation, and therefore an action for judicial review could not be an effective remedy in so far as it could not award the relevant damage, and could not order that the performance go ahead irrespective of the ban.

41. As to the merits, the court made extensive reference to the Court's case-law, in particular *Handyside v. the United Kingdom* (7 December 1976, Series A no. 24), *Otto-Preminger-Institut v. Austria* (20 September 1994, Series A no. 295-A) and *Wingrove v. the United Kingdom* (25 November 1996, *Reports of Judgments and Decisions* 1996-V) as well as prominent authors in the field of human rights. It considered that the decision of the Board to ban the play had been correct and in accordance with the law and established guidelines. The court, having read the entire script, could not tie the plot which the author wanted to transmit with the means employed to do so. In the court's view the author did not need to make use of such perversions in order to show the troubled reality of the characters.

42. It considered that the Board was correct to conclude that the play in its entirety was offensive to Maltese society. Indeed the specific scenes referred to, as well as other parts of the play, were an affront to the dignity of the individual, which was an integral part of the civil and moral fabric (*tessut*) of the country. Even in a pluralistic and democratic society, such as the Maltese one, human dignity could not be trampled on, even if the aim was "presumably" a genuine one. As problematic as the relationship of the couple might have been, one could not make extensive use of vulgar, obscene and blasphemous language to highlight perversions, vilify (*ikasbar*) the right to life and the right to freedom from inhuman and degrading treatment, and vilify the respect towards a woman's dignity. It was not acceptable to publicise uncivil behaviour, which broke the law, debased the suffering of women during the holocaust, portrayed women as the object of sexual satisfaction, as well as ridiculed family life and the responsibilities parents have towards their children. A democratic society, while being tolerant, could not permit its values to be turned on their head in the name of freedom of expression. In the court's view, the stitching of a vagina as an act of sexual pleasure, bestiality, the depravity arising from the thought of a woman eating another woman's excrement, the pleasure obtained in raping children, the murder of children and sexual intercourse with parents of violated and murdered children, were unacceptable even in a democratic society. The court noted that under Maltese law, blasphemy was a contravention, and a person could not be immune from punishment simply because he or she was acting on stage. The *Shoah*, the court went on, "was a historical fact where innocent victims underwent unprecedented suffering.

Instead of treating this sensitive and delicate subject...with due respect to the dignity of the victims, the character Stu shows only sexual depravity...the author permits the demeaning and humiliation of that tragedy totally out of context and for no other reason than for perversions. No matter how the text of the play is looked at, it runs aground on the reef of the inalienable dignity of the human person, and the court understands that this was the underlying reason for the Board's decision."

43. The court rejected their complaint under Article 6 on the basis that the proper procedure had been undertaken, the applicants had been free to put forward their views in their request for reconsideration, which was carried out by another person [not present at first-instance] and no bias had been shown.

2. Appeal judgment

44. The applicants appealed the first-instance judgment only in so far as it concerned the merits of their complaints, and asked the Constitutional Court to confirm the judgment in so far as it related to the second applicant's victim status. By a judgment of 29 November 2012, the Constitutional Court confirmed the first-instance judgment and ordered the applicants to pay all costs.

45. The Constitutional Court noted that the first-court had chosen to exercise its jurisdiction and rejected the defendants' objection of non-exhaustion of ordinary remedies, which in the absence of an appeal on the matter had become final. Nevertheless, it noted that the applicants had not instituted judicial review proceedings of the administrative action in question (the Board's decision); thus they were not complaining that the Board's decision was based on improper motives or irrelevant considerations. Moreover, the ordinary court, in judicial review proceedings, could have also examined the reasonableness of the decision, taking into account all the circumstances of the case. Thus, the applicants could no longer complain about the Board's decision *ut sic*, and people's opinions on the play were irrelevant given that the applicants considered the decision to be reasonable.

