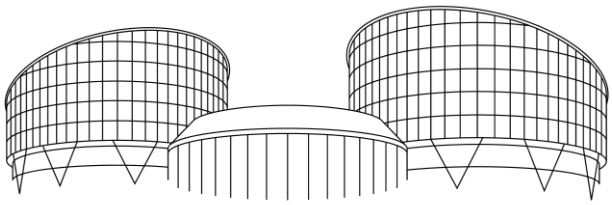

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

DECISION

ON ADMISSIBILITY

(Extracts - Translation)

This version was rectified on 18 July 2011 in accordance with Rule 81 of the Rules of Court

Application no. 2777/10
Thierry EHRMANN and SCI VHI
against France

The European Court of Human Rights (Fifth Section), sitting on 7 June 2011 as a Chamber composed of:

Dean Spielmann, *President*,
Elisabet Fura,
Jean-Paul Costa,
Mark Villiger,
Isabelle Berro-Lefèvre,
Ann Power,
Ganna Yudkivska, *Judges*,

and Claudia Westerdiek, *Section Registrar*,

Having regard to the above application lodged on 31 December 2009,

Having deliberated, decides as follows[1]:

[1] Rectified on 18 July 2011: deletion of "Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,".

THE FACTS

The applicants are Mr Thierry Ehrmann, a French national who was born in 1962 and lives at Saint-Romain au Mont d'Or, Mrs Nadège Ehrmann née Martin, a French national who was born in 1960 and lives at Saint-Romain au Mont d'Or, and VHI, a French real-estate investment partnership (*société civile immobilière*) whose registered office is at Saint-Romain au Mont d'Or. They were represented before the Court by Mr T. Dumoulin, a lawyer practising in Lyons.

A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

The first applicant is a plastic artist who initiated an art project to be pursued in the context of a collective work. The project was launched on 9 December 1999 under the name "Demeure du Chaos / l'Esprit de la Salamandre" ("Abode of Chaos" / the Salamander Spirit) in a seventeenth-century property located in the municipality of Saint-Romain au Mont d'Or, about ten kilometres from Lyons. The project is described as both "a museum and a residence of artists". About thirty plastic artists contributed to a work of art that is made up of 3,123 separate works. The establishment has been open to the public since 18 February 2006 and has the status of "E.R.P." (establishment receiving the general public). It receives about 120,000 visitors per year and has been reported on widely in the press, art reviews, films and documentaries.

The property "Domaine de la Source" is owned by a real-estate investment company, VHI ("Vae Homini Injusto"). The first applicant is the majority shareholder in the company, which granted him authority to create "the monumental work Nutrisco and Extinguo, the Salamander Spirit".

...

In a letter of 9 December 2004 the Mayor of Saint-Romain au Mont d'Or complained to the public prosecutor at the Lyons *tribunal de grande instance* about the work being undertaken on the first applicant's property, "Domaine de la Source". To the letter was appended an official record of infringement drawn up by the Mayor on 4 December 2004, observing that on the building there were paintings covering almost all of the outer walls, with symbols and inscriptions in black, and drawings in black and white (of a skull and salamanders). The Mayor had also recorded that along the boundary wall there were paintings in black and red, various inscriptions and symbols, and blocks of black stone in the wall that represented "meteorites".

The first and third applicants were prosecuted for unlawful work not subject to the issuance of a building permit, for unlawful erection of an

enclosure, for breaching the provisions of the local urban-development plan or land-use plan, and for altering or converting without prior authorisation a construction visible from a listed building.

More specifically, the first applicant was charged with having, at Saint-Romain au Mont d'Or, on 29 November and 4 December 2004, caused to be placed, without planning permission, on the outer walls of the property "Domaine de la Source", paintings, inscriptions and drawings in red or black, together with blocks of black stone, resulting in the alteration of their external appearance, and for carrying out work without prior declaration.

It was stated that the property "Domaine de la Source" was registered within the perimeter of the land-use plan for the north-west sector of the Urban Community of Lyons, as approved on 27 September 1993. Article 11 of the plan's regulations required that, by their appearance, any new constructions and old buildings had to be in harmony with existing neighbouring constructions, with the character of the sites and with the landscapes in which they were situated. It was also mentioned that the property "Domaine de la Source" was in a position of joint visibility with the church of Saint-Romain au Mont d'Or and the manor-house of La Bessée, both of which were enumerated on the secondary list of historic buildings, and that operations capable of altering the appearance of the property were subject to prior authorisation.

