



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

FIRST SECTION

CASE OF MOUVEMENT RAELIEN SUISSE v. SWITZERLAND

(Application no. 16354/06)

JUDGMENT

STRASBOURG

13 January 2011

**THIS CASE WAS REFERRED TO THE GRAND CHAMBER
WHICH DELIVERED JUDGMENT IN THE CASE ON
13/07/2012**

This judgment may be subject to editorial revision.

In the case of Mouvement Raelien Suisse v. Switzerland,
The European Court of Human Rights (First Section), sitting as a
Chamber composed of:

Christos Rozakis, *President*,
Nina Vajić,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges*,
and Søren Nielsen, *Registrar*,

Having deliberated in private on 25 November 2010,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 16354/06) against the Swiss Confederation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an association, Mouvement Raelien Suisse (“the applicant association”), on 10 April 2006.

2. The applicant association was represented by Mr E. Elkaim, a lawyer practising in Lausanne. The Swiss Government (“the Government”) were represented by their Agent, Mr F. Schürmann, Head of the Human Rights and Council of Europe Section of the Federal Office of Justice.

3. The applicant association alleged that measures taken by the Swiss authorities to prohibit the display of a poster had breached its right to freedom of religion and freedom of expression under Articles 9 and 10 of the Convention.

4. On 15 May 2008 the Chamber to which the case had been allocated in the First Section decided to give notice of the application to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1 of the Convention).

5. After consulting the parties, the Chamber decided that no hearing on the merits was required (Rule 59 § 3 *in fine* of the Rules of Court). The parties each filed written comments on the other’s observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant association, which was set up in 1977, is a non-profit association registered in Rennaz (Canton of Vaud). It is the national branch of the Raelian Movement, an organisation based in Geneva and founded in 1976 by Claude Vorilhon, known as “Raël”. According to its constitution, its aim is to make the first contacts and establish good relations with extraterrestrials.

7. On 7 March 2001 the applicant association requested authorisation from the police administration for the city of Neuchâtel (the “police administration”) to conduct a poster advertising campaign in the period between 2 and 13 April 2001. The poster in question, measuring 97x69 cm, featured in the upper part the following wording in large yellow characters on a dark blue background: “The Message from Extraterrestrials”; in the lower part of the poster, in characters of the same size but in bolder type, the address of the Raelian Movement’s website, together with a telephone number in France, could be seen; at the very bottom was the phrase “Science at last replaces religion”. The middle of the poster was taken up by pictures of extraterrestrials’ faces and a pyramid, together with a flying saucer and the Earth.

8. On 29 March 2001 the police administration denied authorisation, referring to two previous refusals. It had been indicated in a French parliamentary report on sects, dating from 1995, and in a judgment of the president of the Civil Court for the district of La Sarine (Canton of Fribourg), that the Raelian Movement engaged in activities that were contrary to public order (*ordre public*) and immoral.

9. In a decision of 19 December 2001 the municipal council of the city of Neuchâtel dismissed an appeal from the applicant association, finding that it could not rely on the protection of religious freedom because it was to be regarded as a dangerous sect. The interference with freedom of expression had been based on Article 19 of the Administrative Regulations for the City of Neuchâtel (the “Regulations”); its purpose was to protect the public interest and it was proportionate, since the organisation advocated, among other things, human cloning, “geniocracy” and “sensual meditation”.

10. On 27 October 2003 the Neuchâtel Land Management Directorate upheld that decision. It noted that, for the Raelian Movement, life on earth had been created by extraterrestrials, who were also the founders of the various religions and were capable of saving the world, and accepted that this amounted to a religious conviction protected by freedom of conscience and belief. It further accepted that the Neuchâtel Regulations constituted a sufficient legal basis in such matters. The Directorate observed that there

was nothing offensive in the text and picture on the poster, or in the allusion to extraterrestrials. However, it pointed to the fact that the Raelian Movement advocated “geniocracy” (a political model based on intelligence), and human cloning. Moreover, in a judgment of 13 February 1998, concerning a right of reply, the Fribourg Cantonal Court had found that the movement also “theoretically” advocated paedophilia and incest, especially in the works of Raël himself. The practice of “sensual meditation” could also easily lead to abuse. In addition, the website of Clonaid, to which the Raelian Movement’s site had a link, proposed specific services in the area of cloning, and eugenism was contrary to the principle of non-discrimination. The poster advertising campaign was prejudicial to morals and to the rights of others. In any event, the Raelian Movement had other means to disseminate its ideas.

11. The applicant association appealed to the Administrative Court for the Canton of Neuchâtel. It claimed, among other things, that the mere defence of “geniocracy”, cloning and sensual meditation were not offensive opinions. Moreover, it argued that the movement denounced paedophilia through its association Nopedo. The refusal to authorise its poster thus amounted purely and simply to censorship, especially as the applicant association’s website was, in any event, accessible through a search engine.

