

**The French Republic
In the name of the French People**

Paris District Court (*Tribunal de Grande Instance de Paris*)

**JUDGMENT
of 22 September 2010
*Execution Copy***

Case No.: 09/04019

PLAINTIFF

FONDATION FRANCO-JAPONAISE, DITE Sasakawa (*Sasakawa Franco-Japanese Foundation*)
27 rue du Cherche-Midi
75006 PARIS

represented by Philippe Metais, Attorney-at-law with the Paris Bar

DEFENDANT

Karoline Postel-Vinay
27 rue Saint Guillaume
75007 PARIS

represented by Kiejman-Marembert, Attorneys-at-law with the Paris Bar

MEMBERS OF THE COURT

Judicial Officers serving at the hearing and deliberations

Anne-Marie Sauteraud, Deputy Chief Justice
Presiding Judge

Nicolas Bonnal, Deputy Chief Justice
Dominique Lefebvre-Ligneul, Deputy Chief Justice
Assisting Judges

Clerk of the Court:
Viviane Rabeyrin

HEARING

Held in open court on 28 June 2010

JUDGMENT

Issued in the Registry, in defended proceedings at first instance.

By writ of summons served on Karoline Postel-Vinay, Senior Fellow of the *Fondation Nationale des Sciences Politiques (Sciences Po – CERJ)*, on 5 March 2009, the Sasakawa Franco-Japanese Foundation (*Fondation Franco-Japonaise Sasakawa*) commenced proceedings seeking judgment from the Court based on Article 29 para 1 and Article 32 para 1 of the Act of 29 July 1881 on Freedom of the Press as follows:

- Rule that five statements (reproduced in the body of this judgment) contained in an e-mail with the subject line “Sasakawa, a war criminal to celebrate 150 years of Franco-Japanese Diplomacy?” and an attached memorandum entitled “Memorandum – Ryôichi Sasakawa (1899-1995), the Sasakawa Empire and the Sasakawa Foundation” sent on 16 December 2008 constitute acts of malicious defamation¹ against a private individual;
- Order Karoline Postel-Vinay to pay the plaintiff € 200 in pecuniary and € 1 non-pecuniary damages;
- Order, as additional relief, publication of the judgment in the daily newspaper *Le Monde* and the weekly magazine *Le Point*, at the defendant’s expense;
- Award to the plaintiff € 15,000 pursuant to Article 700 of the New Code of Civil Procedure and make the judgment immediately enforceable notwithstanding appeal.

In a ruling handed down by the judge directing preparation of this case on 07 December 2009, the Court rejected the application by Karoline Postel-Vinay to have the summons struck out on the grounds that the plaintiff as a legal entity had not been properly identified in the writ and that its Chairman was not legally authorized to act on its behalf. The judge noted that the Decree of 23 March 1990, granting the foundation public interest status and approving its constitution, did refer to it as the “Sasakawa Franco-Japanese Foundation” (*Fondation franco-japonaise, dite Sasakawa*). This remains the organization’s name, and its inaccurate naming in the writ of summons had not caused any prejudice to the defendant liable to have the writ struck out, even though a document produced by defense counsel could lead one to believe that such an inaccuracy was not inadvertent.

On 05 May 2010, the “Sasakawa Franco-Japanese Foundation” (the name used in the letterhead of its pleadings but not in the actual text thereof, without this having any legal bearing) served its final submissions, maintaining all of its original claims.

In her final submissions of 7 April 2010, Karoline Postel-Vinay requested that the Court:

- Find that the name of the plaintiff, as recorded in its constitution, was the “Sasakawa Franco-Japanese Foundation” (*Fondation franco-japonaise, dite Sasakawa*);
- Rule that none of the allegations raised by the plaintiff impugned its honor or reputation inasmuch as its activities were in no way targeted by said allegations;
- Rule that no malicious defamation could arise from the simple statement of historical facts involving its founder Ryôichi Sasakawa, whose name the foundation had included in its own name, which was inconsistent with the name stated in its constitution and under which the foundation had been granted public interest status;

¹ Translator’s note: Under French law, malicious defamation is an offence punishable by fines.

