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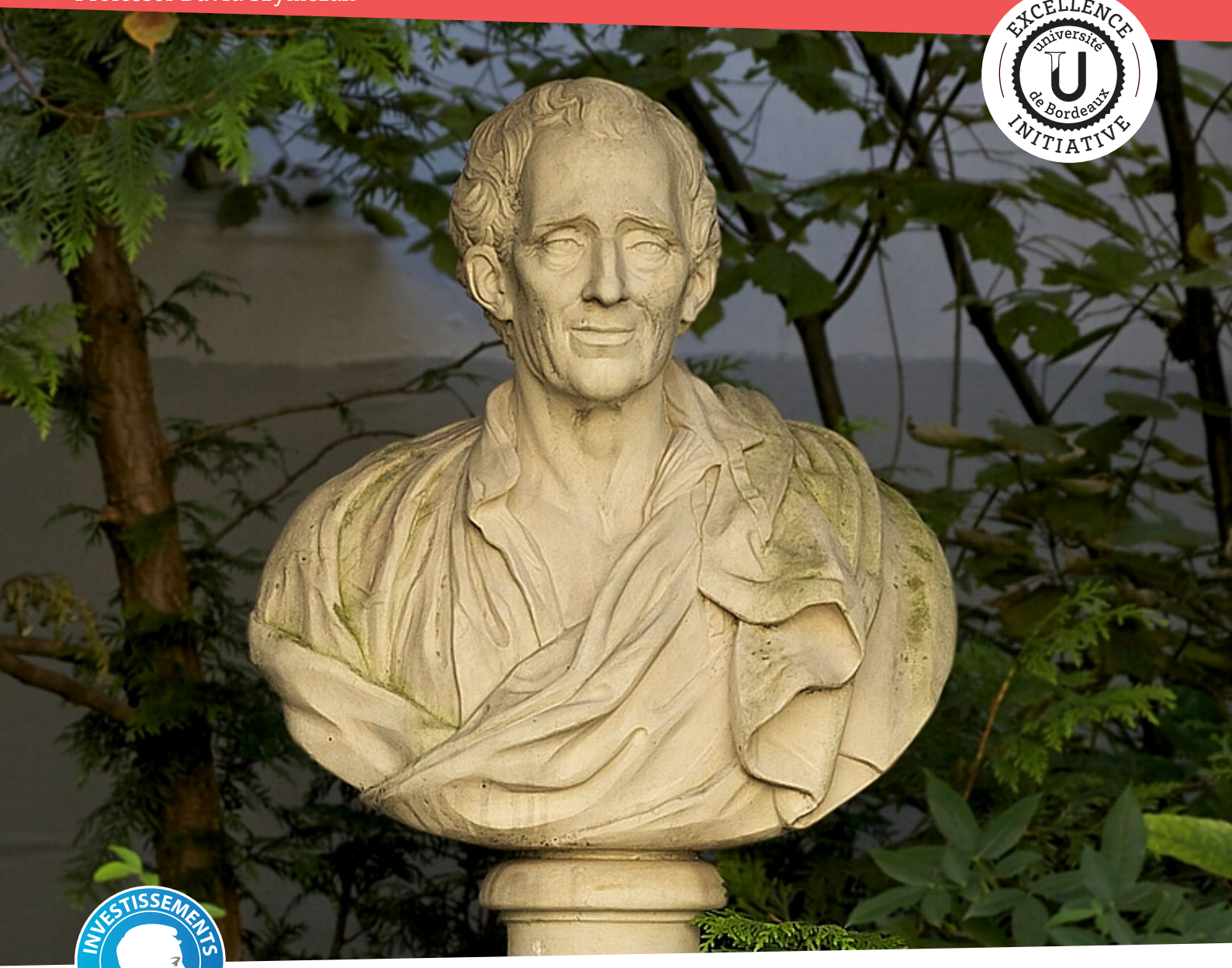

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European law (ECHR):

The European Court of Human Rights and the offence of insulting the President: an ambiguous condemnation for a planned repeal