12. In a judgment of 22 April 2005 the Administrative Court dismissed the appeal, after acknowledging, however, that the applicant association defended a global vision of the world and was entitled to both freedom of opinion and religious freedom. It found first that the impugned measure was based on the Administrative Regulations, which constituted a law in the substantive sense, and that the poster had to be assessed in relation to the message conveyed by the books and websites that could be accessed from the movement’s website. The services proposed by Clonaid were manifestly contrary to Swiss public order. The court further observed that criminal complaints had been filed against the Raelian Movement alleging the existence of sexual practices that were intended to systematically corrupt young teenagers. The content of the works on “geniocracy” and “sensual meditation” could lead certain adults to sexually abuse children, the child being described in certain works as a “privileged sexual object”. The comments on “geniocracy” and the criticisms of contemporary democracies were likely to undermine public order, safety and morality. For those reasons the Administrative Court concluded that it was not justifiable to authorise the dissemination of such ideas on the public highway.

13. The applicant association lodged a public-law appeal against that judgment with the Federal Court, requesting that it be set aside and that the case be referred back to the respondent authority for a new decision.

14. In a judgment of 20 September 2005, served on the applicant association on 10 October 2005, the Federal Court dismissed the appeal. The relevant passages read as follows:

“The Directorate, then the Administrative Court, acknowledged that the [applicant] association could rely on the right to freedom of religion (Art. 15 of the Constitution, Art. 9 ECHR and Art. 18 UN Covenant II), in so far as it defended a global vision of the world, especially as regards its creation and the origin of the various religions. The City of Neuchâtel disputes this, noting that the aim of the [applicant] association as defined in Article 2 of its Constitution, is not religious in nature. According to a report on ‘sects’ produced in 1995 for the French National Assembly, the Raelian Movement is classified among the movements that present dangers for the individual, especially on account of the excessive financial demands made of its members and practices that cause bodily harm, and also dangers for the community, in particular through an antisocial discourse. Many of the movement’s publications contain passages described as offensive.

There is no need to ascertain whether a religious movement may, on account of the dangers it represents, be precluded from relying on the right to freedom of religion, or whether the [applicant] association presents such dangers. Indeed, the parties agree that the applicant is entitled to rely on the right to freedom of opinion. As to the conditions in which such freedom may be restricted, as laid down in Article 36 of the Constitution, it makes little difference whether Article 15 or Article 16 of the Constitution is relied on (see also Articles 9 § 2 and 10 § 2 ECHR). The applicant association does not argue that the impugned measure impairs the very essence of its religious freedom, or that the restrictions on that freedom are, in the circumstances of the case, subject to stricter conditions. On the contrary, the applicant association relies on the principles of proportionality and public interest, without distinction as to the constitutional right invoked.

...

5.2 According to case-law, citizens do not have an unconditional right to an extended use of public space, in particular when a means of advertising on the public highway involves activity of a certain scale and duration, and excludes any similar use by third parties (Federal Court judgment 128 I 295 point 3c/aa p. 300 and the judgments cited therein). When it wishes to grant authorisation for extended or private use of public space, or when it supervises the conditions under which a licence is used, the State must nevertheless take into account, in balancing the interests at stake, the substantive content of the right to freedom of expression (Federal Court judgment 100 Ia 392 point 5 p. 402).

5.3 In the present case, the grounds given by the Cantonal Court to confirm the refusal by the City of Neuchâtel relate to respect for morality and the Swiss legal order. The Administrative Court took the view that it was necessary to take into account not only the content of the poster but also the ideas conveyed by the Raelian Movement, together with the works and websites that could be accessed from the movement’s website. Three different criticisms are thus directed against the [applicant] association. Firstly, the [applicant] association’s website contains a link to that of Clonaid, via which this company offers specific cloning-related services to the general public and announced, in early 2003, the birth of cloned babies. Cloning is prohibited under Swiss law, pursuant to Art. 119 of the Constitution and to the Medically-Assisted Reproduction Act (RS 814.90). Secondly, the Administrative Court referred to a judgment of the District Court of La Sarine, which mentioned possible sexual abuse of children. Numerous members of the movement had, moreover, been investigated by the police because of their sexual practices. Thirdly, the promotion of ‘geniocracy’, a doctrine according to which power should be given

to the most intelligent individuals, and the criticism consequently directed at contemporary democracies, was likely to undermine the maintaining of public order, safety and morality.

