

Court fee: €500

COURT OF APPEALS OF PARIS

Chamber 11, Section A

(No. _____, 13 pages)

Pronounced in open court on Wednesday, May 21, 2008, by Correctional Appeal Chamber 11, Section A.

On appeal against a ruling handed down by the District Court of Paris, Chamber 17, on October 19, 2006 (P0433823039).

PARTIES APPEARING BEFORE THE COURT:

Karsenty, Philippe
Accused

The Department of the Public Prosecutor
Not appealing

Enderlin, Charles
Civil party, not appealing, physically present
Domiciled at 206 Jaffa Street, Jerusalem (Israel)

Société Nationale de Télévision FRANCE 2
Civil party, not appealing
Domiciled at 7 Esplanade Henri de France, 75907 Paris Cedex 15

assisted and represented by **Bénédicte Amblard, Attorney at Law, advocate at the bar of Paris, Toque TQB113, and Francis Szpiner, Attorney at Law, Toque R049**

Composition of the bench during the hearings and the *in camera* sessions:

Presiding Judge: Judge Trebucq

Judges: Judge Croissant
Judge Carbonnier

Court clerk: Ms. Du Parquet, at the hearings and the pronouncement of the ruling.

Department of the Public Prosecutor: represented at the hearings and the pronouncement of the ruling by Mr. Bartoli, Advocate General.

SUMMARY OF THE PROCEEDING:

The accusation:

Philippe Karsenty was sent before the Court of Correction on the order of the examining magistrate, as accused of the following actions in Paris and throughout the national territory of France:

* On November 22, 2004 or at some unspecified previous time, by a means of audiovisual communication, specifically by disseminating on the Website www.M-R.fr, an article entitled "FRANCE 2: Arlette Chabot and Charles Enderlin must be relieved of their functions immediately", which contains passages reproduced in the body of the ruling, having raised allegations or facts which constitute an injury to the character or the reputation of Société Nationale de Télévision FRANCE 2 and Charles Enderlin.

*On November 26, 2004 or at some unspecified previous time, by a means of audiovisual communication, specifically by disseminating on a Website a press release entitled "FRANCE 2: Arlette Chabot and Charles Enderlin must be relieved of their functions immediately", which contains passages reproduced in the body of the ruling, having raised allegations or facts which constitute an injury to the character or the reputation of Société Nationale de Télévision FRANCE 2 and Charles Enderlin.

The aforesaid facts are listed and prohibited by Articles 23, 29 paragraph 1, 32 paragraph 1, 42, 43 of the Law of July 29, 1881, and Article 93/3 of the Law of July 29, 1982.

The ruling:

The Court, in a ruling with all of the parties present,

rejected the pleas of voidance filed,

declared Philippe Karsenty **guilty** of the actions of which he was accused and sentenced him to a fine in the amount of €1000,

allowed the action filed by Société Nationale de Télévision FRANCE 2 and Charles Enderlin, in their capacity as civil parties, and sentenced Philippe Karsenty to pay each of them the amount of €1 as damages, and to pay both parties jointly the amount of €3000 by virtue of Article 475-1 of the Code of Criminal Procedure.

The appeals:

An appeal against the criminal and civil provisions of the ruling was filed by Pierre-Louis Dautier, Attorney at Law, on behalf of Philippe Karsenty, on October 19, 2006.

By means of successive continuances dated January 10, March 28 and June 20, 2007, the pleadings in the case were postponed until September 12, 2007.

At the hearing on September 12, 2007, the Court postponed the pleadings until September 19, 2007.

At that hearing, after having studied, upon the request of the civil parties, various extracts from FRANCE 2 TV news broadcasts, which had been properly filed before the Court by the parties, including the news report which was shown on the 8 p.m. news program on September 30, 2000, and after having heard the parties with

regard to the written pleadings submitted by Philippe Karsenty, requesting the designation of an expert whose assignment would be, after having viewed the 27 minutes of the rush films which were filmed on September 30, 2000 at the Netzarim junction by cameraman Talal Abu Rahma, to state whether there was a link between the scenes which preceded the news report and the images in the news report itself – the accused having spoken last – the Court declared that issue to be part of the background of the case.

