***Case Title: Party 1 v. Party 2/ The Case of …***

**Case Analysis**

**Le Pen v. France**

***Meta-Data*:**

* **Case Number**: 45416/16
* **Date of decision**: February 28, 2017
* **Featured case**: N/A
* **Region**: Europe and Central Asia
* **Country**: France
* **Type of expression**: Public Speech
* **Judicial Body**: European Court of Human Rights
* **Type of law**: Criminal Law
* **Main Themes**: Hate speech
* **Outcome**: Inadmissible, Article 10 not violated
* **Status**: Closed
* **Tags**: Political speech

***Analysis:***

* **Summary and Outcome**:

The fifth section of the European Court of Human Rights (ECtHR) has ruled inadmissible an application to overturn a criminal conviction for public insult against a group of people because of their ethnicity, following comments made at a political rally about the dangers of Roma's immigration in France. The Defendant had implied that Roma from Eastern Europe had never wanted to integrate into European societies and that they were thieves. He was found guilty by the Paris Criminal Court and sentenced to pay a fine of 5,000 euros and damages of around 6,000 euros. The Paris Court of Appeal and the Cour de Cassation upheld the guilty verdicts and sentence. The European Court of Human Rights found that the analysis carried out by the national courts were beyond reproach and based on relevant and sufficient grounds. The criminal offence in question was a necessary state interference in a democratic society, having regard to respect for the reputation and rights of others, notwithstanding the importance that must be attached to the protection of political speech. The comments fall outside the scope of speech protected by Article 10 of the European Convention of Human Rights (ECHR).

* **Facts**:

On September 22, 2012, Jean-Marie Le Pen, founder and then honorary president of the Front National, a French political party, gave a speech at a summer school on the subject of immigration in France. On this occasion, he criticized the low rate of deportation of the Roma and mentioned that they "have never been able or willing to integrate into European societies, some of which they have lived alongside for five centuries, and who say: 'We're like birds, we fly naturally'". It is important to note that in French, the last phrase was a play on word that used the verb “*voler*” which can be interpreted in English either as flying or stealing. In that context, there was an ambiguity as to where it meant “to fly” in reference to the Roma as a population without borders or “to steal” in reference to a population of thieves.

A video of the speech was subsequently posted on the Front National’s website.

The Mouvement contre le racisme et pour l'amitié entre les peuples (MRAP - Movement against racism and for friendship between peoples) lodged a complaint, leading to charges of "public insult against a group of people on the grounds of their ethnicity" under articles 29 and 33 of the Law of the 29th July 1881 on press freedom.

In 2013, the Paris Correctional Court found him guilty and fined him 5,000 euros. The Defendant raised two main arguments in relation to his freedom of expression. He argued that his freedom of political expression and the use of humor through wordplay shielded him from the offense, and that the meaning of the word "voler" was related to the Roma movement and not to their characteristic as thieves. He also maintained that the comments in question did not contain any outrageous expression or any term of contempt or invective exceeding the limits of freedom of expression. Rather, the Court concluded that, based on the context and an objective analysis of the remarks, the Defendant was aware that he was using terms of contempt, invective, or outrageous expression. As for the right to humour, although it can normally be used to remove the outrageous nature of the remarks, in this specific case, humour was not used to put distance with the remarks, and that combined with the subject of the speech (the dangers of immigration), the Defendant intended to stigmatize.

In 2014, the Paris Court of Appeal upheld the lower court's decision, pointing out that the humor in this case did not make the comments a joke or satire, but that the remarks could only be understood in their outrageous sense: Roma are thieves. The Court of Appeal pointed out, however, that it was only as an accomplice that the Defendant could be found guilty because in French press law, the publisher (the Front National) was the main author of the comments. In 2016, the Court de Cassation upheld the decision on appeal, endorsing the analysis carried out by the Criminal Court and the Court of Appeal.

* **Decision Overview**:

Dissenting Opinions of Judges …:

In a unanimous decision, the three judges forming the Committee of the ECtHR declared the Applicant's application inadmissible as manifestly ill-founded under articles 35 §§ 3 and 4 of the ECHR.