5.4 The applicant no longer contests, at this stage, the existence of a sufficient legal basis, namely, in this case, Article 19 of the Regulations. A municipal by-law offers the same guarantees, in terms of democratic legitimacy, as a Cantonal law, and thus constitutes a sufficient legal basis (judgment 1P.293/2004 of 31 May 2005 point 4.3 Federal Court judgment 131 I xxx; Federal Court judgment 122 I 305 point 5a p. 312; 120 Ia 265 point 2a p. 266/267 and the references cited therein). The applicant invokes, however, the principle of public interest and criticises the respondent authorities for going beyond the content of the poster and engaging in an assessment of the [applicant] association's activities. It argues that if it had generally engaged in conduct that was immoral or in breach of public order, it would have been dissolved by the courts pursuant to Article 78 of the Civil Code. If no decision had been taken to that effect, it would not be possible to prohibit it from publicising its philosophy and world vision.

5.5 The poster in itself does not contain anything, either in its text or in its illustrations, that was unlawful or likely to offend the general public. Above the central drawing representing extra-terrestrials appears the text 'The Message from Extraterrestrials', without any explanation. Below that, the [applicant] association's website address and a telephone number are printed in bolder type. The phrase 'Science at last replaces religion' is admittedly capable of offending the religious beliefs of certain persons, but it is merely the expression of the movement's doctrine and cannot be described as particularly provocative.

The poster as a whole can thus clearly be seen as an invitation to visit the website of the [applicant] association or to contact it by telephone. Faced with such advertising, the authority must examine not only the admissibility of the advertisement's message as such, but also that of its content. It is therefore legitimate to ascertain whether the website in question might contain information, data or links capable of offending people or of infringing the law.

Moreover, contrary to the applicant's allegation, an association may be criticised for opinions or activities which, without constituting grounds for dissolution within the meaning of Article 78 of the Civil Code, nevertheless justify a restriction on advertising.

5.5.1 As regards cloning, it was not the opinions expressed by the [applicant] association in favour of such practices (particularly in the book *Yes to Human Cloning*, published in 2001 and available via the applicant's website) that were penalised, but the link with the company Clonaid, set up by the association itself, which proposes various practical services in this area for payment. The issue is thus not simply, contrary to what the applicant has argued, the expression of a favourable opinion of cloning, protected by Article 16 of the Constitution, but the practice of that activity, in breach of its prohibition under Article 119 § 2 (a) of the Constitution. That provision, accepted in 1992 by the majority of the population and of the Swiss Cantons (in the form of Article 24novies (a) of the Constitution), falls in particular within a policy of protection of human dignity, according to the conception thereof that is generally shared in this country (FF 1996 III 278; see also the response of the Federal Council to a question from R. Gonseth of 9 June 1997). The applicant does not contest the unlawfulness of human cloning, especially if it is carried out for

commercial gain (Section 36 § Medically-Assisted Reproduction Act; Art. 119 § 2 (e) of the Constitution). Nor can it seriously contest the fact that the link to the Clonaid website contributes to the promotion of an unlawful activity, and goes further than the mere expression of an opinion. On that first point, which already justifies the decision under appeal, the applicant has not put forward any real relevant argument within the meaning of Art. 90 § 1 (b) of the Judicial Organisation Act.

5.5.2 On 15 October 2003 the Intercantonal Beliefs Information Centre provided information on the Raelian Movement. This information shows, among other things, that the movement apparently has a political mission. Virulently attacking democracies, which are referred to as ‘mediocracies’, it defends the notion of ‘geniocracy’, a political model based on individuals’ level of intelligence. A world government would consist of geniuses, elected by individuals whose intelligence is 10% higher than average. Admittedly, “geniocracy” is presented as a utopia and not as a genuine political project; contrary to the finding of the Administrative Court, this doctrine does not appear likely to undermine public order or safety.

However, apart from the fact that the doctrine appears to be largely inspired by eugenism, it is manifestly capable of offending the democratic and anti-discriminatory convictions that underpin the rule of law (see, in particular, the wording of the preamble to the Federal Constitution of 18 April 1999, together with Article 8 of the Constitution concerning equality and the prohibition of discrimination).

5.5.3 Lastly, according to the judgment under appeal, it cannot be considered that the Raelian Movement advocates paedophilia. However, numerous members have apparently been investigated by the police on account of their sexual practices. According to a judgment delivered on 28 November 1997 by the District Court of La Sarine, concerning a right of reply requested by the Mouvement raëlien suisse, the remarks made by Raël in his works could lead certain adults to commit acts of sexual abuse against children. The judgment quotes extracts from works by Raël that can be downloaded from the website of the [applicant] association, according to which the sexual education of children should not only be theoretical but should consist of a sensual education aimed at showing them how to derive pleasure from it. That judgment further indicates that, notwithstanding the denial subsequently issued on this point, certain articles published in the quarterly newsletter *Apocalypse* described the child as a ‘privileged sexual object’. Lastly, it is stated that a friend and a member of the Raelian Movement were convicted by the Vaucluse Assize Court and sentenced to five years’ imprisonment for sexually assaulting a 12-year-old girl. The judgment was upheld on 13 February 1998 by the Fribourg Cantonal Court. An ordinary appeal and a public-law appeal by the Mouvement raëlien were dismissed on 24 August 1998 by the Federal Court, having regard in particular to the equivocal writings of the movement’s founder or members (judgments 5P.172/1998 and 5C.104/1998).