46. As to the constitutional and conventional complaint raised by the applicants, the Constitutional Court held that the existence of the Board did not breach any of the applicants' rights, and indeed the applicants had not impugned the law establishing the Board. It further considered that freedom of expression had limits and that it was accompanied by duties and responsibilities. Both the Convention and the Constitution provided for *inter alia* the protection of morals and the reputation and rights of others, and the Maltese Constitution also included public decency, in the relevant provision.

47. The Constitutional Court, having read the script, shared the first-instance court's view about various scenes of the play. It considered

that such scenes all throughout the play affected the morality and decency of the entire production, and it was within the Board's competence to assess that in line with the Regulations. The Constitutional Court had no doubt that there were phrases which constituted disparaging and insolent remarks towards more than one belief, towards women and towards the suffering of the Jews in the Second World War.

48. Referring to the Court's case-law, in particular, *Otto-Preminger-Institut v. Austria* (§ 47) it recalled that those who chose to exercise the freedom to manifest their religion, "must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith. However, the manner in which religious beliefs and doctrines are opposed or denied is a matter which may engage the responsibility of the State, notably its responsibility to ensure the peaceful enjoyment of the right guaranteed under Article 9 to the holders of those beliefs and doctrines."

49. In its view the limits of decency had been breached due to the blasphemy which was an offence under Maltese law and to the vilification of the dignity of a people, of a woman, of children, and of the human being, as well as the extreme glorification of sexual perversion. These instances were so strong that they affected the play in its entirety and prevailed over any genuine aim presumably intended by the play. The court emphasized that the production despised the dignity of the individual, in particular sectors, such as women and children, whether because of their nationality or religion, and opined that even though the main characters were acting in this way because of tension, pressure and depression, such contempt could not be justified as art. In the court's view while art was a wide concept covering any type of manifestation of expression, it could not include language which was obscene and despised the trauma of a genocide, and which, in itself, was against the laws of the country. For a strong moral message to be portrayed it was possible to cause discomfort and annoy other persons, but not to the extent of insulting them because of their beliefs, their people, or simply because they were a woman or a child.

50. Recalling that it was the duty of the State to protect the morality of the country, the Constitutional Court considered that the Board had fulfilled its duty. What was morally correct depended on the State and the relevant religion, and could not be determined universally. Thus, the fact that the production was performed elsewhere did not mean that it had to also be produced in Malta, particularly in the light of the laws in force in each country. This was precisely why states had latitude in applying certain restrictions on freedom of expression.

51. It further noted that under the laws in force, the Board could ban the play, as opposed to classifying it for a mature audience. In any event it considered that adults, who could chose to watch the play in such a case, would also be deserving of protection, and thus limitations could also be

necessary in such cases. It highlighted the states' duty to preserve the sensitivities of the silent citizen (as opposed to the vociferous ones, who inundated media forums) and considered that no remedy after the performance could heal any harm already done to society. Thus, in the Constitutional Court's view the Board's decision was correct, was not capricious or exaggerated, and it corresponded to the need to protect public morality in Maltese society and the rights of others.

52. The Constitutional Court concluded that it was not necessary to watch the play as the script was enough. In the absence of an Article 14 complaint, it was also unnecessary to compare the performance to other performances which had been allowed by the Board. The applicants having refused to make any changes to the text, despite its invitation to do so, the Constitutional Court confirmed that it would remain banned and that there was no breach of Article 10.

53. In connection with their Article 6 complaint, the Constitutional Court held that the applicants did not institute judicial review proceedings and in any event there had been no breach of their rights. Furthermore, in their view there had been no determination of any civil right.

II. RELEVANT DOMESTIC LAW

54. The Cinema and Stage Regulations (Subsidiary Legislation 10.17), (originally published in 1937 and amended overtime) obtaining at the relevant time (after amendments by means of Legal Notice 346 of 2008 which came into force on 1 January 2009 and prior to the amendments by means of Legal Notice 335 of 2009 which came into force on 15 November 2009), in so far as relevant, provided as follows:

55. Regulation 42 (2) provided that the function of the Board was to classify cinema and stage productions on the basis of guidelines to be drawn up by the Board based on the following criteria:

> "(*a*) the standards of morality, decency and propriety generally accepted by reasonable adults; and
>
> (*b*) the literary, artistic or educational merit, if any, of the production; and
>
> (*c*) the general character of the production including whether it is of medical, legal or scientific character; and
>
> (*d*) the person or class of persons to whom it is intended or by whom the production is likely to be viewed."