- Find, in any event, that Karoline Postel-Vinay had acted in good faith²;
- Dismiss therefore all of the plaintiff's claims and order said plaintiff to pay €30,000 for irrecoverable expenses incurred by the case for the defense.

After a hearing on 28 June 2010, during which testimony was given by Shigeatsu Tominaga, Chairman of the Sasakawa Franco-Japanese Foundation and its Vice-Chairman Jean-Bernard Ouvrieu, as well as Karoline Postel-Vinay, all present at the hearing, prior to formal submissions by their respective lawyers, the Court indicated that judgment would be handed down and made available at the registry by 02:00 pm on 22 September 2010.



The Sasakawa Franco-Japanese Foundation (*Fondation franco-japonaise, dite Sasakawa*) is a French not-for-profit foundation whose public interest status was granted by decree on 23 March 1990. The Foundation submits that as part of its mission to develop cultural ties and friendly relations between France and Japan it has set up far-reaching partnerships with renowned institutions and that well-known public figures have served or are still serving on its Board of Directors.

The Foundation further submits that it was the main donor for organization of a symposium to take place among other events sponsored by the Japanese Embassy in Paris on the occasion of the 150th anniversary of diplomatic relations between France and Japan. The Foundation accuses Karoline Postel-Vinay of disseminating written documents which cast a severe slur on its respectability, just prior to this symposium which was organized by and held at IFRI³ (*Institut français des relations internationales*) on 18 December 2008.

The alleged defamatory statements were included in an e-mail entitled “Sasakawa, a war criminal to celebrate 150 years of Franco-Japanese Diplomacy?” (“*Sasakawa, un criminel de guerre pour célébrer 150 ans de diplomatie franco-japonaise?*”) sent out on 16 December 2008 at 02:21 p.m. to symposium participants, various public figures and institutions, as well as to French and foreign media organizations, from the e-mail address postelvinay@ceri-sciences-po.org, and in a memorandum attached to same e-mail, entitled “Memorandum – Ryôichi Sasakawa (1899-1995), the Sasakawa Empire and the Sasakawa Foundation” (“*Mémoire - Sasakawa Ryôichi (1899-1995), l'empire Sasakawa et la Fondation Sasakawa*”), signed by Karoline Postel-Vinay and Philippe Pelletier.

In reply, Karoline Postel-Vinay, a Senior Research Fellow in International Relations at *Institut d'Études Politiques de Paris* and an expert on Asia, argues that she was invited to attend the symposium in her capacity as a researcher. It immediately struck her as quite inappropriate that a foundation fashioning its own name after that of a class A war criminal should sponsor such a gathering, which prompted her, along with about sixty French historians and academics, experts on Japan and China, to draw this to the attention of various intellectual and political figures in a wide distribution e-mail “*urging the Ministry of Foreign Affairs to withdraw its sponsorship of the event*”.

On the defamatory nature of the statements:

Before examining each of the statements in contention, it should be recalled that:

² Translator's note: A finding of good faith (*bonne foi*) under French law is sufficient to defend an allegation of malicious defamation.

³ Translator's note: The French Institute for International Relations

- Article 29, para. 1 of the Act of 29 July 1881, defines defamation as “*Any allegation or imputation of a fact undermining the honor or reputation of the individual or organization to which the fact is attributed*”. The fact must be specific, lending itself to verification through an adversarial procedure, thereby setting defamation apart from both insult (*l’injure*) – the latter meaning, under Article 29, para. 2, “*Any offensive phrase, terms of contempt or invective which includes no allegation of any fact*” – and from the expression of opinions or value judgements, authorized under the right of criticism which stops only at personal attacks;
- In order to characterize the offence of public defamation of a private individual (*la diffamation publique envers un particulier*), the person in question does not have to be named or expressly designated. The person merely needs to be identifiable through elements of the speech or written document, or by external context which informs and confirms their identity in such a way as to make it obvious;
- Defamation, which may manifest itself by way of allusion or insinuation, must be assessed taking into account all relevant elements both within and without the incriminated source, namely, in this case, both the actual content and the context of the statements.