The case-file, moreover, contains various documents concerning criminal proceedings brought against members of the [applicant] association for sexual assault. A judgment of 24 January 2002 of the Lyon Court of Appeal clearly shows that acts of sexual abuse were committed by leaders of the movement against minors. The movement’s leaders are thus said to have advocated ‘a broad sexual freedom strongly encouraging commission of the act’; they had thus corrupted young teenagers by supposedly philosophical discourse, by increasingly specific sexual fondling and by inciting them more and more forcefully, in order to satisfy ‘their sexual needs and fantasies with young girls who had just turned fifteen, and who were changing partners very quickly’.

The fact that the impugned articles date from the 1980s and that there has been no conviction in Switzerland does not negate the involvement of members of the [applicant] association in acts leading to criminal sanctions. The applicant association does not dispute the fact that certain passages in the books available via its website could lead adults to abuse children. On that point also, the applicant's arguments do not address the grounds set out in the decision under appeal. Since acts of abuse have indeed been recorded on the part of certain members of the Raelian Movement, the argument that paedophilia is strongly condemned by the movement's official doctrine is not decisive.

5.6 Having regard to the foregoing, the refusal issued to the applicant association appears to be justified by sufficient public-interest grounds, because it is necessary to prevent the commission of acts constituting criminal offences under Swiss law (reproductive cloning and sexual acts with children). Moreover, certain passages in the works available via the applicant's website (in particular about the 'sensual awakening' of children, and 'geniocracy') are likely to be seriously offensive to readers.

5.7 The applicant association invokes the principle of proportionality. It points out that the poster itself contains nothing that is contrary to public order, and maintains that the measure is not appropriate to the aim pursued.

5.7.1 In accordance with Article 36 § 3 of the Constitution., any restriction on a fundamental right must be proportionate to the aim pursued. It must be appropriate to the fulfilment of that aim and any damage to private interests must be kept to a minimum (Federal Court judgment 125 I 474 point 3 p. 482 and the references cited therein).

5.7.2 In the present case, the public interest does not only consist in limiting the publicity given to the [applicant] association's website, in view of the reservations expressed above about public order and morality; it is even more important to ensure that the State does not provide any support for such publicity by making public space available for it, which might suggest that it endorses or tolerates the opinions or conduct in question. From that perspective, the prohibition of the posters is appropriate to the aim pursued. Furthermore, the measure criticised by the applicant is confined to the display of posters in public spaces. The [applicant] association remains free to express its beliefs by many other means of communication at its disposal (see the *Murphy* judgment of 10 July 2003, ECHR 2003-IX, p. 33, § 74).

5.7.3 The applicant takes the view that the authority should have suggested that it make changes to the poster in order to make the content admissible. However, even though it was aware of the objections raised against its poster campaign, the applicant itself never proposed a version of the poster that was likely to be authorised. The Administrative Court, for its part, found that the poster should be prohibited even without the reference to the website, but this seems questionable; there is no doubt, however, that the removal of the address in question would deprive the poster campaign of its object, which, as has been shown, is essentially to advertise the website itself. It is therefore difficult to see what comprehensible meaning the poster could have had without that reference to the website and to the telephone number.

5.7.4 The impugned measure therefore respects the principle of proportionality, in all its aspects. It constitutes, for the same reasons, a restriction that is necessary 'in a

democratic society’, in particular for the protection of morals, within the meaning of Articles 9 § 2 and 10 § 2 of the ECHR.”

II. RELEVANT DOMESTIC LAW

15. Article 119 of the Federal Constitution concerns reproductive medicine and gene technology involving human beings. That provision reads as follows:

“Human beings shall be protected against the misuse of reproductive medicine and gene technology.

The Confederation shall legislate on the use of human reproductive and genetic material. In doing so, it shall ensure the protection of human dignity, privacy and the family and shall adhere in particular to the following principles:

(a) All forms of cloning and interference with the genetic material of human reproductive cells and embryos are unlawful.

(b) Non-human reproductive and genetic material may neither be introduced into nor combined with human reproductive material.