In a letter of 16 June 2005 to the public prosecutor, the National Heritage Architect stated that, as regards the joint visibility, because of the distance the first applicant's work was quite difficult to make out and that it was not justifiable to claim the existence of direct harm to the edifices on the secondary list of historic buildings.

In their submissions to the court, the first and third applicants argued that Article R. 421-1 of the Planning Code exempted from planning permission any statues, monuments or works of art with a height less than or equal to twelve metres above ground and a volume of less than forty cubic metres.

In a judgment of 16 February 2006 the Lyons Criminal Court acquitted the first and third applicants on the charges concerning the execution without prior declaration of enclosure work subject to such declaration and concerning work within the field of visibility of an edifice on the secondary list of historical buildings. On the other charges, it found the first and third applicants guilty, ordering the first to pay a criminal-law fine of 20,000 euros (EUR) and the third a criminal-law fine of EUR 100,000. It gave the first applicant six months in which to restore the premises to their previous state, failing which he would be fined seventy-five euros per day.

On 13 September 2006 the Lyons Court of Appeal upheld the judgment in so far as it had acquitted the first and third applicants on the above-mentioned charges, and had found the first applicant guilty of carrying out work, without prior declaration, on the outer walls of the property "Domaine de la Source". It set aside the remainder of the judgment,

acquitting the first applicant on the charge of failing to comply with the land-use plan. It fine him EUR 200,000. It acquitted the third applicant on the other charges. It declared that there was no need to order the measures of property restoration provided for in Article L. 480-5 of the Planning Code. The Court of Appeal found in particular as follows:

> "... The paintings, inscriptions, red or black drawings and the insertion of blocks of black stone on the various outer walls of the property 'Domaine de la Source' have had the effect of altering the external appearance of those walls, and have thus constituted the volume of the building [sic] significantly in excess of 40 cubic metres, to create, as Thierry Ehrmann had claimed, a massive, global, monumental work. As a result, the exemption provided for by the above-mentioned provision cannot be applied. The defendant accepts, as has also been established by the investigation, that he carried out the work without prior declaration. The corresponding criminal offence, as charged, is thus sufficiently established.
>
> The proceedings brought in respect of the said charge are not incompatible with Article 10 of the Convention ... protecting the exercise of the right to freedom of expression. Freedom of artistic creation, as protected by the exemptions from planning permission or from declarations of work in Article R.421-1 of the Planning Code, must necessarily be reconciled with legitimate interference by the State when the work represents a certain physical volume, particularly in the light of the requirements of public safety, construction safety and compliance with the basic rules governing environmental protection; ..."

The first applicant appealed on points of law.

In a judgment of 11 December 2007 the Court of Cassation quashed and annulled all the operative provisions of the judgment of the Lyons Court of Appeal for reconsideration in accordance with the law, remitting and transferring the case to the Grenoble Court of Appeal. Firstly, in acquitting the third applicant the court below had found that no evidence gathered during the investigation and proceedings had revealed the execution of work on behalf of that company by its bodies or representatives subsequent to 2 July 2003, the date from which the criminal responsibility of legal entities could be engaged on the basis of infringements of the Planning Code. The Court of Cassation added that the Court of Appeal, which had not sought to ascertain whether any changes had been made to the "Abode of Chaos" construction after 2 July 2003, had not substantiated its decision. The Court of Cassation secondly found that in acquitting the first applicant on the charge of infringement of the land-use plan, the Court of Appeal's judgment had stated that the rule whereby the appearance of constructions had to be in harmony with neighbouring constructions and the character of sites and landscapes was neither clear nor precise and amounted to a subjective assessment. Moreover, it had been for the Court of Appeal to ascertain whether the work carried out was in conformity with the sufficiently clear and precise provisions of the land-use plan.

In a judgment of 16 December 2008 the Grenoble Court of Appeal set aside the judgment of the Lyons Criminal Court of 16 February 2006 and found the first applicant guilty of having, at Saint-Romain au Mont d'Or, up

to 4 December 2004, executed or caused to be executed work exempted from planning permission, without a prior declaration, on the boundary walls of the property "Domaine de la Source", and of having executed or caused to be executed work affecting the appearance of constructions within the field of visibility of edifices enumerated in the secondary list of historic buildings, without having sought the authorisation provided for in Article L. 621-31 of the Heritage Code. The Court of Appeal upheld the judgment in so far as it had found the first applicant guilty of having executed or caused to be executed, on the outer walls of the "Domaine de la Source", work that was exempted from planning permission, without prior declaration, and of having executed or caused to be executed work in breach of the requirements of the land-use plan. The first applicant was fined EUR 30,000. The Court of Appeal gave the first applicant nine months to comply with the order to restore the property, failing which he would be fined seventy-five euros per day. The third applicant was found guilty of infringements of the land-use plan (local urban-development plan) and execution of work without prior declaration on the outer walls of the "Domaine de la Source" and ordered, jointly and severally with the first applicant, to pay the sum of one euro in damages to the municipality of Saint-Romain au Mont d'Or.