The Presiding Judge, after having asked the parties – the accused having spoken last – for their opinion on whether it would be worthwhile for the Court to its self view the cameraman's rush films, announced that the Court would deliberate on the matter *in camera* and would issue its ruling at the public hearing of October 3, 2007.

The ruling by Chamber 11 on October 3, 2007:

In a ruling with all of the parties present, on October 3, 2007, the Court:

allowed the appeal by Philippe Karsenty

on an interim basis;

ruled that it required additional information and that FRANCE 2 was required, before October 30 1, 2007, to supply the rush films which were taken on September 30, 2000 by its cameraman, Talal Abu Rahma, and assigned Judge Irène Carbonnier to handle that matter;

and announced that the examination of the case would continue at the hearings of November 14, 2007, January 16 and February 27, 2008.

At the hearing of November 14, 2007, the Court, in the presence of the accused and the civil parties, all assisted by their respective Counsel:

viewed the rush films which were taken on September 30, 2000 by the FRANCE 2 cameraman, Talal Abu Rahma,, which had been properly filed before the Court by FRANCE 2;

and announced that the case would continue at the hearing of January 16, 2008 in chambers and that the pleading would continue at the hearing of February 27, 2008.

COURSE OF THE HEARINGS

At the public hearing on February 27, 2008, the Presiding Judge confirmed the identity of the accused, who appeared along with his Counsel, who filed written pleadings, which were read by the Presiding Judge and the Court Clerk and added to the file, asking them to call Jean-Claude Schlinger, an expert on weapons and munitions officially recognized by the Court of Appeals of Paris and the Supreme Court of Appeals, as a witness.

Counsel for the civil parties – Charles Enderlin, present and assisted by Counsel, and Société Nationale de Télévision FRANCE 2, represented by Counsel – filed written pleadings, which were read by the Presiding Judge and the Court Clerk and added to the file.

The following persons were heard concerning the hearing of the witness:

Patrick Maisonneuve, Attorney at Law, who stated his observations;

Francis Szpiner, Attorney at Law, who stated his observations;

Mr. Bartoli, the Advocate General, who stated his observations;

Philippe Karsenty, who spoke last.

The Court suspended the hearing in order to deliberate on this question and, when the hearing was resumed, rejected the request to hear the witness.

The following persons were heard concerning the request by the accused to view a new CD:

Patrick Maisonneuve, Attorney at Law, who stated his observations;

Francis Szpiner, Attorney at Law, who stated his observations;

Mr. Bartoli, the Advocate General, who stated his observations.

The Court suspended the hearing in order to deliberate on this question and, when the hearing was resumed, allowed the request for viewing.

Judge Carbonnier delivered a verbal report.

The following persons were heard concerning the background of the case:

Philippe Karsenty, accused, who stated his explanations;

Charles Enderlin, civil party who stated his explanations;

Bénédicte Amblard and Francis Szpiner, Attorneys at Law, who submitted their written pleadings and stated their oral pleadings;

Patrick Maisonneuve and Delphine Meillet Attorneys at Law, who submitted their written pleadings and stated their oral pleadings;

Philippe Karsenty, again, who spoke last.

The Cordon and announced that it would deliberate on the matter *in camera* and would meet again on May 21, 2008.

Today, at the public hearing of May 21, 2008, the Presiding Judge read out the ruling, the content whereof appears below, in compliance with the provisions of Articles 485 and 512 of the Code of Criminal Procedure, in the presence of a representative of the Department of the Public Prosecutor and the Court clerk, Ms. Du Parquet.

