***Case Title: Jacques v. Joseph***

**Case Analysis**

***Meta-Data*:**

* **Case Number**: 16271000439
* **Date of decision**: 2021 September the 16th
* **Featured case**: N/A
* **Region**: PARIS
* **Country**: FRANCE
* **Type of expression**:
* **Judicial Body**: Tribunal judiciaire (1st jurisdiction degree) – criminal section
* **Type of law**: criminal liability on social networks Law
* **Main Themes**:
* **Outcome**: the publisher of a website will be prosecuted and convicted when a prior fixing of the litigious message is established.
* **Status**:
* **Tags**:

***Analysis:***

* **Summary and Outcome**:
* **Facts**:

A comment has been published on a web site dedicated to the criticism of the judiciary.

This comment is considered as a slander for a judge who lodge a criminal complaint against the publisher of the web site, as the author of the comment cannot be identified.

Indeed, under French Law, the identification data are retained only for 1 year after the termination of the contract with the Internet provider (Decree 2011-219 of February the 25th 2011).

* **Decision Overview**:
1. Judge Delphine CHAUCHIS, vice President of the Tribunal Judiciaire of Paris delivered the judgment for the Court.
2. **The main issue** before the Court was to know if it was possible to convict the website publisher as no evidence of prior fixing of the litigious comment was established.
3. **The parties’ arguments.** The defendant claimed that the criminal investigation did not establish any prior fixing. On the contrary, there was evidence that the publisher had erased the website before any legal action of the plaintiff . The plaintiff answered that the publisher did not moderate the content of the website.
4. **The applicable law or legal basis:**  Article 93-3 of the statute dated 1982 the 29th of July rules that the publisher can be prosecuted for any content of his website if a prior fixing of the litigious comment is established. On a social network, the publisher will be prosecuted for a comment only if it is proven that he knew the existence of this comment or that he didn’t remove this comment after a prior notice of the plaintiff.
5. **Discussion of the court’s findings and its reasoning:**

The Court considers that:

* The criminal investigation does not establish that a prior notice was sent to the publisher prior to the criminal complaint. Moreover, no prior fixing of the litigious comment is proven;

Finally, the publisher has erased the website before the criminal complaint was lodged.

1. **Conclusion:** The concluding sentence is that the accused is not guilty for the litigious comment published on the website.

***Direction:***

* **Outcome**: this summary judgment confirms the principle of criminal liability on social networks.

***Perspective***:

Under French Law, the provider is not liable for comment posted on the website unless prior fixing of the message or prior notice.

***Significance***:

* **Decision establishes influential or persuasive precedent outside jurisdiction. Explanation**:

This judgment is in accordance with the general principal in media criminal case Law and the decision of the Constitutionnal Court (decision n° 2011-164 QPC 2011 09 16th) which guarantees more effectively freedom of expression than some case Law of the Cour de cassation (the highest Court in the judiciary: crim., 1990 nov. 15 th., n° 89-85479; crim., 2010 Feb. 16th, n° 09-81064) ruling liability for the existence of the social media by itself.

***Docs***:

* **Official Case Documents**:

**Examples:**

Judgment (in French) [Attached]

* **Reports, Analysis, and News Articles**: none