Subarticles (3) and (4) provided that the names of the Board members were to be published in the Government Gazette and that each film (*pellikola*) was to be classified by at least two members in line with these regulations. According to Regulation 56 the word film/s (*pellikola/i*) included posters, notices, photographs, pamphlets or synopsis relevant to films.

56. Regulation 43 provided that the classification of films was to be carried out in accordance with the arrangements made by the Board in consultation with the Commissioner of Police, and duly notified to the licensees of cinematographs.

57. Regulation 45 provided that after applying their discretion in connection with the needs of morality, decency and good behaviour in public as well as the public interest as to whether an application (for the screening of a film) should be allowed, with or without suppressed parts, the examining classifiers had to classify the film in one of six categories, namely U, PG, 12, 14, 16, or 18. A report to this effect was to be sent to the Commissioner of Police, who in turn, according to Regulation 46, had to give a certificate based on the report of the classifiers, to the person having a license to operate a cinema. Regulation 45 read as follows:

> "The examining classifiers shall report to the Commissioner of Police on the application form whether having regard, in their discretion, to public morality, decency or propriety, or to the public interest, the film to which the application refers may or may not be passed for exhibition with or without any suppressed parts, and shall classify such film into one of the following six categories, namely:
>
> (i) 'U' - UNIVERSAL. Suitable for all.
>
> (ii) 'PG' - PARENTAL GUIDANCE. Some scenes are unsuitable for young children and the guidance of parents or guardians is deemed necessary.
>
> (iii) '12' - Suitable only for persons of twelve years and over.
>
> (iv) '14' - Suitable only for persons of fourteen years and over.
>
> (v) '16' - Suitable only for persons of sixteen years and over.
>
> (vi) '18' - Suitable only for persons of eighteen years and over."

58. According to Regulations 47 and 47A when an applicant requesting the assessment of a film felt aggrieved by the decision (including a decision that the film cannot be shown under any of the established categories), he or she could apply, in writing, to the Chairperson for a revision of that decision. The provision read as follows:

> "47. (1) Where the examining classifiers have reported that a film -
>
> (*a*) is fit for exhibition in any of the categories specified in regulation 45, with or without suppressed parts; or
>
> (*b*) is not fit for exhibition in any category specified in regulation 45,
>
> the person who has applied for the examination of the film may, if he feels aggrieved by the decision, within ten days thereof, apply in writing to the chairperson of the Board for a review of such decision.
>
> (2) On receipt of such application, the chairman of the Board shall make the necessary arrangements for the film to be examined again by at least three classifiers whose decision, subject to the provisions of regulation 48, shall be final.

(3) If the chairperson of the Board has not taken part in the first examination, the second examination shall be carried out by the chairperson and at least two other members nominated by him for the purpose.

(4) If the chairperson of the Board has taken part in the first examination, the second examination shall be carried out by such number of classifiers, not being less than three, as the chairperson shall nominate for the purpose.

(5) The classifiers who have taken part in the first examination shall not be eligible for nomination by the chairperson under sub-regulation (3) or sub-regulation (4).

(6) The second examination of the film shall be held not later than fifteen days from the receipt of the application by the chairperson of the Board.

47A*. The Board of Film and Stage Censors, when complying with the review procedures established by regulation 47, shall respect and apply the principles of good administrative behaviour laid down in article 3 of the Administrative Justice Act.