DECISION:

Whereas, following the complaints filed by Société Nationale de Télévision FRANCE 2 and Charles Enderlin, the examining magistrate had sent Philippe Karsenty before the Court of Correction of Paris, to be judged on the tort of public defamation against an individual, on the basis of several passages from a press release dated November 22, 2004 and an article posted online on November 26, 2004 on the Website www.M-R.fr by the company known as MEDIA RATINGS, entitled “FRANCE 2: Arlette Chabot and Charles Enderlin must be relieved of their functions immediately”;

Whereas, speaking before the Court, Counsel for Philippe Karsenty, whose appeal had been declared allowable, announced that he had waived his pleas of voidance of his summons and his invocation of the absence of publicity given to the disputed press release, which was addressed to the subscribers of MEDIA RATINGS; and that he asked the Court to set aside the judgment and release the accused, even if only in recognition of his good faith, and to dismiss all of the demands filed by Charles Anderlin [sic] and FRANCE 2;

Whereas the Advocate General called for confirmation of the judgment;

Whereas Counsel for the civil parties submitted his pleadings requesting the rejection of the exhibits numbered 43 through 73, of which Philippe Karsenty had not proven that he was aware on the date on which the statements cited in the case were published, and requesting the confirmation of the judgment and the sentencing of the accused to pay each of the civil parties the amount of €20,000 by virtue of Article 475-1 of the Code of Criminal Procedure;

Whereas the file and the statements made in Court have shown:

I. With regard to the facts of autumn 2000, that:

- On September 30, on the 8 p.m. news broadcast of FRANCE 2, Arlette Chabot announced “clashes and unprecedented violence, leading to 15 days and 500 wounded on the Palestinian side Saturday” in Israel and in the Palestinian territories, following the visit to Jerusalem by Ariel Sharon, president of the opposition party; the presenter illustrated this information with a news report, 57 seconds in duration, signed by Charles Enderlin, FRANCE 2’s permanent correspondent in the Near East, which described an exchange of real bullets at an intersection near the Israeli settlement of Netzarim in the Gaza Strip, and showed a scene during which a father was seen trying to protect his 12-year-old child, Mohammad al-Dura; Charles Enderlin commented on the images in the following terms: “3 p.m. *Everything has just gotten hot near the settlement of Netzarim in the Gaza Strip. The Palestinians shot real bullets; the Israelis returned fire. Ambulance crews, journalists, passers-by were caught in the crossfire. Here, Jamal and his son Muhammad are the target of shots coming from the Israeli positions. Muhammad is 12 years old; his father is trying to protect him. He makes signs [...] But there’s a new burst of fire. Muhammad is dead and his father is seriously wounded. A Palestinian policeman and an ambulance crewman also lost their lives in the course of this battle.*”

- On October 1, FRANCE 2 showed these events again. The voice of Charles Enderlin mentioned Muhammad, “a 12-year-old child whose tragic death was filmed by FRANCE 2 correspondent Talal Abu Rahma”, and announced the publication of a press release by the Israeli army “regretting the loss of human life and confirming that it was not possible to determine the origin of the shots.”
- On October 2, FRANCE 2 stated that the scene, which showed “the unacceptable”, broadcast with Charles Enderlin’s commentary, had been filmed by its cameraman and soundman, Talal Abu Rahma, who was put on the air and declared that he was “sure that the shots came from the Israeli side.”
- On November 27, reported on the air and item of information given by Charles Enderlin, according to which the military inquiry conducted by General Samia, the officer in charge of security in the southern region, had concluded that it was “more probable that the child was killed by the Palestinians than by the Israelis.”
- On November 28, FRANCE 2 and Charles Enderlin, however, stated that “several elements of the Israeli theory disagree with the elements collected on the scene”, and with the testimony of the doctor who examined the child’s body.

