



Case 95-81605

Cass Crim, n°95-81605, 21 February 1996

Country: France

Region: Europe

Year: 2005

Court: Cour de cassation [Court of Cassation]

Health Topics: Chronic and noncommunicable diseases, Tobacco

Human Rights: Freedom of expression, Right to health

Facts

The defendant was the editor of the weekly magazine VSD (Vendredi, Samedi, Dimanche). In this case, VSD appealed a decision of the court of appeals in which the defendant was fined 200,000 francs by the Paris Court of Appeals on 24 February 1995 for complicity in illegal advertisement of tobacco as defined by the laws n°91-32, "Loi relative à la lutte contre le tabagisme et l'alcoolisme". The article that allegedly violated the law was one discussing technical innovation in the tobacco industry but not directly advertising any tobacco product and included a photograph of a car which was branded with a tobacco brand.

Decision and Reasoning

The Court of Cassation held that the laws relating to the illegal advertisement of alcohol and tobacco do not violate Article 10 of the European Convention on the Rights of Man. The previous judges decided correctly that Article 10 of the Declaration of the Rights of Man and the citizen of 1789, which proclaims "the free communication of thoughts and opinions is one of the most precious rights of man," can be subject to certain restrictions in the domain of health, as recognized by the European Convention on Human Rights.

The Court of Cassation held that the Court of Appeals did not violate Article 10 of the European Convention on the Rights of Man in its decision. Article L. 355-42 of the Code of Public Health created by law n°91-32 forbids publications that purposefully promote the consumption of tobacco, but the article cannot prohibit any form of published writing that does not aim to promote the sale and distribution of tobacco without violating freedom of expression. In punishing the defendant for the publication of an article which gives information concerning a technical innovation in the tobacco industry without promoting the product, the Court of Appeal violated article 10 of the European Convention on Human Rights.

In sanctioning the appellant for the publication of a photograph from an international automobile competition that included a car branded by the Rothmans tobacco company, the lower court has violated the fundamental principle of freedom of the press. Furthermore, the law of 1993 specifically authorizes the dissemination of images of auto racing on television under similar conditions to the case at hand.

The Court held that the tribunal did not err in applying a standard of strict liability to Francois X as director of the publication. Although there is no presumption of liability of an editor, the director of a publication is responsible for guarding against the commission of illegal acts.

Decision Excerpts

"Any diffusion of texts, pictures or photographs participating to the promotion of tobacco or tobacco products encouraging to purchase such goods constitutes an advertisement or propaganda forbidden by article L.355-25 of the Public Health Code"

"« Toute diffusion d'écrit, d'image ou de photographie participant à la promotion du tabac ou des produits du tabac pour inciter à l'achat constitue, quel qu'en soit l'auteur, une publicité ou propagande interdite par l'article L. 355-25 du Code de la santé publique. »"