(c) Methods of medically-assisted reproduction may be used only if infertility or the risk of transmitting a serious illness cannot otherwise be overcome, but not in order to conceive a child with specific characteristics or for research purposes; the fertilisation of human egg cells outside a woman’s body is permitted only under the conditions laid down by the law; no more human egg cells may be developed into embryos outside a woman’s body than are capable of being immediately implanted.

(d) The donation of embryos and all forms of surrogate motherhood are unlawful.

(e) Trade in human reproductive material and in products obtained from embryos is prohibited.

(f) The genetic material of a person may be analysed, registered or made public only with the consent of the person concerned or if the law so provides.

(g) Everyone shall have access to data relating to their ancestry.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 9 AND 10 OF THE CONVENTION

16. The applicant association claimed that the measures taken by the Swiss authorities to prohibit the display of its posters had breached its rights

to freedom of religion and freedom of expression within the meaning of Articles 9 and 10 of the Convention respectively. Those provisions read as follows:

Article 9

“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

Article 10

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

A. Admissibility

1. Compliance with the six-month rule

17. The Government requested the Court to verify whether the time-limit had been met for the lodging of the present application. They observed that according to the applicant association it had received the reasoned judgment of the Federal Court on 10 October 2005. The period of six months allowed for the lodging of its application had thus expired on 10 April 2006. The Government noted that this was the date that appeared on the application but that, having regard to the Court’s date-stamp it seemed to have received the application on 20 April 2006, ten days after the six-month time-limit. As the exact date of dispatch is not shown in the file available to the Government, they were of the opinion that compliance with the six-month time-limit was not established in the present case.

18. The Court observes that the applicant association provided, in an annex to its observations on the admissibility and merits of the case, a copy of a document from the Swiss post office certifying that the application had been deposited on 10 April 2006. Accordingly, as the final judgment of the Federal Court had been served on it on 10 October 2005, the applicant association complied with the six-month rule.

19. In view of the foregoing the Government's objection must be dismissed.

2. Applicability of Article 9 of the Convention

20. The Government maintain that Article 9 does not apply to the present case and, in the alternative, that this provision has not been breached.

21. For the applicant association, the present case clearly falls within the scope of religious freedom and there has been a violation of Article 9.

22. The Court takes the view that the question of the applicability of Article 9 in the present case is closely linked to the merits of the case. It therefore joins it to the merits. It finds that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Complaint under Article 10 of the Convention

(a) The parties' submissions

(i) The applicant association

23. The applicant association argued that the interference with its freedom of expression lay in the fact that the poster had been regarded as representing an invitation to visit the website of the Raelian Movement or to contact it by telephone. It had thus been prevented from imparting its ideas, not only through the prohibition of the impugned poster, but also by the indirect sanction against the content of its website and the writings of Raël.

24. The applicant association further observed that, without providing the slightest concrete evidence, the Government had accused it of being connected to Clonaid. It asserted, however, that it had no control over the staff, work or investors of that company. It presented Clonaid as a legal entity that was separate from and totally independent of the Raelian Movement. In support of this argument, the applicant association submitted two statements that had been published in France, in the context of its right

to reply, denying the existence of any links between the Raelian Movement and that company. In any event, Clonaid had never engaged in any cloning activity on Swiss territory.

25. The applicant association did not deny that the Raelian Movement had expressed a favourable opinion of cloning. However, it would never have participated, in Switzerland or elsewhere, in therapeutic or experimental acts related to human cloning. The Federal Council had moreover indicated that “in so far as, in Switzerland, the Mouvement Raëlien confines itself to calling for social recognition of cloning techniques – or indeed for the lifting of the prohibition on cloning – its activity falls within the freedom of opinion protected by Article 16 of the Federal Constitution” (*Bulletin officiel* 03.1018 – Human Cloning).

26. The applicant association further noted that in Switzerland the Federal Medically-Assisted Reproduction Act, which prohibited not only cloning but also stem-cell research, had been enacted on 18 December 1998. A few years later the Federal Parliament had enacted the law of 19 December 2003 on stem-cell research, which laid down the conditions for the production of human embryonic stem cells from left-over human embryos and the use of such cells for research purposes. That significant relaxation of the regulatory framework had shown that mentalities were changing in this constantly-evolving domain, thus increasing the need for an open debate that the applicant association was advocating on a related question, that of cloning.