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ECHR, Fifth Section, *Eon v France,* Application N°26118/10, 14 March 2013

Despite having long since renounced her monarchy, France did not hesitate in the last century to institute a veritable "republican monarchy" in the person of the President of the Fifth Republic. With extensive powers since the entry into force of the 1958 Constitution and, furthermore, enjoying a high degree of legitimacy owing to his election by direct universal suffrage (1), the President of the French Republic has been at the very heart – indeed, is the keystone – of French institutional and political life for over fifty years. Furthermore, he has traditionally benefited from an especially protected status, on the basis of which it is fitting to mention the offence of insulting the President, formerly provided under Article 26 of the Law of 29 July 1881 on the freedom of the press (2). Deemed by its detractors as the last vestige of the crime of *lèse majesté* (3) – which, moreover, only exists in a scant number of States (4) – the offence of insulting the President remained relatively unknown to the general public in France.

It must be said that while Charles de Gaulle, first President of the Fifth Republic (1959 – 1969), made ample use of the proceedings – he did so on more than 500 occasions (5) – the relevant provisions had only seldom been used before him (6) and subsequently appeared to have fallen into disuse: no other President of the Fifth Republic had used them since the end of Pompidou's presidential term of office (1969 – 1974) (7). It was not until Nicolas Sarkozy's presidency and the *Eon* case that the "offence of insulting the President" suddenly found itself centre stage – and not only the French but also the European stage as, on 14 March 2013, the European Court of Human Rights was called upon to give a ruling on the conformity of the offence with the European Convention on Human Rights and Fundamental Freedoms.

The apparently anodyne facts of the *Eon* case can be summarised as follows. On 28 August 2008, the then President of France, Nicolas Sarkozy, was on an official visit to Laval (Mayenne). When the arrival of the presidential motorcade was imminent, a protestor, Hervé Eon, silently brandished a placard bearing the words "*Casse-toi pov'con"* (loosely, "piss off, you sad bastard"). The slogan referred to a sentence uttered by the President himself some months previously at an agricultural show where a visitor there had refused to shake his hand. This reiteration of words uttered by the President, for which the latter was heavily criticised in the media, resulted in Hervé Eon being prosecuted for the offence of insulting the President. On 6 November 2008, he was found guilty by the *tribunal de grande instance* (regional court) at Laval and received a suspended fine of thirty Euros. The conviction was upheld on appeal on 24 March 2009; the Criminal Chamber of the Court of Cassation dismissed Mr Eon's appeal because no arguable grounds of appeal could be made out. Having exhausted all options on a national level, the appellant brought a case before the European Court of Human Rights, alleging that his conviction and sentence constituted a breach of his right to freedom of expression, protected under Article 10 of the ECHR.

All in all, the judgment in *Eon v France* given on 14 March 2013 led to a somewhat ambiguous solution. On the one hand, the ECHR in Strasbourg recognised, *in concreto*, a breach of Article 10 of the Convention, reminding the French authorities in passing that freedom of political expression ought to enjoy extensive protection as a matter of principle (see section I, below). On the other hand, however, the *Eon* decision also sparked criticism, as the Court refused to rule, *in abstracto*, on the issue of the conventionality of the offence. As such, it appeared to grant a "reprieve" to the offence – a reprieve that was cut short by a swift response on the part of the French authorities, who ultimately chose to repeal the offence of insulting the President of the Republic (see section II, below).

[I] A breach of Article 10 ECHR recognised *in concreto*: a reminder of the extensive protection granted to freedom of political expression

(A) The admissibility of the application

Even before ruling on the potential breach of the Convention, the Court had to decide on the admissibility of the application. As such, the French Government raised two main objections to admissibility. Firstly, it expressed doubts as to whether the facts of the case truly fell within the ECHR's remit; if they did not, this would mean that the Court had no jurisdiction to hear the case. This line of argument was hardly likely to succeed as it amounted to arguing that the contentious remarks did not come within the province of freedom of expression as they *"did not contain any expression of opinion and had been displayed by a private individual, outside the context of any debate on a matter of public concern"* (para. 40). In this case, the Court did not even trouble itself to respond explicitly to the French Government's "doubts", contenting itself with laconically asserting that the applicant's conviction amounted to *""interference by public authority" with his right to freedom of expression"* (para. 47). This finding was inevitable in light of previous ECHR case law, particularly the decision in *Faber* which had accepted a little earlier that the mere fact of silently unfurling and displaying a banner with fascist connotations fell within the remit of freedom of expression (8).

