



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

Information Note on the Court's case-law 182

February 2015

Fuchs v. Germany (dec.) - 29222/11 and 64345/11

Decision 27.1.2015 [Section V]

Article 10

Article 10-1

Freedom of expression

Criminal and disciplinary sanctions imposed on applicant lawyer for defamation of expert witness for the prosecution: *inadmissible*

Facts – The applicant is a lawyer. While representing a client accused of having downloaded child pornography on his computer he alleged in writing before a domestic court that the private expert engaged by the prosecution to decrypt the data files had manipulated them in order to obtain the result sought by the prosecution and had a personal interest in falsifying evidence. The expert had been sworn-in when presenting his results to the court. The expert lodged a criminal complaint against the applicant. The applicant was convicted of defamation and fined. In subsequent disciplinary proceedings he received a reprimand and a fine.

In his application to the European Court, the applicant complained that the measures taken against him had breached his rights under Article 10 of the Convention.

Law – Article 10: The Court found that the measures had been necessary in a democratic society. As regards the relevance and sufficiency of the reasons given by the domestic courts, the Court agreed with the domestic criminal court that the defence of his client's interests did not allow the applicant to imply, generally, that the expert would falsify evidence. It also agreed with the court in the disciplinary proceedings that the offensive statements did not contain any objective criticism of the expert's work in his client's case, but were aimed at deprecating generally his work and declaring his findings to be unusable. The Court accepted the domestic courts' conclusions that the statements which formed the subject matter of the criminal and disciplinary proceedings were not justified by the legitimate pursuit of the client's interests.

As to the question of proportionality, the Court noted that the criminal court, in determining the sanction to be imposed on the applicant, took into account the fact that his statements had not been made publicly, that sworn-in experts must be able to perform their duties free of undue perturbation and may require protection from offensive and abusive verbal attacks and that the fines imposed in the criminal and disciplinary proceedings did not appear to be disproportionate.

Conclusion: inadmissible (manifestly ill-founded).

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This summary by the Registry does not bind the Court.

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