



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

Information Note on the Court's case-law 214

January 2018

GRA Stiftung Gegen Rassismus und Antisemitismus v. Switzerland
- 18597/13

Judgment 9.1.2018 [Section III]

Article 10

Article 10-1

Freedom of expression

NGO held liable for infringement of politician's personality rights for describing speech as "verbal racism": *violation*

Facts – In November 2009 the youth wing of the Swiss People's Party held a demonstration concerning a public initiative to support the prohibition of the building of minarets in Switzerland. Following the demonstration, the applicant, a non-governmental organisation which promoted tolerance and condemned all types of racially motivated discrimination, posted an entry on its website, quoting a speech given by a young politician during the demonstration and describing his words as "verbal racism". The politician in question filed a claim for the protection of his personality rights. The High Court concluded that the politician's speech had not been racist and ordered the impugned article be removed from the applicant's website and replaced with the court's judgment. The applicant's appeal was unsuccessful.

Before the European Court the applicant organisation alleged, in particular, that the civil courts had violated its right to freedom of expression.

Law – Article 10: The domestic courts' finding against the applicant organisation constituted an interference with its right to freedom of expression. That interference had been prescribed by law and pursued a legitimate aim. The question was whether the interference had been "necessary in a democratic society".

When assessing the impugned statements, it was important to bear in mind the general background of the ongoing political debate in which the relevant statements had been made. Both the speech and the applicant organisation's article concerned a topic of intense public debate in Switzerland at the material time: the popular initiative against the construction of minarets which had been widely reported in national and international media. The initiative had ultimately been accepted by a referendum on 29 November 2009 and the ban had been included in the Swiss Constitution.

The politician in question had been elected president of a local branch of the youth wing of a major political party in Switzerland. His speech was clearly political and had been made in the framework of support for his party's political goals, which at that time were to promote the initiative. Consequently, the politician had willingly exposed himself to public scrutiny by stating his political views and therefore had to show a higher degree of tolerance towards potential criticism of his statements by those who did not share his

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views. The applicant organisation had reproduced his speech, which had already been published on the political party's own website, calling it "verbal racism". The Federal Supreme Court had held that classifying the speech as "verbal racism" had been a mixed value judgment which had had no factual basis because the speech had not been racist. In particular, the Federal Supreme Court held that for the average reader the statements did not come across as belittling Muslims, but as merely defending Christianity as the Swiss guiding culture.

A distinction had to be made between statements of fact and value judgments. The requirement to prove the truth of a value judgment was impossible to fulfil and infringed freedom of opinion itself, which was a fundamental part of the right secured by Article 10. Where a statement amounted to a value judgment, the proportionality of any interference might depend on whether there existed a sufficient "factual basis" for the impugned statement. In order to distinguish between a factual allegation and a value judgment it was necessary to take account of the circumstances of the case and the general tone of the remarks, bearing in mind that assertions about matters of public interest might, on that basis, constitute value judgments rather than statements of fact.

The Court concluded that the applicant's classification of the speech as "verbal racism" constituted a value judgment as it contained the applicant organisation's own comment on the statements. It could not be said that classifying the speech as "verbal racism" when it supported an initiative which had already been described by various organisations as discriminatory, xenophobic or racist, could be regarded as devoid of any factual basis*. The applicant had never suggested that the statements fell within the scope of the criminal offence of racial discrimination under the Swiss Criminal Code. In fact, in its arguments before the national authorities and the Court, the applicant organisation had stressed the need to be able to describe an individual's statement as racist without necessarily implying criminal liability.

The impugned description could not be understood as a gratuitous personal attack on or insult to the politician. The applicant organisation had not referred to his private or family life, but to the manner in which his political speech had been perceived. As a politician expressing his view publicly on a very sensitive topic, he must have known that his speech might cause a critical reaction among his political opponents. In view of the foregoing, the impugned categorisation of his statement as "verbal racism" could hardly be said to have had harmful consequences for his private or professional life. The sanction imposed, however mild, might have had a "chilling effect" on the exercise of the applicant organisation's freedom of expression as it may have discouraged it from pursuing its statutory aims and criticising political statements and policies in the future.

The domestic courts had not given due consideration to the principles and criteria laid down by the Court's case-law for balancing the right to respect for private life and the right to freedom of expression. They had thus exceeded the margin of appreciation afforded to them and failed to strike a reasonable balance of proportionality between the measures restricting the applicant organisation's right to freedom of expression and the legitimate aim pursued.

Conclusion: violation (unanimously).

Article 41: EUR 5,000 in respect of non-pecuniary damage.

(*Magyar Helsinki Bizottság v. Hungary* [GC], 18030/11, 8 November 2016, [Information Note 201](#); *Couderc and Hachette Filipacchi Associés v. France* [GC], 40454/07, 10 November 2015, [Information Note 190](#))

* See, for example, the [ECRI's 2009 report on Switzerland](#) and a [2014 UN Committee on the Elimination of Racial Discrimination report](#).

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