* *Added by: L.N. 346 of 2008.*"

59. The subsequent regulations also concerned film projections, up until Regulation 64 which read as follows:

"(1) Dramatic and other stage productions shall be subject to classification as provided in this regulation. [English version; the version in Maltese which prevails under domestic law reads 'these regulations']

(2) Any person who, in any place to which the public is admitted, whether against payment or not, presents any dramatic or other stage productions –

(a) without having previously obtained a certificate from one of the classifiers appointed under this regulation stating that, having regard to public morality, decency or propriety, or the public interest, it is suitable for presentation to the public; or

(b) otherwise than in accordance with any directions given to him by any such classifier as aforesaid,

Shall be guilty of an offence against these Regulations."

60. The only other provision which referred to dramatic or stage productions was Regulation 65 which read as follows:

"Every cinema exhibitor shall have the right, by giving fourteen days clear notice in writing to an importer of films with whom he has contracted to exhibit a film or films, on any particular day, to use his cinema for a dramatic or other stage production on that day, not being a Sunday or public holiday, and provided that the exhibitor shall not make use of this facility more than once in any week, he shall not be deemed to have committed any infringement of his contract with the importer by the exercise of such right."

61. According to the Guidelines for Film Classification (referred to in Regulation 42 (2), and drawn up by the Board itself, on the basis of criteria suggested in the same regulation) a film may be banned (*miżmum*) if, in the opinion of the classifiers, it is contrary to the law concerning morality, decency and good behaviour in public.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

62. The applicants complained that the complete ban on the production of the play "Stitching" was contrary to Article 10 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

63. The Government did not raise any objections as to the admissibility of the application, in particular in so far as it concerned the second applicant whose victim status had not been upheld domestically by a judgment of the first-instance constitutional jurisdiction on 28 June 2010 (see paragraph 39 above) which had not been appealed against (see paragraph 44 above).

64. The Court has already held that it is not prevented from examining of its own motion an applicant's victim status since it concerns a matter which goes to the Court's jurisdiction (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 70, ECHR 2016 (extracts) and *Orlandi and Others v. Italy*, nos. 26431/12 and 3 others, § 117, 14 December 2017).

65. In the present case no appeal was lodged against that part of the judgment of the first-instance constitutional jurisdiction of 28 June 2010 finding that the second applicant did not have victim status. It follows that the second applicant has accepted that judgment and in these circumstances the Court finds no reason to depart from the findings of that court in this respect (see paragraph 39 above).

66. For the above reason the complaint in respect of the second applicant must therefore be rejected as inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

67. The Court notes that the complaint in respect of the remaining applicants (i.e. the first, third, fourth and fifth applicants) is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It

further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Existence of an interference

(a) The parties' submissions

68. The applicants submitted that the complete ban on the production of the play "Stitching", which they considered was not in accordance with the law, was an interference which did not pursue a legitimate aim and was not necessary in a democratic society.

69. The Government acknowledged that there had been an interference with the applicants' right to freedom of expression. In reply to a question set by the Court they further acknowledged that "Stitching" was the only play ever to have been banned. In their view the banning of the play was a proportionate measure necessary in a democratic society for the protection of public morals as understood in the scenario of the relevant time.

(b) The Court's assessment

70. The Court considers that the impugned measure constituted an interference with the applicants' right to freedom of expression under the first paragraph of Article 10 of the Convention.

71. Such interference, in order to be permissible under the second paragraph of Article 10, must be "prescribed by law", pursue one or more legitimate aims and be "necessary in a democratic society" for the pursuit of such aim or aims.

2. Prescribed by law

(a) The parties' submissions

i. The applicants

72. The applicants submitted that the Cinema and Stage Regulations were very vague when setting out the criteria to be followed by the Board in classifying works of theatre. They referred in particular to the generic terms of Regulation 42 (2) sub-paragraphs (a) to (d) (see paragraph 55 above). They considered that sub-paragraph (a) was not sufficiently clear to offer guidance on what constituted good behaviour in terms of that Regulation. Moreover, the regulation provided that the actual guidelines would be drawn up by the Board on the basis of those criteria, which could be interpreted in unforeseen ways by the Board. Moreover, the guidelines created by the Board were not accessible to the public and were only

revealed during the domestic proceedings, when the Chairperson presented them to the domestic court on 18 December 2009.