27. As regards “geniocracy”, the applicant association argued that there had been nothing that undermined public order in its publications or in the writings of Raël on that subject. Even though they presented a utopia that met with the moral criticism of the majority, those writings were simply expressing an opinion, which was in fact subject to a reservation: “The goal is not to impose geniocracy, but to establish it democratically by showing the necessity of abandoning crude democracy in favor of the selective democracy of geniocracy” (see *Geniocracy*, p. 28-9). Moreover, the applicant association maintained that the interference by the State with its fundamental rights was particularly flagrant on this point because neither the impugned poster nor the Raelian Movement’s website referred to the concept of “geniocracy”. It came from a book in which Raël was freely expressing a philosophical opinion with which everyone was free to agree or disagree. As it was purely an academic debate, a breach of public order was, in any event, to be ruled out.

28. As regards the purported allegations by members of the association about sexual abuse of minors, the applicant association first referred to the Federal Court’s finding that the Raelian Movement did not advocate paedophilia. The applicant association considered that the reference by the Government to the judgment of the Fribourg Cantonal Court was totally irrelevant, as that court had been ruling on an appeal in a purely civil matter

(a right of reply) and was not entitled to review the decisions of foreign judicial authorities. In its submission, the Government had not provided any evidence relating to convictions of members of the Raelian Movement.

29. Furthermore, the applicant association observed that neither the Government nor the Federal Court had cited the slightest passage from the allegedly dangerous writings to which they purported to refer. If they had carefully read those writings and the movement's doctrine they would in fact have seen that the Raelian Movement had always strongly condemned the remarks made by one of its former members about 30 years earlier. In those circumstances, the general reference to the movement's doctrine as being capable of leading adults to commit abuse against minors was totally unfounded. The applicant association further noted that in order to confront the unfounded allegations of paedophilia it had created the association Nopedo, which not only condemned paedophile acts but even acted to prevent them. Anyone consulting the association's website would be able to see that there was a link between the Raelian Movement's website and that of Nopedo. In addition, all of the movement's websites contained a notice explaining very clearly the applicant association's position with regard to paedophilia. Lastly, the applicant association pointed out that it had always, without the slightest hesitation, expelled any members who were suspected of unlawful conduct as regards the protection of minors.

30. For all those reasons the applicant association requested the Court to reject the Government's submissions and to uphold its application.

(ii) The Government

31. The Government acknowledged that the applicant association was entitled to invoke its right to freedom of expression. However, they maintained that it was not prevented from disseminating its doctrine, provided it respected the Swiss legal order, through the numerous other means of communication at its disposal (books, tracts, Internet, etc.). It could not therefore claim that there had been an interference with its freedom of expression.

32. In the alternative, the Government observed that all the domestic authorities had accepted that Article 19 of the Municipal Administrative Regulations, which enabled the police administration to prohibit posters that were unlawful or immoral, constituted a sufficient legal basis on which to refuse permission to display the impugned poster. Moreover, as the national authorities had found, the disputed measure pursued the legitimate aims of the prevention of crime, the protection of health or morals and the protection of the rights of others.

33. As regards the necessity of the measure in a democratic society, the Government noted, like the Federal Court, that citizens did not have an unconditional right to an extended use of public space, in particular when a

means of advertising on the public highway involved activity of a certain scale and duration, and excluded any similar use by third parties.

34. The Government pointed out that the applicant association, before the domestic authorities and in its application, had criticised the respondent authorities for going beyond the content of the poster and engaging in an assessment of the association's activities. As the Federal Court had found, the poster did not in itself contain anything, either in its text or in its illustrations, that was unlawful or likely to offend the general public, but could clearly be seen as an invitation to visit the association's website or to contact it by telephone, and the applicant association had not denied this. The court had quite rightly taken the view that, faced with such advertising, the authority had to examine not only the admissibility of the advertisement's message as such, but also that of its content.

35. The first ground given by the domestic authorities to uphold the impugned decision concerned the applicant association's link to the company Clonaid, set up by the association itself, which proposed various specific cloning-related services in return for payment. The Federal Court had found that the issue was not simply the expression of a favourable opinion of cloning, but the practice of that activity, which was prohibited under Article 119 § 2 (a) of the Federal Constitution (see paragraph 15 above).

36. The second ground concerned the fact that the applicant association advocated "geniocracy", which was, in the Government's submission, also clearly contrary to Article 119 of the Federal Constitution. They were of the view that, without specifically undermining public order or safety in itself, this doctrine might offend democratic or anti-discriminatory convictions, which underpinned the rule of law. In the Government's submission, the essential argument of the applicant association on this point consisted in noting that neither the poster nor the association's website referred to the notion of geniocracy; the information available to the Swiss courts, it had said, was based solely on a report of the Beliefs Information Centre. The Government pointed out that the Federal Court had nevertheless also observed (point 5.6 of the judgment) that this theory appeared in the works proposed on the website.

