**Case summary and outcome**

The Paris Tribunal held that the publishing director of an online blog dedicated to criticism of the judiciary could not be held criminally responsible for an outrageous comment published by an anonymous author unless it was established that the director was aware of the contentious message before its publication and did not intervene promptly to remove it.

**Facts**

On September 26, 2016, a magistrate named Jacques P. filed a criminal complaint with the investigating magistrate of the Paris Tribunal for public insult against a public official under Article 23, 29 (2) and 33 (11) of the law on audiovisual communication. He submitted that an article entitled ‘*Draguignan, partisan justice; the justice must be rendered objectively, Jacques P.: ‘the justice is dead’* was published on the website http://juge.partisan.online.fr on July 16, 2015. The magistrate indicated that on June 26, 2016, a person published under the pseudonym ‘Clementine’ an online comment under the said article, which called the judge ‘*big perverted manipulator’*, saying that ‘*he must take psychotherapy*’ before exercising the judgeship and questioning ‘*how he can judge others’*. The plaintiff magistrate argued that these outrageous and contemptuous expressions presented him as a person unfit to exercise the profession of the magistrate. A criminal investigation was initiated against Joseph M., identified as the creator and responsible of the blog. In his statement during the investigation, Joseph M. declared having created the blog at issue after he had noticed difficulties faced by a litigant when being heard without a lawyer. He argued, however, that he did not understand how the impugned comment could be published without his approval as the website moderator. The investigating authorities could not identify the author of the comment since she was connected through a mobile IP address and the connection data was only stored for one year under the French law.

**Decision overview**

Before the Paris Tribunal, the blog moderator, Joseph M. declared that he created the blog in question to publish local articles and personal writings about judicial events he was interested in and added that he did not approve the publication of the contentious comment, nor did he receive a notification before its publication. He added that once he read the comment at issue, he had decided to delete everything, including the blog itself, in the face of the difficulties of moderation. The plaintiff magistrate argued that Joseph M. did not substantiate the reasons that had allegedly prevented him from moderating the relevant content; he did not submit evidence to corroborate a potential hacking of the website; and he was aware of the contentious message before its online publication. He claimed that the defendant did not react promptly to remove the comment in question. He requested the Court to sentence Joseph M. to pay a sum of 1,000 euros in compensation for the damages he incurred and of 8,000 euros on the basis of Article 475-1 of the Code of Criminal Procedure.

The Tribunal examined whether the publishing director of the blog at issue, Joseph M. was aware of the message before its publication and, if this was the case, whether he acted in a prompt manner to remove it. Having noted the absence of evidence corroborating that Joseph M. had editorial control over the messages published under the article in question, the Paris Tribunal held that there was no advanced fixing of the outrageous comment. In fact, it could not be established that Joseph M. knew of the impugned comment before its publication. The evidence established, however, that on the date of the complaint by the magistrate Jacques P., the article under which the allegedly injurious message was published was removed and the blog was deleted by Joseph M., long before he knew about the complaint lodged against him.

In light of the foregoing, the Tribunal concluded that Joseph M. could not be held responsible as publishing director of the blog for the online publication of an outrageous comment and dropped the case against him.

**Expands freedom of expression**

The judgment expands freedom of expression online since it conditions the duty to moderate anonymous, outrageous messages from users to having knowledge of and being able to control the content at issue.

**Global perspective**

**Table of Authorities**

National standards, law or jurisprudence

* Fr., Law on audiovisual communication, art. 93 (3)
* Fr., Law on freedom of press, art. art. 23, 29 (2) and 33 (11)