73. The applicants submitted that the revision procedure was also unclear in so far as while Regulation 42 referred to both cinema and stage productions, Regulations 45 and 47 solely referred to films and it was unclear whether these regulations also applied to plays. From the evidence tendered during the domestic proceedings it appeared that other measures could have been possible or the classifiers could have watched the rehearsal before banning the play but they had failed to do so.

74. In reference to the revision procedure undertaken by the applicants they noted that - while M.S. and C.S. had testified that a classifier would not know whether any other member of the Board had read the script, and whether the assessment was being made at first-instance or at appeal stage - in their case the classifiers on appeal had been given a script full of scribbles and comments made by the previous classifier (as transpired during the domestic proceedings) thus prejudicing their impartiality. The applicants also noted that it transpired from the domestic proceedings that the classifiers did not understand the play and its time lines (such as, at what stage Abby fell into mental degeneration, which was when the hard dialogue went on). This was probably due to the fact that the narrative was not linear and time lines shifted from one scene to the next, a change which was evident when the play was acted out - in fact none of the witnesses who viewed the performance had trouble understanding it. The applicants submitted that a classifiers' report based on a total misreading of the play, where the plot is not grasped, should not form a legitimate foundation for judging the moral standards of a play.

ii. The Government

75. The Government submitted that the Board acted in accordance with the Cinema and Stage Regulations applicable at the relevant time. They referred to Regulations 42 (2), 45 and 64 (1) and (2) (see paragraphs 55, 57 and 59 above). Moreover, according to the Guidelines for Film Classification (hereinafter "the Guidelines") issued by the Board in accordance with Regulation 42 (2) a production could be banned if in the opinion of the classifiers it was contrary to morality, decency and good behaviour in public. In the Government's view both the Cinema and Stage Regulations and the Guidelines were clear and accessible. The law also provided for the classification of a play and a total ban of a play as well as the possibility of a revision of a decision by the Board (Regulation 47).

76. According to the Government, the view of the Board (which may be debatable but was by no means without reasonable foundation) was that the play was offensive in its singular parts as it included attacks on vulnerable persons like women, children and the victims of the holocaust, and that it became even more offensive when considered as a whole due to the

persistent attack against human dignity. This was the result of the use of vulgar, obscene and blasphemous language so much so that the play glorified perversions and the lowest human instincts. The author himself during the domestic proceedings had admitted that it contained swear words and described sexually explicit images. They considered that the play depicted perversion as being the norm rather than the exception and that all the classifiers had acted independently and fully understood the play. The Government submitted that it was the right and sometimes the duty of the State to limit the freedom of expression in order to protect morals and religious sentiment. Thus, the banning of the play was in accordance with the applicable legislation at the time.

(b) The Court's assessment

i. General principles

77. The expression "prescribed by law" in the second paragraph of Article 10 not only requires that the impugned measure should have a legal basis in domestic law, but also refers to the quality of the law in question, which should be accessible to the person concerned and foreseeable as to its effects (see *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no 17224/11, § 68, ECHR 2017; *Rotaru v. Romania* [GC], no. 28341/95, § 52, ECHR 2000-V, and *Maestri v. Italy* [GC], no. 39748/98, § 30, ECHR 2004-I). According to the Court's established case-law, a rule is "foreseeable" if it is formulated with sufficient precision to enable any individual – if need be with appropriate advice – to regulate his conduct (see, among many other authorities, *RTBF v. Belgium*, no. 50084/06, § 103, ECHR 2011, and *Ahmet Yıldırım v. Turkey*, no. 3111/10, § 57, ECHR 2012).

78. The Court has consistently held that for domestic law to meet the requirements of accessibility and foreseeability it must afford a measure of legal protection against arbitrary interferences by public authorities with the rights safeguarded by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion conferred on the competent authorities and the manner of its exercise (see, among many other authorities, *Rotaru*, cited above, § 52, and *Ahmet Yıldırım*, cited above, § 59, and the case-law cited therein).