More convincing, however, was the French Government's second objection, based on the new admissibility conditions introduced by Protocol n°14: the significant disadvantage criterion (9). As of 1 June 2010, the latter allows the Court to refuse any application in which the applicant has not suffered a significant disadvantage, unless the human rights interest is such as to require an examination of the case on its merits and on condition that said case has been "duly considered" by a national court. *A priori*, this second point appeared to be the stronger argument, the Court even conceding that *"the case concerns a modest sum of money and that its financial implications are therefore minimal"* (para. 34) (10). It did, however, recall that a significant disadvantage may be identified independently of any pecuniary interest. Indeed, *"the seriousness of a violation should also be assessed by taking into account both the applicant's subjective perceptions and what is objectively at stake in a particular case"* (para. 34). As regards "the subjective importance of the issue", the Court deemed this to be obvious, particularly because the applicant *"pursued the proceedings to their conclusion, even after being refused legal aid because no arguable grounds of appeal could be made out"* (para. 34) (11). As to "what was objectively at stake", the case had *"received widespread media coverage and concerns the question whether insulting the head of State should remain a criminal offence, a matter that is regularly raised in Parliament"* (para. 34). Lastly, for the sake of completeness (12), the Court considered that there was in any event a

human rights interest in the Court examining the case on its merits as *"the application raises an issue that is not insignificant, either at national level or in Convention terms"* (para. 35) (13).

From that point of view, the ECHR's recognition of the significant disadvantage suffered amounts to a very real repudiation of France's Court of Cassation. Previously, the latter had not only refused to admit the application submitted by Hervé Eon, but had also refused him legal aid because no arguable grounds of appeal could be made out. However, by stressing the "*objective importance of the issue of maintaining the offence of insulting the President*", the Court set a trap for itself that it later sprang, by refusing to rule on the conventionality *per se* of the offence of insulting the President (14). The main objective had nevertheless been achieved: having ruled on the admissibility of the application, the Court could then go on to examine the merits of the case.

(B) The examination of the alleged breach

Having ruled on the admissibility of the application – and, incidentally, on the question of interference – the Court then had to establish whether the restriction imposed on freedom of expression by the French authorities met the three criteria required under Article 10 (2) ECHR. In order to be compatible with the Convention, state interference must be prescribed by law, pursue a legitimate aim and be necessary in a democratic society, i.e. proportionate to the legitimate aims pursued. It is on the third condition that the Court focused its attention, the first two (having been confirmed) being subject to only the briefest of examinations. Admittedly this is a typical stance, the Court only rarely sanctioning a State for a lack of lawful basis and/or legitimate aim, to such an extent that this double test sometimes seems formal, even artificial. Nevertheless, in this particular case, an examination of the first two criteria would have benefited from being a more in-depth one.

Firstly concerning whether the interference was "provided by law", the Court agreed that it was in the course of one sentence (para. 48), when the issue could have been discussed at greater length. Admittedly, the offence of insulting the President is "formally provided" by law (i.e. the Law of 29 July 1881, s. 26) but the notion of "insult" likely to constitute the offence (i.e. the material element of the offence) is not defined by that law. Now, while the ECHR sometimes settles for a definition drawn from case law (15), the French legal decisions that sought to define the notion of "insult" are some forty years old and precision is not necessarily their strong point (16). Suffice it to say that there is some doubt as to whether the foreseeability, accessibility and clarity requirement, usually an underlying element of the first condition for accepting an interference, was observed (17). Such uncertainty surrounding the constituent element of the offence of insulting the President does not, however, appear to trouble the Court at Strasbourg though, in our opinion, it is the main flaw in the judgment. Be that as it may, if the Court had sanctioned France at this stage for "lack of legal basis", it would in fact have ruled on the conventionality *per se* of the offence of insulting the President… which it evidently wished to avoid.