The central question addressed to the Court was whether the Applicant's criminal conviction was contrary to his right to freedom of expression guaranteed by Article 10 of the ECHR.

Such a question requires a two-step test: is there interference with the exercise of the right to freedom of expression? And is the interference lawful, legitimate, and necessary in a democratic society?

In this instance, this last step requires the ECHR to ask whether the grounds invoked by the national authorities to justify the interference are "relevant and sufficient" and whether the measure is "proportionate to the legitimate aims pursued".

The ECtHR summarized the test in *Chauvy and others v. France*, App. No. 64915/01 (2004):

65. When exercising its supervisory jurisdiction, the Court’s task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 10 the decisions they delivered in the exercise of their discretion. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully or in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was “proportionate to the legitimate aim pursued” and whether the reasons adduced by the national authorities to justify it are “relevant and sufficient”.

The ECtHR’s reasoning is very similar to that adopted in another admissibility decision handed down in 2010 against the same claimant ([*Le Pen c. France (déc.)*, App. No. 18788/09 (2010)](https://globalfreedomofexpression.columbia.edu/cases/le-pen-v-france/)). The ECtHR subsequently summarized the impact of the present decision when it mentioned that “ […] remarks capable of arousing a feeling of rejection and hostility towards a community fall outside the protection guaranteed by Article 10 (see Le Pen v. France (dec.), No. 45416/16, §§ 34 et seq., 28 February 2017)” (*Sanchez v. France*, App. No. 45581/15 (2023) at para 150).

That said, the main issue of the dispute concerns the interference (the criminalization of the insult at issue) and its necessity in a free and democratic society. The ECtHR added, as did the national courts, that the analysis must be contextual and particularized.

In the present case, the ECtHR quickly notes that there is indeed interference by the public authorities with the exercise of freedom of expression guaranteed by Article 10 ECHR. This interference is lawful and legitimate, since it stems from legislative provisions and is aimed at safeguarding the reputation and rights of others, as authorized by the second paragraph of Article 10.

Regarding the proportionality tests, on the one hand, the ECtHR reiterates the cardinal importance of freedom of expression in a political context, especially for comments made in the context of a debate of general interest relating to immigration policies, which must be considered to benefit freedom of expression. In this respect, States have a fairly wide margin of appreciation when assessing the need for interference with freedom of expression ([*Le Pen c. France (déc.)*, App. No. 18788/09 (2010)](https://globalfreedomofexpression.columbia.edu/cases/le-pen-v-france/)and *Soulas v. France*, App. No. 15938/03 (2008)).

On the other hand, the ECtHR has to keep in mind the limit on freedom of political expression: the protection of the reputation and rights of others, especially in cases of racial discrimination, given the disadvantages caused to such groups (see [*Le Pen c. France (déc.)*, App. No. 18788/09 (2010)](https://globalfreedomofexpression.columbia.edu/cases/le-pen-v-france/)and *Soulas v. France*, App. No. 15938/03 (2008)). The ECtHR also added that the proportionality of the interference needed to be assessed in light of the sanctions imposed, as established in *Soulas v. France*, App. No. 15938/03 (2008). In this case, the Applicant was fined 5,000 euros, whereas the maximum penalty was 22,500 euros and six months' imprisonment. The state interference was then proportionate in that regard.

These principles were recently put forward in 2023 in the case of *Sanchez v. France*, App. No. 45581/15 (2023):

“157. In its Soulas judgment (cited above, § 42), the Court reiterated one of the lessons of Jersild v. Denmark (23 September 1994, § 30, Series A No. 298), namely that it was of the utmost importance to combat racial discrimination in all its forms and manifestations. Moreover, the Court has consistently held that the varying degrees of problems that States may face in the context of immigration and integration policies require that they be afforded a margin of appreciation that is broad enough to determine the existence and extent of the necessity of such interference (see Le Pen, decisions cited above, and Soulas, cited above, § 38). […]”

Here, the ECtHR notes that the analysis of the national courts were "methodical and thorough" and concluded that the Applicant intended on stigmatizing, and his comments “created a feeling of rejection and hostility” towards the Roma. Also, humor could rule out the outrageous nature of the comment in an otherwise serious political discourse. The interference was therefore based on "relevant and sufficient" grounds and necessary in a democratic society.