79. Further, as regards the words "in accordance with the law" and "prescribed by law" which appear in Articles 8 to 11 of the Convention, the Court observes that it has always understood the term "law" in its "substantive" sense, not its "formal" one; it has included both "written law", encompassing enactments of lower ranking statutes and regulatory measures

taken by professional regulatory bodies under independent rule-making powers delegated to them by Parliament, and unwritten law. "Law" must be understood to include both statutory law and judge-made "law". In sum, the "law" is the provision in force as the competent courts have interpreted it (see, *inter alia*, *Sanoma Uitgevers B.V. v. the Netherlands* [GC], no. 38224/03, § 83, 14 September 2010; *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 88, ECHR 2005-XI, with further references).

80. Lastly, the Court reiterates that Article 10 of the Convention does not in terms prohibit the imposition of prior restraints on a particular form of communication (see *Karademirci and Others v. Turkey*, nos. 37096/97 and 37101/97, § 40, ECHR 2005-I). The Court has frequently examined preventive restrictions and prior restraints, reiterating that the dangers inherent in prior restraints are such that they call for the most careful scrutiny on its part (see, *inter alia*, *Ahmet Yıldırım*, cited above, § 47, concerning blocking access to websites; *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 118, ECHR 2004-XI, concerning the prohibition of journalistic activity; *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], no. 32772/02, § 93, ECHR 2009 concerning a refusal to broadcast an advert; and *Association Ekin v. France*, no. 39288/98, § 56, ECHR 2001-VIII concerning bans on dissemination of publications). Indeed, a legal framework is required, ensuring both tight control over the scope of bans and effective judicial review to prevent any abuse of power. In that regard, the judicial review of such a measure, based on a weighing-up of the competing interests at stake and designed to strike a balance between them, is inconceivable without a framework establishing precise and specific rules regarding the application of preventive restrictions on freedom of expression (see, *inter alia*, *Ahmet Yıldırım*, cited above, § 64).

ii. Application to the present case

81. The Government relied on Regulations 42 (2), 45 and 64 (1) and (2) (see paragraphs 55 57 and 59 above) and the Guidelines for Film Classification, as well as on Regulation 47 concerning the review procedure. The Constitutional Court noted that the applicants had not impugned the law establishing the Board and that it was the Board's competence to assess the script in line with the Regulations (see paragraphs 46 and 47 above).

82. The Court notes that the Government did not rebut the applicants' claim that the Guidelines had only appeared for the first time in the domestic proceedings. Indeed the Government did not explain how or in what way the Guidelines where accessible to the public and the Court notes that the copy submitted during the domestic proceedings (also submitted to this Court) contains no date or any information as to its publication, circulation or other means of dissemination. In consequence, the Guidelines which provided that a play could be banned did not attain the relevant

quality of law in so far as they were not accessible. It is therefore not necessary to examine whether they fulfilled other quality of law requirements.

83. As to the Regulations relied on by the Government, the Court notes the following.

84. Regulation 42 (2) empowered the Board to classify stage productions. This matter is not in dispute and was also confirmed by the Constitutional Court (see paragraph 47 above). Their classification was meant to be based on guidelines to be eventually issued by the Board (i.e. the Guidelines). In this respect, the Court notes that, irrespective of their content, the Guidelines where not accessible to the public. It follows that the completeness and therefore the precision of Regulation 42 (2) is questionable. Indeed it was intended for the Guidelines to elaborate the meaning of, *inter alia*, the criteria mentioned in Regulation 42 (2) (a), namely the levels of morality, decency and good general behaviour. Thus, in the absence of guidelines which fulfilled the quality requirements (at least that of accessibility), the criteria mentioned in Regulation 42 (2) (a), left room for an unfettered power since the law did not indicate with sufficient clarity the scope of any discretion conferred on the authority and the manner of its exercise.