Next, the issue of "legitimate aim". The Court was scarcely more forthcoming when it was making a substitution in relation to the aim argued by the Government: according to the latter, the aim of the offence was *"the prevention of disorder, given the need to protect the institutional representative embodying one of the highest State authorities from verbal and physical attacks liable to undermine the State institutions themselves"* (para. 41). This assertion contains the basic rationale behind the offence – or at least that which prevailed when the offence was created under the Third Republic and which serves in distinguishing it from the crime of *lèse-majesté* (18).

However, the Court considered *"the purpose of the interference was "protection of the reputation ... of others"* (para. 49). Admittedly, the purpose retained is that which it "mobilises" most often in cases involving the privacy of public figures. However, such an automatic reclassification amounts to a denial of the specific dimension of the offence (19). This not only allows the Court, once again, to avoid the issue of the conventionality of the offence of insulting the President but also to tie the *Eon* case to its classic case law on the protection of freedom of political expression.

Moreover, this is revealed by the examination of the final criterion: that of the necessity of the interference in a democratic society. As such, the ECHR began by recalling that, even though its task was not to substitute itself for the national court, but rather "*to look at the interference complained of in the light of the case as a whole, including the content of the comments held against the applicants and the context in which they made them"* (para. 51). Equally, it stated that while the expression used by Mr Eon was "*in literal terms, insulting*", such a phrase had also to "*be examined in the light of the case as a whole, particularly with regard to the status of the person at whom it was directed, the applicant's own position, its form and the context of repetition of a previous statement*" (para. 53). Consequently, the Court undertook a detailed examination of the case, which ultimately led it to conclude that the contentious statement did not constitute "*a gratuitous personal attack against* [the President]" (para. 57), but that they could be perceived as "*criticism of a political nature*" (para. 58), and were an expression moreover of "*the medium of irreverent satire*" (para. 59). So, in ruling as it did, the ECHR strengthened the guarantee of the applicant's freedom of expression twice over.

Firstly, the Court chose to compare the contentious statement to "political speech", which is usually afforded a great deal of protection in ECHR case law. In this respect, it recalled that "*there is little scope under Article 10 § 2 for restrictions on freedom of expression in the area of political speech or debate – where freedom of expression is of the utmost importance*" (20). It also recalled that "*[t]he limits of acceptable criticism are wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance*" (21). Such protective principles must apply in this case as, according to the Court, it is the case and the protagonists, taken as a whole, that are imbued with political connotations. In particular, it considered that "*the applicant's intention was to level public criticism of a political nature*" and that a link could be established "*between his political involvement and the very nature of the phrase he had used*". This view is further bolstered by Mr Eon's "profile" which, as noted by the Court, was that of "*an activist and former elected representative who had fought a long-running campaign actively supporting a Turkish family residing unlawfully in France*" (para. 58).

It is appropriate at this stage to emphasize the clear-cut difference between the respective approaches of the French court and the ECHR: from the same starting point, each reached diametrically opposed conclusions. Indeed, when the case was tried at a national level, the French courts also acknowledged Mr Eon's "political motives". They ruled, however, that the political nature of the phrase featured on the applicant's placard proved that the insulting phrase had been used solely with the intention of insulting the President. Equally, they considered that "*in view specifically to his political activism and the premeditation of his act*", the applicant "*could not have acted in good faith*". As can be seen, where the applicant's "political motives" had the effect of

"limiting" his freedom of expression before the French courts, those same motives served to "amplify" it before the European Court of Human Rights.