- **1st Contentious Statement: §2 of the E-mail**

“The main sponsor of this event (is) the Sasakawa Franco-Japanese Foundation (which) bears the name of a class A war criminal, Ryōichi Sasakawa.”

The plaintiff claims that it is being accused of bearing the name of a war criminal, thereby endorsing the latter’s past abuses, which would be contrary to all moral standards.

Indeed, the statement alleges that the “*Sasakawa Franco-Japanese Foundation*”, by adopting that name (although the title is inaccurate but commonly used) “*bears the name of a class A war criminal*”, a specific allegation that lends itself to verification, and stains the honor and reputation of the Foundation inasmuch as it has chosen the name of its own free will, implying at the very least that the Foundation does not condemn the actions of the person whose name it bears.

- **2nd Contentious Statement: §4 of E-mail**

“There are, in Japan and France alike, many foundations whose respectability is beyond question; it is most unfortunate that this partnership should have been chosen to celebrate 150 years of diplomatic relations between the two great democracies that are France and Japan.”

The Sasakawa Franco-Japanese Foundation reads into this excerpt an allegation that its own attitude was not respectable or worthy of involvement in a cultural event within a democracy.

Here the authors of the text express their view on the respective respectability of various foundations and find the choice in this case unfortunate; in so doing, they express an admittedly critical view, but without accusing the plaintiff of a specific fact lending itself to verification.

- **3rd Contentious Statement: pg. 17 of the Memorandum**

“In 1999, just when the election of an Egyptian scholar at the head of UNESCO appeared assured, African representatives voted against their candidate, thereby ensuring the election of Japanese diplomat Matsuura Koichirō. It would appear that the Sasakawa Foundation had promised “gifts”

to the African delegates in return for their votes. After his election, having partly liquidated the legacy of his predecessor Federico Mayor, Matsuura Koichirō started many initiatives involving UNESCO, Nippon Zaidan and – since the UNESCO headquarters were in Paris – the Sasakawa Franco-Japanese Foundation, and more specifically its Vice-Chairman Jean-Bernard Ouwrieu, a former French Ambassador to Japan (1994-1998).”

“*The Sasakawa Franco-Japanese Foundation*” is described here as having been involved in “*initiatives*” on the part of “*Japanese diplomat Matsuura Koichirō*” after the latter’s election at the head of UNESCO in 1999, a description which is in no way defamatory; moreover, the alleged bribery which purportedly led to the election is not attributed to it but to the “*Sasakawa Foundation*”, a reference to the Japanese foundation – a separate legal entity – without there being any indication or indeed any insinuation that the French foundation was even aware of such bribery having been committed by others.

The statement therefore is not defamatory to the plaintiff.

- **4th Contentious Statement: pg. 24 of the Memorandum**

“The “Sasakawa Franco-Japanese Foundation” (Nichifutsu Sasakawa Zaidan) was created in Paris at the end of 1989, and officially on 3 February 1990. It was granted public interest status by decree of the Prime Minister on 23 March 1990.

Initially, the State Council (Conseil d’Etat)– the body with authority to allow such recognition – ruled against the application. Then, a few weeks later – surprisingly fast according to certain analysts – it changed its mind and returned a positive verdict (Le Canard Enchaîné, issue N°3689 of 1991; and issue dated 17 April 2002). What happened in between? Amongst possible scenarios, two likely explanations have emerged. One is that the decision was made in the debacle of the Rocard government. Another is that, under the guidance of a former French diplomat turned financier who became its plenipotentiary traveling nuncio, the Sasakawa clan “went out shopping” in France – in particular it helped finance the renovation of the stained glass windows in the Blois cathedral, where the mayor, Jack Lang, was also a government minister; likewise it provided financing for a well-known and politically influential French foundation.”