As to whether the proceedings were compatible with the right to freedom of expression, the Court of Appeal took the following view:

> "A finding on the artistic nature of a work would mean referring to an aesthetic order which would define what falls within Article 475-1 of the Code of Criminal Procedure and would determine the criteria thereof. Such an assessment is not within the remit of the judge responsible for enforcing the law, in particular ensuring compliance with the above-mentioned Convention provisions.
>
> Regardless of the question whether it should be described as a work of art, a question which is not within the purview of a criminal court, and solely on the ground that the work known as the 'Abode of Chaos' imparts 'information or ideas' within the meaning of Article 10 of the European Convention on Human Rights, the defendant is entitled to rely on the protection of the right to freedom of expression as guaranteed by that provision. ..."

The Court of Appeal examined whether the formalities, conditions, restrictions or sanctions provided for by the Planning Code and the Heritage Code, on which the prosecution was based, were compatible with the right to freedom of expression. It took the view that by penalising a failure to comply with the formality requiring a prior declaration to the town hall for the execution of certain work affecting the external appearance of existing constructions, the provisions of those two codes did not breach the right to freedom of expression. In the Court of Appeal's view, those measures were necessary in a democratic society for the prevention of disorder, which entailed, in the general interest, the protection of the common good and respect for the collective intent as expressed in the planning choices enshrined in land-use plans:

"The restrictions imposed by both the Planning Code and the Heritage Code, and those resulting from the application of the land-use plan for the municipality of Saint-Romain au Mont d'Or, together with the sanctions laid down for non-compliance with the rules, are proportionate to the legitimate aim pursued. They do not encroach upon the substance of the right to freedom of expression but merely affect, in the general interest and in a very limited manner, how that right is to be exercised, by regulating manifestations thereof where public space is affected. The work carried out on the outer walls and boundary wall are certainly visible from the public highway. The explanatory catalogue states: 'The Abode of Chaos imposes itself and exposes itself', 'The main point of its work is the permanent confrontation with others. And this is precisely its innovative quality, its tendentious character: how far can you force people to look?', 'This permanent and imposed confrontation provokes reactions, expectedly and more or less intentionally'. The restrictions in issue are directed only at those constructions which, from outside the property, are in full public view and not, as the defendant has claimed, at works erected in the inner areas of the property or its gardens.

In view of the foregoing, the highly circumscribed proceedings against Thierry Ehrmann do not breach the provisions of Article 10 of the European Convention on Human Rights ...".

Before the Court of Cassation, the first and third applicants alleged in particular that the Court of Appeal had proceeded by extension in convicting them for work on the "enclosure walls" under the provisions of Article R. 421-17 of the Planning Code, whereas those provisions applied only to work that had the effect of altering the external appearance of an "existing building".

In a judgment of 15 December 2009 the Court of Cassation dismissed the appeals on points of law lodged by the first and third applicants. As to their conviction in respect of work on the "enclosure walls", it was of the view that the Court of Appeal had substantiated its decision. As to the alleged breach of the right to freedom of expression, the Court of Cassation found that the Court of Appeal, which had examined whether the interference with freedom of expression in the present case had been proportionate to the legitimate aim pursued, had substantiated its decision.

B. Relevant domestic law

The relevant provisions of the Planning Code (*Code de l'urbanisme*) read as follows at the material time:

Article L. 421-1

"Anyone who wishes to develop or place a construction, whether or not for use as a dwelling, even without foundations, shall first obtain a building permit subject to the provisions of Articles L. 422-1 to L. 422-5. Such obligation shall be imposed on public authorities, and contractors thereof, of the State, regions, *départements* and municipalities, as well as on private individuals.

Subject to the provisions of Articles L. 422-1 to L. 422-5, the same permit shall be required for work carried out on existing constructions when it has the effect of

changing their use, altering their external appearance or volume or creating additional storeys. ...