Secondly, the applicant's freedom of expression was also bolstered as it resembled "satirical criticism", as recognized by the Court when it considered that "*by adopting an abrupt phrase that had been used by the President himself [...] the applicant chose to express his criticism through the medium of irreverent satire*" (para. 60). According to ECHR case law, "*satire is a form of artistic expression and social commentary which, by its inherent features of exaggeration and distortion of reality, naturally aims to provoke and agitate. Accordingly, any interference with the right of an artist – or anyone else – to use this means of expression should be examined with particular care*" (para. 60) (22). In extending this reminder, the Court reasserted that the penalties for such views, even where they are minor, are "*likely to have a chilling effect on satirical forms of expression relating to topical issues. Such forms of expression can themselves play a very important role in open discussion of matters of public concern, an indispensable feature of a democratic society*" (para. 61). Consequently, the fact that the applicant had only been sentenced to a suspended (low) fine of thirty Euros would not suffice to exonerate the French authorities from their responsibility.

Ultimately, the guarantee of "free political speech", combined with that of "free satire", serves to grant maximum protection to the applicant's freedom of expression. The interference being disproportionate, the Court concluded that there had indeed been a violation of Article 10 of the Convention (23). From that point of view, the decision in *Eon* is part of a resolutely liberal approach to freedom of expression, allowing the European Court to renew (24) the wording adopted in the *Handyside* judgment, according to which "[freedom of expression] *is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society*" (25). Nevertheless, the Court did not necessarily follow its line of thought through as it chose to avoid the issue of the conventionality of the offence of insulting the President.

[II] The refusal to rule *in abstracto* on the offence of insulting the President: a provisional suspension but a swift response on the part of the French authorities

(A) The refusal expressly to condemn the offence of insulting the President

While concluding that there had indeed been a violation of Article 10, the Court considered that *"it is not necessary in the present case to determine whether the criminal classification of the applicant's acts was compatible with the Convention – even if it is recognised that this was a special measure"*. It took the view that the classification "*did not have any particular effects or confer any privilege on the head of State concerned vis-à-vis the right to convey information and opinions concerning him"* (para. 55). The Court therefore relied on the essentially specific nature of its examination to justify its refusal to examine Article 26 of the 1881 Law. Prior to this, it took pains to make the distinction between *Eon* and its decision in *Colombani* (26). In the latter case, the Court had clearly condemned France for its offence of insulting foreign heads of State, the purpose of which *"is to confer a special legal status on heads of State, shielding them from criticism solely on account of their function or status, irrespective of whether the criticism is warranted"*. In the Court's view, *"that... amounts to conferring on foreign heads of State a special*

privilege that cannot be reconciled with modern practice and political conceptions" (para. 68) and had to be considered as contrary to Article 10 ECHR.

It was therefore possible to think that the Court would be just as strict with regard to the "twin" offence of insulting the French President. Instead, it chose to undertake a subtle distinction between the two cases (27), recalling first of all that in *Colombani*, the prosecutions had been brought on the basis of a newspaper article, so that the litigation fell within the scope of press freedoms. Next, in *Colombani*, the offence of insulting a foreign head of State had been condemned "in itself" as *"unlike the position under the ordinary law of defamation, the applicants had been unable to rely on a defence of justification – that is to say, proving the truth of the allegation – to escape criminal liability on the charge of insulting a foreign head of State"* (para. 55). Admittedly, in *Eon*, the mechanism under Article 26 did not provide for a defence of justification either, but this had not had any specific consequences. Indeed, *"the phrase [Mr Eon] used was an insult rather than an allegation"*, and he would have been prevented from proving the truth of the same (para. 55). Finally, the Court noted that the applicant *"did not claim that the head of State had acted or spoken offensively towards him"*. Consequently, the fact that the offence of insulting the President did not allow the "defence of provocation" to be invoked was of no consequence in the present case (28).