37. The third ground for refusal had concerned the convictions of members of the association for sexual assaults on minors and the movement's doctrine advocating in particular the "sensual awakening of children". The Government referred to the domestic authorities' finding that, even though the Raelian Movement could not be regarded as advocating paedophilia, numerous members of the association had been involved in conduct for which they had been convicted on account of their sexual practices. In addition, certain passages in the books proposed on the movement's website might lead adults to commit acts of abuse against minors. In support of their allegations, the authorities had referred in

particular to a judgment delivered on 28 November 1997 by the District Court of La Sarine, upheld by the Cantonal Court of the Canton of Fribourg and by the Federal Court, and to various documents concerning criminal proceedings against members of the association for sexual assault, including a judgment of the Lyon Court of Appeal of 24 January 2002 (see judgment of the Federal Court, point 5.5.3). Contrary to what the applicant association had asserted in its application, the facts set out in the Federal Court's judgment thus did not all date back more than twenty years.

38. The Government argued that a poster advertising campaign could be distinguished by the fact that it entailed not a mere obligation of tolerance, but the making available of public space. The direct impact on the general public could be considerable, including on minors or persons likely to be offended; that impact had to be taken into account in the consideration of the proportionality of the interference (see *Murphy v. Ireland*, no. 44179/98, § 69, ECHR 2003-IX).

39. The Government were of the opinion that the slogan "Science at last replaces religion", displayed on the public highway, might offend the religious feelings of certain persons. In addition, the invitation to visit the association's website entailed risks for public morality, order and safety. Like the Federal Court, the Government took the view that the public interest was not only to limit the publicity given to the applicant association's website, in view of the reservations expressed above concerning public order and morality, but also to ensure that the State did not provide its support for such publicity by making available public space, with the result that it could be seen to endorse or tolerate the opinions and conduct in question.

40. Having regard to the foregoing, the Government were of the view that the impugned measure respected the principle of proportionality. It thus constituted a restriction that was necessary "in a democratic society".

41. For all these reasons, the Government requested the Court to reject the complaint under Article 10.

(b) The Court's assessment

(i) Existence of an interference

42. The Court shares the applicant association's opinion that it has sustained an interference with the exercise of its freedom of expression on account of the fact that it was not authorised to impart its ideas through the impugned poster advertising campaign.

(ii) Justification for the interference

43. Such interference breaches Article 10, unless it meets the requirements of paragraph 2 of that provision. It thus remains to be ascertained whether the interference was "prescribed by law", was inspired

by one or more legitimate aims in the light of that paragraph and was “necessary in a democratic society” in pursuit of such aims.

(α) Prescribed by law

44. The Government relied on Article 19 of the Municipal Administrative Regulations, which provides that the police administration may prohibit unlawful or immoral posters.

45. The Court, observing that the applicant association did not call into question the existence of a sufficient legal basis for the interference with its right to freedom of expression, is of the opinion that the interference had a legal basis within the meaning of its case-law.

(β) Legitimate aims

46. In the Government’s submission, the impugned measure pursued the legitimate aims of the prevention of crime, the protection of health or morals and the protection of the rights of others.

47. The Court, finding that the applicant association did not dispute the fact that the impugned measure pursued legitimate aims within the meaning of Article 10 § 2, accepts the Government’s argument.

(γ) “Necessary in a democratic society

48. The main question in the present case is whether the impugned measure was necessary in a democratic society.

- *The applicable principles*

49. The fundamental principles in that regard are well established in the Court’s case-law and have been summed up as follows (see, for example, *Stoll v. Switzerland* [GC], no. 69698/01, § 101, ECHR 2007-V, and *Steel and Morris v. the United Kingdom*, no. 68416/01, § 87, ECHR 2005-II):

“(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no ‘democratic society’. As set forth in Article 10, this freedom is subject to exceptions, which ... must, however, be construed strictly, and the need for any restrictions must be established convincingly ...

(ii) The adjective ‘necessary’, within the meaning of Article 10 § 2, implies the existence of a ‘pressing social need’. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a ‘restriction’ is reconcilable with freedom of expression as protected by Article 10.

(iii) The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and 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'.... In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts"

50. The Court finds that the present case can be distinguished by the fact that it raises the question whether the domestic authorities should have allowed the applicant association to impart its ideas through its poster advertising campaign, namely by making public space available to it for that purpose. The Court has not previously had occasion to rule on this issue. It has only examined, under Article 10, the use of public and open space, namely the territorial sea (see *Women On Waves and Others v. Portugal*, no. 31276/05, 3 February 2009), and the use of privately-owned space (see *Appleby and Others v. the United Kingdom*, no. 44306/98, ECHR 2003-VI). In the latter case, the Court found that Article 10 had not been breached by a prohibition, imposed by a private company that owned a shopping centre, on the setting-up of stalls there for the distribution of leaflets (§ 47):