II. With regard to the presentation of the facts starting in 2002, that:

- During the month of March 2002, the German television channel ARD broadcast a documentary by Esther Shapira entitled *Who killed Muhammad al-Dura*, which emphasized the lack of material proof, especially with regard to determining the origin of the shots, and the absence of any real autopsy of the child.
- On October 2, 2002, Esther Shapira’s film was projected on a giant screen to an audience of about 1000 persons in front of the premises of FRANCE TELEVISION, and a “misinformation prize” was symbolically awarded to FRANCE 2 and Charles Enderlin by the organizers of the demonstration.
- In November 2002, the French-Israeli news agency MENA made a 20-minute documentary, *Al-Dura: the inquiry*, which, on the basis of declarations by Nahum Shahaf, a doctor who participated in General Samia’s inquiry, questioned the reality of the scenes filmed by the FRANCE 2 cameraman and concluded by referring to “a real stage production, played by actors.”
- In January 2003, the permanent correspondent of MENA in Paris, Gérard Huber, published *Second expert opinion of a staging*, a work which represented the topic of the documentary set forth above, which he had helped to make.
- On October 22, 2004, FRANCE 2 and Arlette Chabot invited three journalists who had expressed criticism: Daniel Lecomte (ARTE), Denis

Jeambar (L'Express), and Luc Rosenzweig (formerly of Le Monde), to view the 27 minutes of rush films taken on September 30, 2000.

- On November 18, 2004, FRANCE 2 organized a press conference during which stills showing Muhammad al-Dura's wounds were presented.

Whereas, on November 22, 2004, the MEDIA RATINGS company published on its Website, www.M-R.fr, an article entitled "FRANCE 2: Arlette Chabot and Charles Enderlin must be relieved of their functions". The passages of that article which were cited by the civil parties, underlined wherever they concern only Charles Enderlin, are as follows:

"The principles of accuracy, objectivity, transparency and responsibility of the PHILTRE method have been repeatedly violated by France 2 in its broadcast of the faked death of Mohamed Al Dura on September 30, 2000."

"Preliminary notices" [...]

"At least two members of the government of M. Jean-Pierre Raffarin and many journalists are aware that FRANCE 2 broadcast a false report on September 30, 2000. It would be best if they would admit to it, in order to cease this masquerade" [...]

"We hope that the Conseil supérieur de l'audiovisuel will demand the immediate resignation of those who have participated in this hoax"

"Given the evidence in our possession, we maintain that France 2's correspondent in Jerusalem, Charles Enderlin, did, indeed, broadcast a false report on September 30, 2000."

"Following are the inconsistencies in France 2's document"

"From the very beginning of the report presented by France 2, we can see that we are viewing scenes that are being acted out [...] This first scene is pure fiction" [...]

"Charles Enderlin, as it happens, is mistaken and simultaneously misleads us. Why? Is he trying to cover up his fraud?"

Whereas, on November 26, 2004, MEDIA RATINGS disseminated to all of the persons registered on the list, including FRANCE 2, the electronic press release, of which the passages cited in the case are as follows:

"Given the evidence in our possession, we maintain that France 2's correspondent in Jerusalem, Charles Enderlin, did, indeed, broadcast a false report on September 30, 2000."

"We invite you to learn more about the inconsistencies in France 2's document, as well as the reactions of certain media to this hoax, on Media-Ratings."

"Arlette Chabot has threatened to file suit against any person who would accuse France 2 of having broadcast a lie on September 30, 2000." [...]

“We hope that the Conseil supérieur de l’audiovisuel will demand the immediate resignation of those who have participated in this hoax”

“We hope that the French media will inform their readers, listeners, and viewers rapidly of the media fraud France 2 has engaged in for more than four years.” [...]

Whereas these passages, taken as a whole, indicate that Philippe Karsenty, Director of the rating agency MEDIA RATINGS, which he himself created in order to evaluate the reliability of information disseminated in the press, challenged the work of FRANCE 2 and its correspondent in Jerusalem, through the use of methodological criteria of media analysis performed by him;

Whereas, in his article dated November 22, 2004, Philippe Karsenty referred to Charles Enderlin’s new support as a masquerade which is a dishonor to public television and a hoax which engendered numerous violent incidents throughout the world, recalling the terms of the debate which he had provoked, several years earlier, between FRANCE 2 and the Israeli press agency MENA (Metulla News Agency), which accused the French channel of having broadcast a false report;