Aside from the fact that the distinction between the two cases seems fairly artificial, the timidity shown by the Court in *Eon* also stands in stark contrast with other recent decisions, particularly in *Otegi Mondragon* (29) where Spain was condemned for a criminal penalty imposed on a Basque militant for "serious insult to the King". In this instance, the Court criticised Spanish legislation, which afforded a higher level of protection to the Head of State than to other persons or institutions. It also recalled that *"providing increased protection by means of a special law on insults will not, as a rule, be in keeping with the spirit of the Convention"* and *[t]hat interest, in the Court's view, could not serve as justification for affording the Head of State privileged status or special protection vis-à-vis the right to convey information and opinions concerning him"* (para. 55). The lessons drawn from the decision in *Otegi Mondragon* was ignored in *Eon* (30), when the same line of reasoning could well have been reiterated, even applied *a fortiori*. In the Spanish case, the special scheme criticised by the Court related to a monarch who, by its own admission, occupied *"a unique institutional position"*. The President of the Fifth Republic, as is known, performs a much more active political role than that of the Spanish sovereign (31)…

Consequently, while the offence of insulting the King *per se* raised the issue of conventionality in *Otegi Mondragon*, it is difficult to see why the Court decided otherwise in *Eon* (32). The fact remains that while the Court unquestionably demonstrated judicial self-restraint in the latter case by not expressly requiring that France repeal the offence of insulting the President, one might also think that the repeal was implicitly expected of the French authorities, which likely explains the swift response on their part.

(B) The swift repeal of the offence of insulting the President by the French authorities

The refusal to rule *in abstracto* on the offence of insulting the President does not mean that it was judged to be in conformity with the Convention's requirements, or that it had received absolution for the future. Evidently, it was simply a detailed refusal tied to the facts of the case, the Court having probably considered that this "*case would not have been the right time to get to the legislative basis for the interference, through the review* in concreto*"* (33). The Court having taken

great pains to emphasise that the offence of insulting the President was a "special measure", one could therefore think that, in other circumstances and particularly in a case concerning press freedoms, it would probably have been led directly to sanction this legal mechanism in that it confers special protection and procedural privilege to the President, particularly in cases of insults deemed defamatory. On that basis, and although the Court was careful to make the distinction between the two cases, the decision in *Colombani* proves instructive once again. In that case, the Court emphasised the incompatibility with Article 10 ECHR of the offence of insulting a foreign Head of State, formerly provided under Article 36 of the 1881 Law (34).

On this occasion, the Court pointed out that *"[u]nlike the position under the ordinary law of defamation, the applicants were not able to rely on a defence of justification (...) to escape criminal liability"* and that *"[t]he inability to plead justification was a measure that went beyond what was required to protect a person's reputation and rights, even when that person was a head of State or government*" (para. 66). Furthermore, it stressed the fact that *"[i]t is the special protection afforded foreign heads of State by* Article *36 that undermines freedom of expression, not their right to use the standard procedure available to everyone to complain if their honour or reputation has been attacked or they are subjected to insulting remarks"* (para. 69). In *Colombani*, the condemnation was therefore based on the fact that in cases of insulting a foreign Head of State, the law did not grant the accused the same defence as he would have had in cases of defamation or insult. The offence of insulting the President – which was challenged in *Eon* – is exactly identical on this point to that of insulting a foreign Head of State, repealed in 2004. It is also an exception which places the President in a privileged position – a position which is even less justified when he actively occupies the centre of the political stage and is therefore necessarily exposed to criticism. Consequently, repressing those criticisms under cover of the offence of insulting the President can come across as an abuse of power.

The exceptional nature of the offence of insulting the President, which is potentially fatal to freedom, explains why, well before the *Eon* case, a number of bills had already be put before the French Parliament, with a view to repealing the offence (35) – without success, however. In that sense, France's condemnation in *Eon*, while it did not directly concern the offence of insulting the President, not only renewed the debate but above all led to the swift removal of the offence from French law. More specifically, only a few months after the *Eon* judgment was handed down, Article 21 of the Law of 5th August 2013 (36) removed Article 26 of the 1881 Law. The repeal did not draw a great deal of media attention but gave rise to lively debate in Parliament. In particular, there was a set-to between, on the one hand, the National Assembly, which wanted simply to repeal the offence and, on the other hand, the Senate, which feared that the President of the Republic would in future be deprived of any effective protection. The two branches of the French legislature did, however, reach a compromise (37).