85. As to Regulations 45 and 64 (1), the Court accepts that they constituted a legal basis of sufficient quality for the classification of both films and theatrical performances in one of the six categories mentioned. However, in the Court's view, a total ban was not a category as envisaged in Regulation 45, and thus Regulation 64 (1) concerning stage productions did not provide a legal basis for bans (which were only possible in the case of films) (see paragraph 57 above). Having also eliminated the Guidelines, any supposed legal basis for a total ban of a stage production could only be derived by a convoluted reading of the law with indirect references to, and in the light of, practice. In particular, in Regulation 47 mention was made of the possibility of a total ban, and that only in so far as the regulation provided for an appeal against a decision banning a production. However, again Regulation 47 only referred to films (*pellikoli*). The Court considers that, given the specific reference to films (unlike in Regulation 42), even an extended reading in conjunction with Regulation 64, would not suffice to make the Regulations (on whether banning a stage production was at all possible) precise and foreseeable.

86. Furthermore, while it is true that the applicants actually undertook that revision procedure which led to an appeal decision, the Court observes that even had it to be accepted that the procedure was also applicable to a ban on stage productions, the relevant procedure was not followed in the case of the applicants. The Court considers that if the provision had to apply to stage productions, then it had to apply in its entirety. This means that the applicants' appeal review would have had to be undertaken by three persons

who had not been part of the first assessment. It has not been disputed that in the applicants' case this was not so, as the review had only been done by one classifier, namely J.C. (see paragraph above 36). In this connection the Government solely relied on the argument that the rule concerning the composition of the board examining the appeal applied only to films, an argument the Court cannot uphold for the reasons just mentioned. It follows that not only Regulation 47 was not precise as to whether it allowed for such a procedure or not, but even if it did, the procedure undertaken in the present case had not been regular and therefore the decision-making procedure which led to the interference with the applicants' rights cannot be accepted as a procedure prescribed by law.

87. The various considerations above are sufficient for the Court to find that the law relied on by the respondent Government was not of a sufficient quality and that the interference was a result of a procedure which was not prescribed by law.

88. Having determined that the interference was not lawful within the meaning of the Convention it is not necessary for the Court to determine whether it was necessary in a democratic society.

89. There has therefore been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

90. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

91. The applicants claimed 4,299.20 euros (EUR) in respect of pecuniary damage covering the fees for the classification exercise, purchase of performance rights, theatre bookings, promotional material and advertisements and EUR 30,000 in non-pecuniary damage.

92. The Government submitted that the applicants were well aware that they would have had to obtain a requisite permit to perform the play, thus the expenses they incurred relative to the play represented a self-imposed business risk taken while knowing that the play could be banned. They also considered that a finding of a violation would constitute sufficient just satisfaction, and in any event the Court should not award more than EUR 3,500 in non-pecuniary damage.

93. Despite the lack of clarity of the law as to whether a total ban was possible, the Court considers that in any event the applicants should have waited for a decision on the specific classification of the play and thus

knowledge of the applicable audience before venturing into theatre bookings, promotional material and advertisements. It also considers that performance rights are likely to be required before such a procedure is undertaken at a cost, no matter its outcome. Thus, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, making its assessment on an equitable basis, it awards the first, third, fourth and fifth applicants EUR 10,000, jointly, in respect of non-pecuniary damage.

B. Costs and expenses

94. The applicants also claimed EUR 16,651.11 for the costs and expenses, including EUR 11,518.09 in professional legal fees (as per submitted invoices) incurred before the domestic courts and this Court as well as EUR 5,133.02 (as per taxed bill of costs of EUR 8,084.80 less professional fees mentioned above) for domestic court expenses.

95. The Government submitted that they did not contest the applicants' costs of proceedings namely EUR 3,540.17 as per taxed bill of costs. They also considered that the costs relative to proceedings before this Court should not exceed EUR 1,500.

96. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court notes that the applicants were to pay the costs of all the parties to the domestic proceedings but that no reason has been put forward as to the difference in legal fees between the taxed bill of costs and the actual requests for higher payments for the services supplied to the applicants as submitted to this Court. In the present case, regard being had to the documents in its possession and the above criteria, as well as the fact that most documents consist of invoices as opposed to receipts of payment the Court considers it reasonable to award the first, third, fourth and fifth applicants the sum of EUR 10,000, jointly, covering costs and expenses incurred domestically and before this Court.

