

# FRENCH CRIMINAL COURT CONFIRMED THE LEGITIMATE CHARACTER OF THE BOYCOTT, DIVESTMENT AND SANCTIONS (BDS) CALL DISMISSING THE ALLEGATIONS OF INCITEMENT TO DISCRIMINATION AGAINST ACTIVIST

## Executive Summary of the Judgement

1. On 18 May 2021, a French criminal court of Lyon (*Tribunal Correctionnel de Lyon*) acquitted defendant Olivia Zémor, the President and website Publication Director of *CAPJPO-EuroPalestine*, a group of activists supporting Palestinian rights. Teva Santé, the French subsidiary of TEVA Pharmaceutical Industry (hereinafter, TEVA) accused the defendant of incitement to discrimination on the grounds of nationality according to article 23 (1) and article 24 (7) of Law of 29 July 1881 on the freedom of the press, and public defamation on the grounds of membership of a specific ethnic group, nation, race or religion according to article 29 of Law of 29 July 1881 on the freedom of the press.
2. The hearing took place on 16 March 2021. Several Israel-advocacy groups (the *Lawyers without Borders association*, the “*Alliance France-Israel*” association and the “*Bureau National de Vigilance contre l’Antisémitisme*”) joined the hearing as third parties claiming a civil interest in Court.
3. The Court used the landmark ruling [Baldassi and Others v. France](#) of the European Court of Human Rights (ECtHR) in June 2020 in its reasoning.

## Background

4. On 19 November 2016 the members of *Collectif 69* – a network consisting of several French grassroots organisation advocating for Palestinian rights – gathered in front of the *Grande Pharmacie Lyonnaise* in Lyon as part of a Boycott, Divestment and Sanctions (BDS) protest asking passers-by to [boycott TEVA products](#).
5. TEVA is a global pharmaceutical company based in Israel that produces and distributes generic medicines across the world. According to Israeli NGO ‘[Who Profits](#)’, TEVA is the

largest commercial company on the Israeli market and a dominant part of the Israeli pharmaceutical industry. A [report](#) by Who Profits revealed that TEVA is one of the industries that takes advantage of Israel's occupation of Palestinian territory. In particular, the company is allowed to exploit the Palestinian captive market.

6. In this context, several Palestine solidarity groups have been [campaigning](#) in favour of boycotting this company for a number of years. *Collectif 69* is one of them.
7. During the protest *Collectif 69* distributed leaflets to passers-by and stuck stickers on their health care cards with the aim of informing them about the complicity of TEVA in the Israeli occupation.
8. Teva Santé was informed about the event the following day on 20 November 2016. On the same day *CAPJPO-EuroPalestine* published online content about the BDS protest in Lyon. In particular, it published a tweet stating “*TEVA, we don't want it: well done LYON!*” with a link redirecting to an [article](#) on EuroPalestine website where the event was reported in the following terms: “*The Collectif 69 carried out an information campaign on generic drugs of the brand TEVA, this Saturday, in front of the largest pharmacy in Lyon*” and quoting the activists from Collectif 69: “*We have distributed hundreds of leaflets to passers-by and we have stuck a good number of stickers on their health care cards. Despite the fact that TEVA carefully hides in its various advertisements that part of its profits goes to the Israeli army, a significant number of passers-by were already aware about this situation and they declared themselves unwilling to give any money to the manufacturer of drugs from a country that prevents Palestinians from getting health treatments.*”
9. Following that, Teva Santé filed a complaint against the Publication Director of *EuroPalestine's* website for discrimination on the grounds of nationality since the company is Israeli and for public defamation.