Whereas, on the basis of the evidence in his possession, the accused affirmed that the Paris correspondent in Jerusalem had issued a false report, which he broke down, in the course of his criticism, into two successive stages – saying that, first of all, the first 50 minutes of the report, consisting of a series of acted scenes, were pure fiction; and secondly, the principal scene, which lasted only a few minutes, included inconsistencies in the FRANCE 2 commentary;

Whereas he had been asking himself, ever since, about the reasons why Charles Enderlin – who, on that point, “is mistaken and simultaneously misleads us” – sought “to cover up his fraud”;

Whereas the author against whom the proceedings were instituted, in his press release of November 26, 2004, accuses Charles Enderlin of having broadcast a false report by providing commentary on an inconsistent document submitted by his cameraman, and accuses the public television channel of having committed a media hoax and broadcast it on September 30, 2000;

Whereas, with regard to the defamatory nature of the accusations, the court of first instance correctly held that the statement about knowingly deceiving the public, by broadcasting and/or arranging for the broadcast of a false report containing images which do not reflect reality, and which represent a “fake death”, even if the author took care to accompany his accusation with a certain number of explanations, incontestably represents an injury to the character and the reputation of information professionals, and even the more so given that the defamatory statement is supported by the use of such terms as “masquerade”, “fraud”, “hoax” to describe the attitude of FRANCE 2 and “acted scenes” and “pure fiction” to describe the first episode of the news reports;

Whereas, with regard to the exhibits submitted as proof of the truth of the defamatory statements, the appellant submitted 14 documents and requested the hearing of three witnesses who, he claimed, were capable of proving that FRANCE 2 had screened a dubious montage, which was widely contested on the date of the dissemination of the passages of which he stands accused, thereby leaving him to

conclude that the news report had been manipulated, with regard to both the conditions of the filming and the reality of the scenes filmed, by its cameraman, especially concerning the death of little Muhammad al-Dura;

But whereas, as stated by the judges in the court of first instance, in order to have the absolute effect set forth in Article 35 of the law of July 29, 1881, the proof of the truth of the defamatory statements must be perfect, complete, and in line with the material nature and entire extent of the defamatory accusations;

Whereas, in attesting that the exhibits offered by him as proof would establish “a dubious montage, which was widely contested on the date of the dissemination of the passages of which he stands accused”, the accused cannot claim to be able to demonstrate that a “false report” was knowingly made, as it is true that his first accusation constitutes, at best, a diminished form of the accusation cited in the case;

Whereas, this being so, it is appropriate to reject the plea of truth filed by the accused;

Whereas, in the appeal, Philippe Karsenty essentially invokes his good faith in order to justify the publication of the statements of which he stands accused;

Whereas, even if it is true that the criteria of good faith, as set forth by the judges in the court of first instance, are evaluated differently according to the nature of the written text and the quality of the author, and are especially evaluated more rigorously when the person summoned to justice is engaged in the profession of informing or – as in the case before us – raging the media, it is incontestably legitimate for a media rating agency to conduct an inquiry, even if only because of the impact which the criticized images had on the entire world, on the conditions under which the report in question was shot and disseminated, and to bring the results of the inquiry to the attention of the public, as well as submitting them to the criticism of professionals;

Whereas, when Philippe Karsenty addresses subject of general interest, such as the working methods of the media and, more specifically, the public channel, the strength of images and the pertinence of life commentary, on the basis of the public’s right to serious information – and this makes the publication of his research entirely legitimate – Charles Enderlin cannot escape the criticism directed against him as an information professional, a correspondent in Israel and the Palestinian territories for the TV news reports of FRANCE 2, which are broadcast in prime time, and, in that capacity, he inevitably and knowingly exposes himself to the most attentive criticism of his statements and actions, by both his fellow citizens and his professional colleagues;