Such permit shall not be ... required for structures which, on account of their nature or very limited dimension, cannot be characterised as constructions within the meaning of the present Title. An order of the *Conseil d'Etat* shall stipulate, as may be required, the structures which accordingly are not subject to a building permit.

Where the construction is non-permanent in nature and is intended for regular dismantling and re-assembly, the permit shall indicate the period or periods in the year during which the construction shall be dismantled. In such cases a new permit shall not be required for each re-assembly. The building permit shall become null and void if the construction is not dismantled by the date fixed in the authorisation. ..."

Article R. 421-1

"In accordance with the fourth paragraph of Article L. 421-1, the following works or structures, in particular, shall not fall within the scope of application of the building permit:

...

Statues, monuments or works of art, with a height less than or equal to twelve metres above ground and a volume of less than forty cubic metres; ..."

Article R. 421-17 (in force since 1 October 2007)

"A prior declaration shall be required for work carried out on existing constructions which is not subject to a building permit, in accordance with Articles R. 421-14 to R. 421-16, except for ordinary maintenance or repairs, and changes of use of existing constructions, as follows:

Renovation of walls and other work having the effect of altering the external appearance of an existing building; ..."

The relevant provision of the Heritage Code (*Code du patrimoine*) read as follows at the material time:

Article L. 621-31

"Where a building is situated within the field of visibility of a listed building it cannot be subjected, whether by private owners or public authorities and institutions, to any new construction, demolition, deforestation, conversion or modification such that its appearance may be affected, without prior authorisation. ..."

C. Domestic case-law concerning the interpretation of Article L. 621-31 of the Heritage Code

In judgment no. 284863 of 28 December 2005 the *Conseil d'Etat* ruled as follows:

"In finding that the Minister responsible for the protection of historic buildings had vitiated his favourable opinion by an error of judgment, the Administrative Court of Appeal based its ruling on the fact that the planned extension had the effect of increasing the stadium's capacity from the current 21,200 seats to 32,900 seats and of raising its height to 28.5 metres, it currently being 15 metres for most of the

construction and 21.7 metres for certain tiers that were raised in 2000, and that therefore, having regard in particular to its voluminous nature, shape and height, the envisaged construction was likely to cause significant and long-term damage to the appearance and character of the Citadel. The court was entitled, without committing any error of law, to take into consideration the scope of the envisaged work, which constituted the very object of the project, and the permanent nature of the damage caused thereby to the appearance and character of the listed buildings, in order to assess the conformity of the project with the above-mentioned provisions of Article L. 621-31 of the Heritage Code. In finding, for the above-mentioned reasons, that the planned construction would be capable of affecting the appearance of the listed parts of the Citadel within whose field of visibility it would be situated, without deeming it appropriate to order any supplementary enquiries, the Administrative Court of Appeal, which gave sufficient reasons on this point in its judgment and did not commit any mistake of law, gave a final decision on the facts which was not vitiated by any misinterpretation; ..."

In judgment no. 296012 of 13 February 2008 the *Conseil d'Etat* ruled as follows:

"... the Administrative Court of Appeal of Nantes found that the replacement of the La Roque-Genest railway bridge in La Meauffe by a new permanent structure had affected the "Fours à chaux" (limekilns) industrial site in La Meauffe, which was added to the secondary list of historic buildings on 6 July 1992; ...

It is not apparent from the material in the case file, having regard in particular to the National Heritage Architect's opinion and to the obligations imposed by the impugned order of the prefect, that the replacement of the La Roque-Genest railway bridge, which had no intrinsic value, by a new permanent structure, had the effect of causing harm to the appearance of the "Fours à chaux" site in La Meauffe, within whose field of visibility it is situated, such that the prefect may be said to have committed an error of judgment when authorising the replacement, in so far as the new structure ... has been designed and placed in a manner that takes into account the layout of the site and blends properly into the landscape. Accordingly, the Prefect of the Manche did not misapply Article L. 621-31 of the Heritage Code; ..."

D. Relevant European law

The Council of Europe Framework Convention on the Value of Cultural Heritage for Society (27 October 2005) provides, in particular, as follows:

Article 1 – Aims of the Convention

"The Parties to this Convention agree to:

(a) recognise that rights relating to cultural heritage are inherent in the right to participate in cultural life, as defined in the Universal Declaration of Human Rights;

(b) recognise individual and collective responsibility towards cultural heritage;

(c) emphasise that the conservation of cultural heritage and its sustainable use have human development and quality of life as their goal; ..."

