

Judicial Decisions

European Court of Human Rights, Lehideaux and Isorni v. France, 55/1997/839/1045 (Sept. 23, 1998)

Lehideaux, President of the Association for the Defence of the Memory of Marshal Petain, and Isorni, an attorney who represented Petain before the French High Court of Justice in 1945, were charged and ultimately found in violation of the crime of public defense of the crime of collaboration with the enemy, defined in the Freedom of the Press Act of July 29, 1881, arising out of a newspaper ad in *Le Monde* calling for a reappraisal of Petain's record, including the period between 1940 and 1945. para. 21. The Criminal Division of the Court of Cassation dismissed their appeal stating that "[i]n presenting as praiseworthy a person convicted of collusion with the enemy, the text glorified his crime and, in so doing, publicly defended it" and that the restriction on speech was permissible under Article 10(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) as being pursuant to a law which was "necessary...in the interests of national security, territorial integrity or public safety." para. 23.

The European Court of Human Rights held that unlike attempted denial of "clearly established historical facts - such as the Holocaust" which would be outside the protection of speech contained in Article 10 of the Convention, the question of Petain's policies was "part of the ongoing historical debate" and did not need to be settled by the Court. para. 47. The Court held that in order for a law restricting speech to be "necessary", it must be "proportionate to the legitimate aims pursued" by the national authorities as justified by "relevant and sufficient" reasons. para. 51. The Court held that the restrictions were disproportionate and unnecessary in a democratic society in that (1) the advertisement did not so much "prais[e] a policy as a man" and was done for the purpose of securing revision of Petain's conviction; (2) the events described in the advertisement took place more than forty years ago and it is inappropriate to deal with them with the same severity as if they occurred ten or twenty years previously; (3) Article 10 of the Convention protects not just inoffensive expressions, but also "those that offend, shock or disturb"; (4) the publication corresponds with the objectives of its sponsoring associations, which were legally constituted under French law; and (5) criminal convictions are particularly serious penalties, given other available means of rebuttal, including civil remedies. paras. 53-58. DL
<http://www.dhcour.coe.fr/eng/LEHIDEUX%20ENG.html>