C. Default interest

97. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application in respect of the first, third, fourth and fifth applicants admissible, and that in respect of the second applicant inadmissible;

2. *Holds* that there has been a violation of Article 10 of the Convention in respect of the first, third, fourth and fifth applicants;

3. *Holds*
   (a) that the respondent State is to pay the first, third, fourth and fifth applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 10,000 (ten thousand euros), jointly, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 10,000 (ten thousand euros), jointly, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 15 May 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Ganna Yudkivska
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Kūris is annexed to this judgment.

G.Y.
A.N.T

CONCURRING OPINION OF JUDGE KŪRIS

1. Having voted together with my distinguished colleagues in finding a violation of Article 10 of the Convention in respect of four applicants, I am nevertheless not fully satisfied with the reasoning leading to this finding, which is laid down in paragraphs 84–86 of the judgment. As stated in paragraph 87, that finding is based on "various" considerations presented in the three preceding paragraphs. In my opinion, that "variety" could be kept to a minimum. For a finding of a violation of Article 10, the reason indicated in paragraph 84, with some rewording, should have sufficed on its own: namely that the guidelines for the classification of stage productions were inaccessible to the public, and therefore the impugned "interference was a result of a procedure which was not prescribed by law" (see paragraph 87). The latter statement is relevant not only to the guidelines which were legally absent. But the fact that Regulation 47 deals explicitly only with films does not necessarily mean that it could not be interpreted - extensively or by analogy – so as also to cover stage productions: if Regulation 64 (1) could be read together with Regulation 45, why could it not be read together with Regulation 47, which is an "extension" of Regulation 45 in its own right? In order to prefer a verbatim interpretation of Regulation 47 (as the Chamber does – though with a very cautious reservation – in clear contradiction to the reading by the Constitutional Court of Malta), at least some consideration of the method(s) of its interpretation was more than desirable.

2. If, however, these contiguous shortcomings of the law applied in the applicants' case were to be addressed, then there was something else which had to be addressed too. The Chamber found that "the law relied on ... was not of a sufficient quality". Again, this applies not only to the guidelines mentioned above, but also to Regulation 42 (2), the "completeness" and "precision" of which has been rightly recognised as "questionable". But the shortcomings of the Regulation are not confined to its "incompleteness" and "imprecision". They encompass also the Board's power to rule on the "literary, artistic or educational merit" of productions, "if any", and to ban some of them as "not fit for exhibition". This privilege, so indiscriminately worded, smells of discretionary censorship, especially (but not only) having regard to the Board's (whatever its members' professional and moral merits) appointment by the Parliamentary Secretary for Culture and Local Government, that is to say, by members of the Government. After all, Regulation 47A mentions the "Board of Film and Stage *Censors*" and not their "*Classification*" (compare paragraphs 58 and 7 respectively; emphasis added). The word "censors" is perhaps rather too instructive. However, the deeper problem of the limits of discretionary censorship was not touched upon in the judgment.

3. One last point. The Chamber recognised the second applicant as a non-victim of the alleged violation. In order to be able so to conclude, the Chamber gave prominence to the fact that that applicant had not lodged an appeal against that part of the judgment of the first-instance court which found him to have no victim status "in his own capacity" and interpreted this omission as "acceptance" of the finding of the first-instance court by the second applicant. But the Chamber does not know the real reasons behind the failure to lodge such an appeal. The second applicant might have not accepted the said finding at all, but had not appealed against it owing to some overriding personal circumstances. Who knows? Rather than taking on board this far-fetched "acceptance" excuse, the Chamber should have stated directly and determinedly (as did the first-instance court) that that applicant could not claim to be a victim of a violation of the right to freedom of expression under Article 10, because the latter does not cover the activities of theatre directors (unless they are artists at the same time), just as it does not cover the work of accountants, managers, service providers, stewards etc. At times excessive caution gratuitously leaves questions open where there should be full clarity.