Given that the interference was necessary in a democratic society, the application was rejected as manifestly ill-founded. The comments fell outside the scope of Article 10 ECHR.

***Direction:***

* **Outcome**: Contracts Expression/**Mixed Outcome**/Expands Expression
* **Explanation for why and how it contracts or expands expression or has a mixed outcome.** You can also provide additional context about the case here.

The decision is a mixed one since it contracts expression in validating the existence of a limit to freedom of expression in regards to offensive comments likely to create a feeling of hostility towards a community, while merely recognizing a pre-existing limit in relation to the offence of provocation to discrimination, hatred or violence against a group of persons on the grounds of their origin or ethnicity ([*Le Pen c. France (déc.)*, App. no. 18788/09 (2010)](https://globalfreedomofexpression.columbia.edu/cases/le-pen-v-france/)), or more generally in relation to the protection of vulnerable minorities (*Soulas v. France*, App no. 15938/03 (2008)).

***Perspective***:

* **Related International and/or regional laws**:

**Example:**

* [ECHR, art. 10](https://www.echr.coe.int/Documents/Convention_ENG.pdf);
* [ECtHR, *Jersild v. Denmark,* App. No. 15890/89 (1994)](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57891#{)
* ECtHR, *Chauvy and others v. France*, App no. 64915/01 (2004)
* ECtHR*,* [*Le Pen c. France (déc.)*, App no. 18788/09 (2010)](https://globalfreedomofexpression.columbia.edu/cases/le-pen-v-france/)
* ECtHR, *Soulas v. France*, App. No. 15948/03 (2008)
* [ECtHR*, Sürek c. Turquie (No 1), App. No. 26682/95*](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22s%C3%BCrek%22],%22languageisocode%22:[%22ENG%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22],%22itemid%22:[%22001-58279%22]}) (1999)
* ECtHR*,* [*Jerusalem c. Autriche*, App. No. 26958/95](http://hudoc.echr.coe.int/eng?i=001-59220) *(2001)*
* [ECtHR, Al*meida Azevedo v. Portugal*, App. No. 43924/02 (2007)](http://hudoc.echr.coe.int/eng?i=001-79073)
* [ECtHR, N*ews Verlags GmbH & Co. KG v. Austria*, App. No. 31457/96 (2000)](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58587#{)
* [ECtHR, *Incal v. Turkey*, App. No. 41/1997/825/1031 (1998)](http://hudoc.echr.coe.int/eng?i=001-58197#{)
* **National law or jurisprudence**:
* [**Fr., Freedom of the Press Act 1881**](https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006070722&dateTexte=20170715), art. 29 and 33

**Other national law or jurisprudence**:

N/A

***Significance***:

* **Binding or persuasive precedent within jurisdiction**; **Decision establishes influential or persuasive precedent outside jurisdiction**; **Explanation**:

Standard I:

**The decision establishes a binding or persuasive precedent within its jurisdiction.**

Information:

This judgment establishes a binding or persuasive precedent since the European Court of Human Rights’ judgments are binding upon parties to the decision.

Standard II:

**Decision (including concurring or dissenting opinions) establishes influential or persuasive precedent outside its jurisdiction.**

Information:

This judgment has precedential value on the interpretation on the right to freedom of expression but also on the use of the inadmissibility clause on other States Parties to the European Convention on Human Rights.

* **Related Cases**: Self-generated
* **Date updated**: N/A

***Docs***:

* **Official Case Documents**:

**Examples:**

Judgment (in English) [Attached]

Press Release issued by …. (in English) [Attached]

* **Le Pen v. France Judgement (French)**
	+ https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-172508%22]}
* **Reports, Analysis, and News Articles**:
	+ Please list any titles and URLS of interesting articles or analyses about the case that might be of interest to readers