Whereas, in order to prove the serious nature of his inquiry, Philippe Karsenty presents – aside from the testimony by Luc Rosenzweig, Gérard Huber, Francis Balle and Richard Landes, which appears in the transcript of the trial – the documents which were filed before the court of first instance, as well as new documents numbered 43 through 73, which, starting from the FRANCE 2 report, essentially do not discuss the facts which followed the publication of the statements of which he stands accused; and whereas, in this context, it is fitting and proper to appreciate the worth of the accused’s inquiry, not as a function of its ability to prove

the truth of the defamatory accusations, but as a function of the value and variety of the sources used and the pertinence of their contents;

Whereas, as set forth by the court of first instance, Philippe Karsenty's inquiry gives rise to two major types of criticism concerning the report – whether Charles Enderlin wrongly presented the mortal shots as being deliberate and originating from the Israeli positions, or whether the images of the death of young Muhammad al-Dura were fictitious and did not correspond to the reality stated by the journalist in his commentary;

Whereas the author of the statements cited in the case essentially relies on the inexplicable inconsistencies in the images, which, according to him, are visible even in the principal scene; on the fact that the photos of Jamal al-Dura's wounds presented by FRANCE 2 are not of a probative nature; and, finally, on the contradictory replies given by Charles Enderlin to the questions about the cuts in his montage, and the replies by his cameraman on the subject of the continuity of the film scenes and the filming conditions;

Whereas it has been shown that Charles Enderlin was not a witness to the facts for which he provided a “voice off” commentary, according to a procedure which in no way runs counter to the ethical code of journalism, provided that the TV audience understands this; and whereas, in fact, FRANCE 2 stated, on October 1, 2000, that the child's death was “filmed by Talal Abu Rahma, [its] correspondent in Gaza” and, on October 2, that the cameraman “filmed the unacceptable” – which did not necessarily allow the deduction that the commentator had not been present on the scene; and whereas this fact led Philippe Karsenty, although he could not, at that time, have deduced that the event commented on was false, to ask himself questions about the degree to which the images chosen by the Palestinian cameraman (who, in an interview, was heard to say “I'm the one who decides what's important”) corresponded to the commentary of those images by Charles Enderlin;

Whereas, even if it is true that the authors of the two video documents (Exhibits No. 1 and No. 2) – one of which was made at the initiative of Esther Shapira for the ARD television channel in March 2002, and the other, *Al-Dura: the inquiry*, was made the following November by MENA on the basis of statements by Nahum Shahaf, appointed to lead a commission of inquiry initiated by the commander of the southern region – do not draw the same conclusions from the observation of the report, because the former states that the child was killed by a stray Palestinian bullet, whereas the latter accuses the Palestinians of having staged his death, it does not matter that these hypotheses are irreconcilable, given that the two documents led the accused, in successive stages, to question the reporting of FRANCE 2 with regard to the reality of the facts reported by information professionals;

Whereas the aforesaid hypothesis advanced by MENA, which constituted the object of a work by Gérard Huber which came out in January 2003 under the title *Second expert opinion of a staging* (Exhibit No. 3) – which infers the death of young Muhammad al-Dura from the fact that young Palestinians are seen to exploit the presence of the cameras in order to act out scenes of war and wounds – and which, in turn, was adopted by Philippe Karsenty, was founded on FRANCE 2's persistent reluctance to allow its cameraman's rush films to be viewed; the imprudent statement by Charles Enderlin that he cut the images of the child's death agony out of the

montage; and the statements made by several journalists who had seen the rush films;

Whereas Luc Rosenzweig, former editor in chief of Le Monde, states in his testimony that, after having met, in May 2004, with colleagues who disclosed to him their doubts of Charles Enderlin's reporting, and after subsequently having shared those doubts with Denis Jeambar and Daniel Leconte, he and the latter, on October 22, 2004, viewed the FRANCE 2 rush films and was surprised to find that, out of the 27 minutes of Talal Abu Rahma's rush films, more than 23 minutes of filmed scenes had nothing to do with the images broadcast by the channel, including those of little Muhammad's death, and consisted of the presentation of fake war scenes by young Palestinians; and whereas the witness concluded his statement, in a hearing before the court of first instance, by declaring that he was convinced that "the version that [the child's death] was staged is more probable than the version presented by FRANCE 2", although admitting that, as a journalist, "the criteria did not permit [him] to go any further";