## Arguments of the Parties

10. Teva Santé complained that the BDS protest and the distribution of leaflets and stickers inciting the boycott of TEVA's products constituted discrimination on the grounds of nationality that impeded “*the normal exercise of its economic activity*”. Furthermore, it considered the above-mentioned statements to be inaccurate and defamatory and claimed the accusation of its affiliation to the State of Israel and the claim of financing the Israeli army were detrimental to the honour and the reputation of the company.
11. On the contrary, the defendant argued that the statements (*read above*) “*repeated the words published by the Collectif 69*” and that they did not “*affect the honour or reputation of the company*” since they did not “*include an imputation of a criminal offence or unlawful conduct.*” She also highlighted that the call for a boycott of Israeli products was not a call for economic or national discrimination, but was “*a call for citizens to exercise their freedom of choice*”. It was a non-violent modality of action with a political aim. She also underlined

the fact that the international community supports the boycott call on the grounds of freedom of expression.

12. In particular, she referred to the *Baldassi and Others v. France* case delivered by the ECtHR on 11 June 2020. In this case, BDS movement' supporters had been condemned by French tribunals for incitement to discrimination or hatred and the ECtHR found France responsible for the violation of the right to freedom of expression (Article 10 ECHR) of the activists. According to the Publication Director's opinion, this decision from the ECtHR showed that the peaceful call for a boycott benefits from a strong protection from the ECHR.

### Arguments put forward by the Criminal Court of Lyon

13. On 18 May 2021, the Court acquitted the Publication Director of *EuroPalestine's* website, dismissing the accusation of incitement to discrimination on the ground of nationality and the accusation of public defamation on the grounds of membership of a specific ethnic group, nation, race or religion.
14. On the allegation of **incitement to discrimination on the ground of nationality**, the Court of Lyon referred to the *Baldassi* case. The ECtHR described the boycott call as a peculiar modality of the exercise of freedom of expression because it combines the exercise of a protesting opinion with incitement to differential treatment. The latter is discriminatory if it has no objective and reasonable justification, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised.
15. In the present case, the Court of Lyon emphasised that *"the action of Collectif 69, organised on 19 November 2016, [...] was part of a subject of general interest, in a contemporary debate in France, as well as in the entire international community, and which is [...] the respect of international public law by the State of Israel and the respect of the human rights situation in the Occupied Palestinian Territory."* The Court then stressed that the event was peaceful and aimed to stimulate a debate among consumers, and it *"was not subject to any prosecution of its participants for making racist or antisemitic statements or for calling to hatred or violence."*
16. According to the Court of Lyon, the statements reported by the Publication Director of *EuroPalestine's* website (*read above*) reflected *"a commitment, a firm belief in a public debate of general interest"*, were moderate and did not incite anyone to commit violent acts or discriminate. Therefore, the Court of Lyon stated that **the defendant did not exceed the limits that are imposed on the exercise of the right to freedom of expression.**
17. On the allegation of **public defamation on the grounds of membership of a specific ethnic group, nation, race or religion**, the Court of Lyon held that defamation could take the form of allusion or insinuation. However, defamation *"must be assessed taking into*

*account the intrinsic and extrinsic element of the material in question”* considering both the content of the statement and its context.

18. According to the Court of Lyon, the statements clearly referred to TEVA, but also supported “*a militant opinion that criticises the implementation of this company on Israeli territory*”. The Court of Lyon held that 1) the remarks were imprecise and 2) writing that the company was financing Israel’s army was not in itself a statement prejudicial to its honour or reputation. Therefore, the Court of Lyon ruled that the comments made by the Publication Director **did not contain defamatory allegations against Teva Santé**.

In conclusion, the Criminal Court of Lyon acquitted the Publication Director of *EuroPalestine’s* website of both charges, stating that her opinions published on the web were within the context of legitimate freedom of expression: they did not incite to discrimination nor they were defamatory. Most notably, **by referring to the *Baldassi* case in its reasoning, the Court acknowledged that the call for boycott of Israeli products is a legitimate form of protest, which remains within the limits of freedom of demonstration and expression.** The decision by the Court of Lyon represents a significant step forward for Palestinian rights advocates in France, a country in which there is an [institutional resistance](#) to recognising the full legitimacy of BDS campaign.