"That provision [Article 10 of the Convention], notwithstanding the acknowledged importance of freedom of expression, does not bestow any freedom of forum for the exercise of that right. While it is true that demographic, social, economic and technological developments are changing the ways in which people move around and come into contact with each other, the Court is not persuaded that this requires the automatic creation of rights of entry to private property, or even, necessarily, to all publicly owned property (government offices and ministries, for instance). Where, however, the bar on access to property has the effect of preventing any effective exercise of freedom of expression or it can be said that the essence of the right has been destroyed, the Court would not exclude that a positive obligation could arise for the State to protect the enjoyment of the Convention rights by regulating property rights. A corporate town where the entire municipality is controlled by a private body might be an example (see *Marsh v. Alabama*, cited at paragraph 26 above)."

- *Application of the principles to the present case*

51. According to the Federal Court's case-law, individuals do not have an unconditional right to the extended use of public space, in particular for the purpose of advertising on the public highway involving activity of a certain scale and duration, and excluding any similar use by third parties (point 5.2 of the judgment, see paragraph 14 above).

52. When it receives a request for the extended or private use of public space, or when it supervises the conditions in which a licence is used, the State must nevertheless take into account the substantive content of the right

to freedom of expression and its importance in a democratic society. That being said, the Court finds it necessary, in the present case, to balance the interests at stake, on the one hand that of the applicant association in conveying its ideas, and, on the other, that of the authorities in protecting public order and preventing offences. The Court shares the Government's view that acceptance of a poster advertising campaign could suggest that they are endorsing, or at least tolerating, the opinions and conduct in question. Consequently, it is prepared to admit that the margin of appreciation afforded to domestic authorities in examining the necessity of a measure is broader in this area (contrast *Women On Waves and Others*, cited above, § 40).

53. As regards the circumstances of the present case, it is not in dispute that the impugned poster in itself did not contain anything, either in its text or in its illustrations, that was unlawful or likely to offend the general public. In the middle was a drawing representing extra-terrestrials and above it the text "The Message from Extraterrestrials", without any explanation. At the bottom of the poster appeared the phrase "Science at last replaces religion". In the Federal Court's view, that phrase was admittedly capable of offending the beliefs of certain persons, but could not be described as particularly provocative.

54. However, the Court cannot disregard the fact that the poster also displayed, in bolder type, the association's website address and a telephone number. The website had a link to that of Clonaid, through which that company was proposing specific cloning-related services to the general public. Having regard to the principle that the Convention and its Protocols must be interpreted in the light of present-day conditions (see, among many other authorities, *Tyrer v. the United Kingdom*, 25 April 1978, § 31, Series A no. 26, and *Vo v. France* [GC], no. 53924/00, § 82, ECHR 2004-VIII), the Court takes the view that contemporary means of disseminating information must be taken into account in examining the impugned measure. Accordingly, it must in particular assess, in deciding whether the measure was in conformity with Article 10, not only the poster but also the more general context surrounding it, especially the ideas expressed in the books and the content of the websites of the association and of Clonaid. As those websites were *per se* accessible to everyone, including minors, the impact of the posters on the general public would have been multiplied and the State's interest in prohibiting the poster advertising campaign was thus all the greater (see, to the same effect, *Stoll*, cited above, § 104).

55. The Court further observes that the domestic authorities gave detailed reasons for their decisions, explaining why they considered it appropriate not to authorise the poster advertising campaign. The Administrative Court directed three types of criticism at the association (see point 5.3 of the Federal Court's judgment, above). First, the association's website contained a link to that of Clonaid, via which that company was

proposing specific cloning-related services to the general public, and on which it had announced, in early 2003, the birth of cloned babies. Secondly, the Administrative Court referred to a judgment of the District Court of La Sarine, which mentioned possible sexual abuse of minors. Thirdly, the propaganda in favour of “geniocracy”, namely the doctrine according to which power should be entrusted to people with the highest level of intelligence, and the resulting criticism directed at contemporary democracies, was capable of undermining public order, safety and morals.

56. The Court finds that the domestic authorities’ accusations against certain members of the applicant association, as regards their sexual activities with minors, are of particular concern. It notes in this connection that, in the case of *F.L. v. France* ((dec.), no. 61162/00, 3 November 2005), among other things it found to be compliant with Article 8 an obligation for the applicant to avoid bringing her children into contact with the Raelian Movement. Admittedly, it is not within the Court’s remit, in principle, to review the facts established by the domestic bodies or the proper application of domestic law; therefore, it is not called upon to ascertain whether the authorities’ accusations are proven. However, the Court is of the opinion that, having regard to the circumstances of the present case, the authorities had sufficient reason to find it necessary to deny the authorisation requested by the applicant association.

57. