

July 2009

Willem v. France - 10883/05

Judgment 16.7.2009 [Section V]

Article 10

Article 10-1

Freedom of expression

Criminal conviction of mayor for announcing intention to boycott Israeli products in the municipality: *no violation*

Facts: In 2002, during a meeting of the town council at which journalists were present, the applicant, who was the mayor, announced his intention to boycott Israeli products in the municipality, to protest against the anti-Palestinian policies of the Israeli Government. His words were reported in a newspaper. In response to the reactions the article triggered, a few days later the applicant published an open letter on the municipal Internet site. Representatives of the Israeli community lodged a complaint with the public prosecutor, who decided to prosecute the applicant for incitement to discrimination on national, racial and religious grounds. The applicant was acquitted by the criminal court, but sentenced on appeal and fined 1,000 euros. He lodged a cassation appeal but was unsuccessful.

Law: The applicant's conviction, which amounted to an "interference" with his freedom of expression, had been based on the Press Act 1881, which referred to the provisions of the Criminal Code. The aim of the interference had been to protect the rights of others, namely, Israeli producers. However, interference with the freedom of expression of a mayor required the Court to show particular vigilance. In this case the applicant had not been convicted for his political opinions but for inciting the commission of a discriminatory act. He had not stopped at denouncing the policy of Ariel Sharon's government at the time, but had gone further and called for a boycott of food products from Israel. Furthermore, the Court of Cassation had taken into account not only the call for a boycott made orally at the council meeting but also the message posted on the municipal Internet site, which had aggravated the discriminatory nature of the applicant's position. In his capacity as mayor the applicant had certain duties and responsibilities. In particular he should have shown a certain neutrality, and he had a duty of discretion when acting on behalf of the community he represented. The applicant's intention may have been to protest against the policy of Israel's Prime Minister, but the reasons given for the boycott, both at the meeting and on the Internet site, were discriminatory and therefore reprehensible. The applicant had not been prosecuted or convicted because of his political opinions, which fell within the scope of freedom of expression, but rather for calling on the municipal authorities to engage in an act of positive discrimination, namely the explicit and determined refusal of all commercial relations with Israeli producers. In so doing, by means of a statement at a municipal council meeting, with no debate or vote on the matter, and on the municipal Internet site, the applicant could not claim to have been encouraging the free discussion of a subject of general interest. Furthermore, as the public prosecutor had noted in his submissions to the domestic courts, the mayor was not entitled to take the place of the

governmental authorities by declaring an embargo on products from a foreign country. In such circumstances the reasons given by the French courts to justify the interference with the applicant's freedom of expression had been "relevant and sufficient" for the purposes of Article 10 § 2 of the Convention. In addition, the fine imposed had been relatively moderate and proportionate to the aim pursued. That being so, and regard being had to the margin of appreciation allowed to the national authorities in such matters, the impugned interference had been proportionate to the legitimate aims pursued.

Conclusion: no violation (six votes to one).

© Council of Europe/European Court of Human Rights
This summary by the Registry does not bind the Court.

Click here for the [Case-Law Information Notes](#)