Whereas this testimony is borne out by the essentially non-contradictory opinions of Daniel Leconte and Denis Jeambar, in a position statement given to Le Figaro, which appeared on January 25, 2005 (Exhibit No. 16) and an interview broadcast on February 1, 2005 on RCJ (Exhibit No. 4);

Whereas both journalists declared, with no ambiguity, that they had confided their "serious doubts" to Arlette Chabot, but that they were "ready to challenge Rosenzweig's accusations concerning the staging of the child's death, if the viewing of all of the rush films shot by Talal Abu Rahma confirmed what Charles Enderlin had stated at least twice, including to Telerama: 'I cut out the child's [death] agony. It was unbearable... It would not have added anything'," and then, after having viewed the rush films, stated that "this famous agony, which Enderlin says he cut out of the montage, does not exist";

Whereas they also stated that, "in the minutes which preceded the fusillade, the Palestinians seem to have organized a staged scene, [...] were 'playing' at war with the Israelis and simulating, in most cases, imaginary wounds", and that viewing all of the rush films also showed that, "at the moment when Charles Enderlin gave the kid up for dead [...], nothing enabled him to confirm that he was really dead, and even less that he had been killed by Israeli soldiers"; whereas, according to them, the FRANCE 2 journalists assured them, at the time of the shelling of the rush films, that "their experts had even demonstrated [...] that the child had been hit by shrapnel (?) or by bullets which ricocheted off the road, bullets which, in any event, were not aimed at either the child or his father";

Whereas it is true that, even while noting that their colleague should have admitted that he had "extrapolated on the basis of the rush films and the version of the events provided by his cameraman", and that the commentary on the Israeli barbarism "had nothing to do" with the images which had been shown around the world, Denis Jeambar and Daniel Leconte refused to subscribe to the hypothesis that the child's death had been staged; and whereas, in so doing, they relied on the film made by Talal Abu Rahma, which was presented by FRANCE 2 on November 18, 2004, in order to show that the father's wounds exactly corresponded to the dressings which he had the next day at the hospital in Gaza, and did not comment on the possibility of a contradiction between the photos which were shown to them and their own

statement to the effect that, in the rush films, “the father is wearing a T-shirt on which no trace of blood can be seen”;

Whereas Richard Landes, a journalist and professor at Boston University, who was heard as a witness by the judges in the court of first instance, declared that, as he saw it, after having studied the Reuters rush films and the report by Charles Enderlin, with whom he had a conversation, the possibility that the child’s death, presented by Enderlin, was staged was “greater than 95%”;

Whereas, even if none of the arguments advanced by the accused – neither the conclusions of the inquiry conducted at the personal initiative of General SAMIA (Counter-Exhibit No. 12), nor the “imprudent statement” by Charles Enderlin cited above – appeared, in and of themselves, to the judges in the court of first instance, to be sufficiently definitive with regard to the contested report, it appears that the examination, in the appeal, of the 18 minutes of Talal Abu Rahma’s rush films provided by FRANCE 2, does not enable the Court to challenge the professional expert opinions heard in the course of the proceeding or submitted during the hearings; and whereas, by contrast, the statements submitted by the cameraman (Counter-Exhibits No. 5 through 10) cannot be held to be perfectly credible, from the standpoint of both presentation and content;

Whereas, given that no principle can allow the refusal, without examination or explanation, to give any credit to a document only because it bears no official label or is given very little credit by the “authorities”, it is fitting and proper to mention that the initial declarations by the Israeli authorities, especially that of General Eiland, were made on the sole basis of the images in the FRANCE 2 report; and whereas it is also well known, and was explained by Denis Jeambar and Daniel Leconte, that the Israeli army almost never gives answers to anything – “that is the method of communication that it has chosen”;