The plaintiff claims that it was accused of securing its public interest status through bribery and influence peddling, to which the defendant replies that she merely recounted the embarrassment expressed by public authorities when called upon to grant such status, and referred to the weight of patronage and financial support which the Japanese foundation, and not the French foundation, brought to bear on influential institutions and personalities.

While the Sasakawa Franco-Japanese Foundation is not being directly accused of having personally committed acts that could be qualified under criminal law as bribery and influence peddling, there is nonetheless the insinuation that the “*surprisingly fast*” change of heart on the part of French authorities may be attributable to facts akin to influence peddling, even though the instances of patronage cited “*in particular*” did not originate with the French foundation, the latter being nonetheless targeted with the general phrase “*Sasakawa clan*” described as having “*gone out shopping in France*”.

The statement therefore shall be deemed to be defamatory.

- **5th Contentious Statement: pg. 24 of the Memorandum**

“In a letter dated 25 November 1991, Augustin Berque who at the time was head of CRJC, expressly noted the following: “... seen from Japan, a foundation bearing the name Sasakawa would be

the equivalent of a foundation in France bearing the name of a [French Nazi] collaborator under [German] Occupation who remained a boss in the [[far-right] National Front and an underworld boss; or rather, as Japan's experience is closer to that of Germany, this would be as if a foundation in that country bore the name of someone who was active as a Nazi under Hitler and claimed to have remained a Nazi, and who was linked to the mob and financed neo-Nazi [movements]”.

This excerpt is also defamatory: while it does not accuse the plaintiff of embracing Nazi ideology, it does carry a similar imputation as the one deemed defamatory in the first excerpt – namely, of bearing a name equivalent to that of someone both a particularly active Nazi and linked to organized crime. In this regard, it matters little that the statement was not authored by the defendant herself, given it was quoted in the memorandum she signed and disseminated along with others.

On the question of good faith:

Karoline Postel-Vinay has not offered to prove the truth of the defamatory statements, with at least some of them dating from more than ten years ago. Instead she has relied upon the defense of good faith, arguing in particular that the true purpose of the present legal action for the plaintiff is not to defend its own reputation but rather attempt to rehabilitate the memory of the more than controversial figure whose name it bore.

Defamatory statements are deemed by law to be made with malicious intent, but they may be justified where their author can establish his or her good faith by proving that his or hers was a legitimate pursuit, devoid of any personal animosity, and that he or she has abided by a number of requirements, including making serious investigation and adopting a cautious manner of expression.

These criteria are assessed differently depending on the nature of the text in question and the position of the person authoring it. A less stringent approach may be applied where the author of the defamatory statement is not a journalist, whose professional role is to inform the public, but merely an individual caught up in the facts about which they are reporting. However, it is entirely another matter in the case of a specialized researcher making statements about their field of research.

The plaintiff has claimed, wrongly, that none of the four criteria of good faith was met in this case.

It was indeed legitimate for a senior research fellow in international relations specializing in Asia, acting alongside others, on the occasion of a symposium organized as part of the 150th anniversary celebrations of Franco-Japanese diplomatic relations, to draw the attention of the symposium's participants, the French Foreign Minister as well as various personalities and the media, to the potential problem posed by the fact that the main financial sponsor of the event should be a foundation whose title included the name of a highly controversial figure in Japanese history. Likewise it was legitimate to supply information about the said foundation and the figure whose name it bore, neither of which were necessarily known to the French general public. In this respect, the defendant correctly pointed out that the Japanese foundation had changed its own title precisely so as to stop using the name Sasakawa - and thereby preclude any suggestion of allegiance to its founder.

Moreover, there is nothing to show that the defendant was motivated by any personal animosity towards the plaintiff which might have prompted her to make litigious statements.