Article 9 – Sustainable use of the cultural heritage

"To sustain the cultural heritage, the Parties undertake to:

(a) promote respect for the integrity of the cultural heritage by ensuring that decisions about change include an understanding of the cultural values involved; ...”

COMPLAINTS

...

Relying on Article 10 of the Convention and Article 1 of Protocol No. 1, the applicants complained of a breach of their right to freedom of artistic expression. In their submission, the domestic courts had taken the view that the exemption from the prior declaration of work provided for by Article R. 421-1 of the Planning Code for works of art “not exceeding twelve metres in height and forty cubic metres in volume” was not applicable to them. They argued that the domestic courts had not established how it was proportionate to the legitimate aim pursued by the planning regulations to impose sanctions in respect of the art works that were placed on the outer walls and boundary wall of the “Abode of Chaos”. They alleged that the measure of restoration ordered by the domestic courts, on account of its irreversible and permanent nature, constituted a disproportionate interference with their freedom of artistic expression.

...

THE LAW

...

2. The first and third applicants argued that the sanction imposed on them represented a disproportionate interference with their freedom of artistic expression. They complained more specifically that they had not been able to benefit from the exemption from building permits or prior declarations of work applicable to works of art not exceeding twelve metres in height and forty cubic metres in volume. They relied on Article 10 of the Convention and Article 1 of Protocol No. 1, but the Court finds it appropriate to examine the complaint under the first of those Articles, which reads as follows:

Article 10

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, ... for the prevention of disorder ...”

The Court reiterates that freedom of expression, as secured in paragraph 1 of Article 10, constitutes one of the essential foundations of a democratic society, indeed one of the basic conditions for its progress and for the self-fulfilment of the individual. Subject to paragraph 2, it 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" (see *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24). Those who create, perform, distribute or exhibit works of art contribute to the exchange of ideas and opinions which is essential for a democratic society. Hence the obligation on the State not to encroach unduly on their freedom of expression (see *Müller and Others v. Switzerland*, 24 May 1988, § 33, Series A no. 133).

In the case of *Müller and Others* (cited above), the Court emphasised the fact that artists and those who promoted their work were not immune from the possibility of limitations as provided for in paragraph 2 of Article 10. Whoever exercises his freedom of expression undertakes, in accordance with the express terms of that paragraph, "duties and responsibilities", whose scope will depend on his situation and the means he uses. In considering whether a penalty was "necessary in a democratic society", the Court cannot overlook this aspect of the matter.

The Court notes that the majority of cases concerning the freedom of artistic expression which it has had occasion to examine concerned criminal convictions of applicants with the aim of protecting morals or public order (see, for example, *Otto-Preminger-Institut v. Austria*, 20 September 1994, Series A no. 295-A; *Wingrove v. the United Kingdom*, 25 November 1996, *Reports of Judgments and Decisions* 1996-V; *Karataş v. Turkey* [GC], no. 23168/94, ECHR 1999-IV; and *Akdaş v. Turkey*, no. 41056/04, 16 February 2010).

The present case, unlike those cited above, does not concern a dispute relating to morals. The Court observes that the first applicant was declared guilty of four criminal offences for failure to comply with planning regulations. More specifically, he was convicted for executing or causing to be executed work exempted from planning permission, without a prior declaration, on the enclosure wall and outer wall of the property "Domaine de la Source", and of having executed or caused to be executed work affecting the appearance of constructions within the field of visibility of edifices enumerated in the secondary list of historic buildings, without having sought the authorisation provided for in Article L. 621-31 of the Heritage Code, and for having executed or caused to be executed work that was in breach of the requirements of the land-use plan. The Court notes that the property "Domaine de la Source" is in a position of joint visibility with

a church and a manor-house, which are both on the secondary list of historic buildings. As to the third applicant, it was ordered under the civil head, jointly and severally with the first applicant, to pay the sum of one euro in damages to the municipality.

The Court observes that the criminal and civil sanctions imposed on the first and third applicants constitute an interference by the public authorities with the exercise of freedom of expression guaranteed by Article 10 of the Convention.