Whereas, in replying to Denis Jeambar and Daniel Leconte, in Le Figaro on January 27, 2005, that “the image corresponded to the reality of the situation, not only in Gaza, but also on the West Bank”, when in fact the definition of a report is understood to be testimony to what the journalist saw and heard, Charles Enderlin admitted that the film, which was seeing throughout the world and gave rise to unprecedented violence in the entire region, perhaps did not correspond to the commentary which he had given; and whereas this is also the opinion cited by Daniel Dayan, Director of Research at CNRS and a media specialist, in his affidavit (Exhibit No. 5);

Whereas, with regard to the prudence of the aforesaid statement, it is fitting and proper to emphasize that the limits of admissible criticism are broader when the subject is of public interest and the accusations are backed by a quantity of evidence from an inquiry, and even broader with regard to those whose function or activity exposes them to the public;

Whereas this is the significance which should be attributed to the statement by Francis Balle, a professor at Université de Paris II and a specialist in image and information, who declared before the court of first instance that it did not seem to him that, in practicing his profession, Philippe Karsenty had “crossed the yellow line” by using the terms of which he stands accused to speak of a subject of public interest;

Whereas, even if it is true that the repeated use of the expression “false report”, accentuated by the terms “staging”, “masquerade”, “hoax” and “fraud”, at first glance appears to give the statements of which he stands accused an essentially negative and critical – even, in view of the phrase “fake death”, provocative – character, more profound reading of the online article, which is briefly summarized in the press release, shows that the overall tone of the article is firm, and that the author explains with vehemence, but not really in extreme terms, why the public channel deserved his criticism with regard to the grading criteria used by its agencies;

Whereas, in fact, the accused cites facts, retells the debate, indicates that MENA accused the French channel of falsification, before giving his own analysis and his conclusions; whereas, in that framework, he calls the first episode pure fiction – a view which is also supported by many major figures in the field of information and the press, who saw the rush films in October 2004; whereas he subsequently exposes, with regard to the principal scene, in which he observed inexplicable inconsistencies and contradictions in the explanations of the child’s agony given by Charles Enderlin, that Enderlin is mistaken – which adds up to merely attributing an error to him; and that Enderlin is “simultaneously” misleading the public – which appears to be a euphemistic phrase; and whereas, in concluding by asking for the reasons for “trying to cover up his fraud”, Philippe Karsenty addresses the basic nature of the subject with a sharpness which, however, must be justified by the importance of the question concerned;

Whereas personal animosity toward the civil parties was not demonstrated by the production of two affidavits – one by René Backmann, the other by François Raiga-Clémenceau – subsequent to the inquiry conducted by Philippe Karsenty, and the contents of the article and the press release issued by the director of the media rating agency do not disclose any hostile personal feelings toward Charles Enderlin and FRANCE 2;

Whereas, under the circumstances, the evidence from the inquiry, which constitutes a sufficient factual basis for admitting that the statements which constitute the object of the present litigation, and which often resemble a value judgment, could have been considered by the author of the article and the press release cited in the case as appropriate to subjects of such general interest as the danger posed by a power – in the case before us, that of the press – in the absence of a counterweight and the public’s right to serious information; and whereas it is therefore appropriate to decide that Philippe Karsenty used his right of free criticism in good faith, and, in so doing, he did not exceed the limits of freedom of expression recognized by Article 10 of the European Convention of Human Rights, which applies not only to information or ideas which are received with favor or considered as harmless or indifferent, but also to those which are startling, shocking or upsetting;

Whereas the ruling by the court of first instance is accordingly set aside, Philippe Karsenty is discharged from the case, and the demands by the civil parties are dismissed;

NOW THEREFORE

the Court,

by means of a ruling issued at a public hearing, with all parties present, and after having deliberated on the matter as required by law,

in view of the interim ruling of October 3, 2007,

declares the conclusions regarding the incident, which were disseminated by Philippe Karsenty, to be unobjectionable,

sets aside the judgment by the court of first instance and discharges Philippe Karsenty from the case,

and dismisses all the demands by the civil parties.

THE PRESIDING JUDGE

[Signature]

THE COURT CLERK

[Signature]