Thus, although the offence itself has been repealed, the President remains protected as prosecutions for criminal defamation or insult are still possible under ordinary law (38). Furthermore, France's parliamentarians ensured that the protection afforded to the President is, at least, equivalent to that conferred to ministers, deputies and senators, as well as French civil servants in the performance of their duties. On that basis, the Head of State is therefore also subject to Article 31 of the 1881 Law, which carries a €45,000 fine in cases of defamation of such persons exercising public authority. Indeed, there still exists a kind of "aggravated repression" in cases of defamation of the President "*on grounds of his function or capacity*", the maximum fine

being the same as under the former offence (€45,000). Conversely, the 2013 Law reduced the penalties incurred where the views expressed against the President amount to insult (39). In such a scenario, the maximum fine is the same as that incurred in cases of defamation of or insult to a private individual, i.e. €12,000 (40). In summary, the possibility of an aggravated sentence is now limited to those cases of defamation of the President on grounds of his functions or his capacity. Finally, it should be noted that the author of the contentious statement may plead justification, and therefore establish the truth of the allegedly defamatory statement, in order to escape criminal liability.

It may also be said that while there remains a "special protection" afforded to the President of France, this now appears to be broadly in conformity with the requirements of the European Convention on Human Rights. Although "European influence" has been played down by some authors (41), the French legislature fortunately chose to go "beyond" a literal, minimalist reading of the *Eon* decision, in order to align national law with the Convention in advance – and this without waiting for a subsequent, explicit condemnation of the offence on the part of the European Court of Human Rights. Let us hope that such exemplary behaviour will be repeated in future in other contexts!

Notes:

(1) Since the constitutional amendment of 6 November 1962.

(2) Article 26 of the Law of 29 July 1881: *"defamation of the President of the Republic by one of the means stipulated under* Article *23 is punishable by a fine of 45,000 Euros"*. As will be seen below, that provision was repealed by Law n° 2013-711 of 5 August 2013.

(3) The "crime of lèse-majesté" disappeared as such from French law in 1832, following an amendment to the *Code penal* (penal code).Under the Third Republic, however, the Law of 29 July 1881 on freedom of the press created the new offence of insulting the President of the Republic.

(4) This type of offence still exists under various guises in Thailand and Morocco, not to mention the Netherlands, Spain and Denmark.

(5) And this in a troubled context where the President was under threat from far-right opposition and partisans in French Algeria. See O. BEAUD, « Le délit d'offense au Président de la République. Un épisode à redécouvrir de la République gaullienne (1959 – 1969) », *Annuaire de l'Institut Michel Villey*, vol. 4, 2013.

(6) Six convictions under the Third Republic, and three under the Fourth Republic. The best known use of these proceedings was that of Mac-Mahon against Gambetta when the latter rudely remarked: *"Lorsque la France aura fait entendre sa voix souveraine, il faudra se soumettre ou se démettre"* ("When France makes her sovereign voice heard, you'll have to submit or resign"). The most comical was the prosecution instigated, once again by Mac Mahon, against a journalist who, remarking on a statue of the Marshal on horseback, allegedly said "*Le cheval a l'air intelligent ma foi"* ("Well, the horse looks intelligent").

(7) It must be added that Georges Pompidou only instigated such proceedings on one occasion. Thereafter, Valery Giscard d'Estaing, François Mitterrand and Jacques Chirac all successively and expressly refused to resort to it.

(8) ECHR, *Faber v Hungary*, Application n° 40721/08, 24 July 2012.

(9) On this new criterion, see for example D. SZYMCZAK, « Le préjudice important… un critère inquiétant ? Retour sur les premières années d'application de la nouvelle condition de recevabilité par la Cour de Strasbourg », *RTDH* 2014, n° 99, p. 555.

(10) As a reminder, the applicant had been sentenced "on principle" to a fine of 30 Euros (suspended), when he faced a maximum fine of 45,000 Euros under the 1881 Act.
(11) *A contrario*, the Court had already accepted that the applicant's passivity during the criminal trial tended to show that the proceedings had been of little importance to him. See for example ECHR, *Shefer v Russia*, Application n° 45175/04, 13 March 2012.
(12) The disadvantage being deemed significant, there was no need to bring the safeguard clause into play.
(13) See *a contrario* the dissenting opinion of Judge Pejchal.
(14) See below.
(15) See for example ECHR *Soros v France*, Application n° 50425/06 6 October 2011.
(16) See for example Cass. Crim., 31 May 1965, *Bull. crim.*, n° 146
(17) We may also wonder whether the offence of insulting the President respects the principle of the legality of offences and sentences, also protected by the ECHR but not argued by the applicant in this case.
(18) See. O. BEAUD, « A propos de la suppression du délit d'offense au président de la République. Explications et réflexions », *AJDA* 2014, p. 25
(19) Which consists, substantively, in protecting institutions over and above the persons attacked.
(20) See for example ECHR, *Dumas v France*, Application n° 34875/07, 15 July 2010.
(21) See for example ECHR, *Renaud v France*, Application n° 13290/07, 25 February 2010. See also an older decision, ECHR *Lingens v Austria*, Application n°9815/82, 6 July 1986.
(22) See also ECHR (GC), *Palomo Sánchez v. Spain*, Application n° 28955/06, 12 September 2011.
(23) The applicant does now, however, receive just satisfaction in this case; or, more precisely, the Court considers that the finding of a breach *per se* constitutes just satisfaction.
(24) In some recent cases, the Court had indeed distanced itself from this liberal approach. See for example ECHR, *Willem v France*, Application n° 10883/05, 16 July 2009.
(25) ECHR, *Handyside v Royaume-Uni*, Application nº 5493/72, 7 December 1076.
(26) ECHR, *Colombani and others v France*, Application n° 51279/99, 25 June 2002.
(27) The distinction does not, however, convince the dissenting judges. See, in this sense, the partly dissenting opinion of Judge Power-Forde, to whose mind *"the rationale behind the criminal offences in issue was the same, namely, to confer upon heads of State a special legal status"*.
(28) The latter argument serving to distinguish between the two cases is, however, hardly conclusive as, in *Colombani*, the lack of provocation had no effect either.
(29) ECHR, *Otegi Mondragon v Spain*, Application n° 2034/07, 15 March 2011.
(30) The decision in *Otegi Mondragon* is only cited once in *Eon*…
(31) Or than the President of the Third Republic, a body protected originally by the offence of insulting the President provided under Article 26 of the 1881 Act.
(32) See, in this sense, N. DROIN, « Le délit d'offense au Président de la République : une occasion manquée », *RFDA* 2013 p. 594 ; and N. HERVIEU, « L'équivoque sursis européen concédé au délit d'offense au Président de la République », *Lettre Actualités Droits-Libertés du CREDOF*, 20 mars 2013.
(33) C. PICHERAL, « L'abrasion conventionnelle du délit d'offense au président de la République », *JCP G* 2013, p. 656.
(34) Following *Colombani*, the offense of insulting foreign Heads of State was repealed by Article 52 of the *loi Perben II* (Perben II Law) of 9 March 2004.
(35) See for example the Bill proposed by J-L Melenchon, "aiming to repeal the offence of insulting the President of the Republic", www.senat.fr, 19 November 2008.

(36) Law n° 2013-711 of 5 August 2013 containing various provisions for adapting French justice to European Union law and France's international obligations.

(37) For an overview of the discussions, see in particular O. BEAUD, « *A propos de la suppression du délit d'offense au président de la République. Explications et réflexions* », cited above.

(38) Such prosecutions are no longer entrusted to the Public Prosecutor (as they are for offences of insulting the President) but are now subject to a prior complaint on the part of the Head of State. This alignment with the ordinary law on defamation and insult thus allows the easier identification of the person behind the prosecution and, therefore, serves to establish whether the President shows "tolerance" in the face of criticism.

(39) Or where such views, though defamatory, relate solely to the President's private life.

(40) When it was a fine of 45,000 Euros for the offence of insulting the President.

(41) See, in particular, O. BEAUD, « *A propos de la suppression du délit d'offense au président de la République. Explications et réflexions* », (cited above), which evokes a politically expedient decision.