Regarding the criterion of serious investigation, to be appreciated along with that of cautious expression, the two main allegations found to be defamatory in nature should be considered separately.

On the allegation of bearing the name of a class A war criminal also linked to organized crime, the plaintiff accuses Karoline Postel-Vinay in particular of using incomplete sources by failing to refer to the work of Christian Henriot, a teacher of contemporary history at the University of Lyon 2 - Lumière, and making false statements inasmuch as Ryôichi Sasakawa was never convicted of class A war crimes but merely suspected of crimes against peace, for which he was arrested and then released (a fact which is not in dispute in this case).

Karoline Postel-Vinay argues that the memorandum attached to the e-mail dated 16 December 2008, based on a great number of sources and biographical documents, points out among other things that:

- In the early 1930's, Ryôichi Sasakawa founded an extreme right-wing group which became one of the most active nationalist organizations advocating expansionism and the invasion of Manchuria;
- In 1942 he was elected to the Diet, the Japanese Parliament, on an ultra-nationalist and militarist platform;
- In 1945 he was arrested by the American authorities along with other protagonists of Japan's policy of aggression, then accused as a "class A war criminal" with the charge of "*crimes against peace and conspiracy*", incarcerated in Sugamo prison and released three years later without trial due to a reversal of American policy;
- Sasakawa built a genuine financial empire largely thanks to the support of the Japanese mafia, remained very active in far-right circles and created a foundation which used some of its wealth for charitable purposes and patronage.

The defendant calls into question in particular the quality of Christian Henriot's paper and points out that the latter had, over a specific controversy, taken sides against Philippe Pelletier, a Ph.D. in geography specializing in Japan and co-author of the memorandum in question in this case.

It should be recalled here that it is in no way for the Court to settle a historical controversy, nor rule on the accuracy of facts asserted by either side concerning contemporary politics and history. The task of the Court is limited to assessing whether the authors of the defamatory statements were in possession of sufficient evidence to justify the statements they went on to make.

Without, therefore, it being necessary to conduct an exhaustive and detailed examination of the documents produced, suffice it to note that the following emerged from the documents produced by the defense in support of its case:

- Ryôichi Sasakawa was arrested on 11 December 1945 as a "*war criminal*", with a mention in the prosecution warrant of 04 December 1945 indicating that he was "*one of the most active Fascist organizers prior to the war*", that he "*strongly advocated a policy*

of conquest in East Asia” and that he should be “*apprehended because of his leadership in movements promoting aggression, nationalism and hatred of the United States, and because he is currently active in organizations likely to be detrimental to democracy*”, according to the unchallenged translation tendered by the case for the defense (Exhibit N° 59);

- The Charter of 19 January 1946 provides that “*the Court has jurisdiction to judge and punish war criminals of the Far East accused of crimes including Crimes against Peace, either as individuals or members of organizations*” (Exhibit N° 71);
- The above categorization follows the model of the London agreement of 08 August 1945, whose Article 6 distinguishes between *crimes against peace* (class A: leading, preparing, starting or waging a war of aggression), *war crimes* and *crimes against humanity*, it being noted that the plaintiff argued in its final submissions that “class A war crime” (or Class A) was the phrase used in everyday language to identify the “crimes against peace” category as defined in this text, which is also supported by various documents;
- The charges against Sasakawa were not dropped by the SCAP (Supreme Commander for the Allied Powers) in his report dated 04 June 1947 (Exhibit N° 60): “*He has been squarely behind Japanese military policies of aggression and anti-foreignism for more than twenty years*”;
- In his note dated 28 October 1947 (Exhibit N° 5), General MacArthur referred to him as “*clearly one of the worst offenders, outside the military, in developing in Japan a policy of totalitarianism and aggression*” and recommended that he “*should be detained as a class A war crime suspect and tried before an International Military Tribunal in Tokyo*”;
- Several works and articles mention the fact that he was imprisoned as a war criminal and linked to the Japanese criminal underworld.