That interference was "prescribed by law", namely by Articles L. 480-4, L. 480-5 and L. 160-1 of the Planning Code and L. 624-3 of the Heritage Code. In the view of the domestic courts, the aim of the impugned interference was to ensure the prevention of disorder. The Court observes that there is a natural link between prevention of disorder and protection of the rights of others (see, *mutatis mutandis*, *Müller and Others*, cited above, § 30). The disputed interference thus had the aim of ensuring, through the review of construction and other work in the vicinity, the quality of the environment surrounding protected national heritage structures. The Court considers, in the present case, that this was a legitimate aim for the purposes of protecting a country's cultural heritage, also taking into account the margin of appreciation afforded to the national authorities in determining what is in the general interest of the community (see, *mutatis mutandis*, *Beyeler v. Italy* [GC], no. 33202/96, § 112, ECHR 2000-I). In this connection the Court would refer in particular to the Council of Europe Framework Convention on the Value of Cultural Heritage for Society, adopted on 27 October 2005 (see "Relevant European law" above), which states in particular that the conservation of cultural heritage and its sustainable use have human development as their goal.

The Court notes that the examination by the domestic courts concerned two points. They first examined whether or not the prior authorisation under Article L. 621-31 of the Heritage Code was required in the present case. They observed that the property "Domaine de la Source" was located within a perimeter of five hundred metres from two historic buildings and that a position of joint visibility existed in two places. With that in mind, they found it unimportant that the National Heritage Architect had not regarded the joint visibility as "sufficiently significant", and took the view that the first applicant should have sought the requisite authorisation in accordance with Article L. 621-31 of the Heritage Code.

Secondly, the domestic courts examined whether the work carried out was prohibited by the land-use plan applicable to the municipality, one of whose provisions stipulated that "constructions must be in harmony with the character or interest of neighbouring sites" and "must blend into the surrounding landscape". On this point they took the view that the modifications to the outer walls and boundary wall of the property

"Domaine de la Source" were totally at odds with the neighbouring constructions, which had a very characteristic style.

The Court observes that the Grenoble Court of Appeal, following remittal of the case by the Court of Cassation, indicated that the question whether the "Abode of Chaos" should be characterised as a work of art was not for the criminal court to decide. After examining the applicant's complaint under Article 10 of the Convention, it concluded that the restrictions imposed both by the Planning Code and the Heritage Code, and those resulting from the land-use plan for Saint-Romain au Mont d'Or, together with the sanctions prescribed for failure to comply with the regulations, were necessary in a democratic society and proportionate to the legitimate aim pursued.

Without entering into the debate as to whether the "Abode of Chaos" was a work of art, the courts were entitled to consider that the planning regulations pursued a legitimate aim, fulfilled the function of regulating conduct in matters of land use and contributed to creating the conditions for the harmonisation of social life. The Court finds, like the domestic courts, that the planning regulations in question constituted measures that were necessary in a democratic society for the prevention of disorder, which meant ensuring the protection of the common good and respect for the collective intent as expressed in planning choices. In those circumstances, the Court is of the opinion that the reasons put forward by the domestic authorities were both relevant and sufficient.

In the present case the Court observes that the limitation on the exercise of freedom of expression was confined to the boundary wall and outer wall, which were situated within the field of visibility of edifices enumerated on the secondary list of historic buildings, and did not affect the work as a whole. The general interest, which in the present case is constituted by the protection of heritage, requires that the applicants comply with certain planning regulations (see, *mutatis mutandis*, *SCEA Ferme de Fresnoy v. France* (dec.), no. 61093/00, ECHR 2005-XIII). The applicants were merely obliged to obtain the prior authorisation provided for in Article L. 621-31 of the Heritage Code. With those considerations in mind, the Court finds that the restrictions to freedom of expression affected only, in the general interest and in a very limited manner, a condition of the exercise of such right.

Moreover, the criminal penalty of EUR 30,000 imposed on the first applicant and the civil penalty imposed on the third applicant, together with the order to restore the premises to their previous state, cannot be regarded as disproportionate, it being observed in this connection that the restrictions in question concerned only the work that, from outside the property, were in full public view and did not affect the works situated in the inner areas of the property or in its gardens.

The Court is of the view that the imposing of a criminal penalty on the first applicant was legitimate, especially as the amount of the fine, whilst not insignificant, cannot be regarded as excessive.

Accordingly, having regard to the circumstances of the present case, the Court finds that the interference could be regarded as "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention.

It follows that the complaint under Article 10 of the Convention must be dismissed as manifestly ill-founded, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

...

For these reasons, the Court by a majority

Declares the application inadmissible.

Claudia Westerdiek
Registrar

Dean Spielmann
President