In the context of this historical controversy and in view of the sum of evidence produced by the case for the defense, the authors of the litigious statements did base themselves on sufficient material to refer to “*the name of a class A war criminal*”, it being duly noted that they never claimed Ryôichi Sasakawa was convicted of that charge, that the phrase is equivalent to “crime against peace” and that the figure under review was widely presented as such. Likewise they were justified in quoting, with quotation marks and therefore adequate caution, the figurative language used by Augustin Berque with its added reference to links to organized crime.

On the allegation relating to the circumstances in which public interest status was granted, the defendant produces various documents clearly showing the misgivings expressed by French authorities on the matter. First there are excerpts from a book by Nicolas Beau and Olivier Toscer, entitled “The Incredible Story of Jacques Chirac’s Japanese Account” (*L’incroyable histoire du compte japonais de Jacques Chirac*) which includes many facsimile documents; a note dated 19 December 1988, in which the Ministry of Foreign Affairs indicates that it has no objection to the foundation being granted public interest status, provided “*that Mr. Sasakawa’s name does not appear in the Foundation’s title*”; a note by Pierre Joxe dated 24 August 1989; handwritten notes by Michel Rocard (20 September 1989: “*In the end I’d rather say no*”; 03 February 1990: “*Read it... Had enough of this... Change the name*”.

Also tendered into evidence was another note from the Ministry of Foreign Affairs, dated 12 July 1988, indicating that the *“highly controversial character”* of Ryôichi Sasakawa, *“especially in his own country, prompted the Department to advise against the granting of public interest status to the Sasakawa Franco-Japanese Foundation”*, stating in relation to this *“dubious reputation”* that *“Mr. Sasakawa’s political activities in the fascist-leaning extreme right-wing between 1930 and 1945 landed him among the 26 “Class A war criminals” (including General Tojo) detained in the Sugamo prison”*, and accusing him of building his fortune through business activities *“tightly controlled by the Yakuza, i.e. the “mafia” (itself closely linked to the far right).”*

In attempting to explain the change of heart on the part of French authorities, the authors of the memorandum merely raise the question and draw no final conclusions, thereby showing appropriate caution, and offer no more than hypothetical explanations, of which patronage was one.

Accordingly, the defense of good faith has been made out by the defendant who made legitimate use of her freedom of expression. As a result, the charge of malicious defamation has not been established in the present case.

Therefore, all claims brought by the Sasakawa Franco-Japanese Foundation will be dismissed.

Lastly, the Court finds that there are grounds to grant partially the application by Karoline Postel-Vinay based on Article 700 of the Civil Procedure Code.

NOW, THEREFORE

THE COURT,

Ruling in open court with judgment issued through the registry, in defended proceedings and at first instance:

DISMISSES all claims made by the Sasakawa Franco-Japanese Foundation;

ORDERS the plaintiff to pay Karoline Postel-Vinay the sum of FIVE THOUSAND EUROS (€ 5,000.00) under article 700 of the Civil Procedure Code,

ORDERS the plaintiff to pay costs.

Executed and handed down in Paris on 22 September 2010.

Clerk of the Court:

Presiding Judge:

Case no.: 09/04019

EXECUTION COPY in the matter of:

1st Plaintiff: **SASAKAWA FRANCO-JAPANESE FOUNDATION** *et alia*

1st Defendant: **Mrs. Karoline Postel-Vinay, Senior Research Fellow at Fondation Nationale des Sciences Politiques** *et alia*

NOW, THEREFORE, THE FRENCH REPUBLIC orders and commands:

- All bailiffs so requested to enforce the present judgment,
- Principal State Counsels and Public Prosecutors at District Courts to uphold it,
- All commanders and officers of the forces for public order to lend support where so requested.

In witness whereof, the present properly collated engrossment of the judgment was signed and issued by us Registrar in Chief of the Paris District Court.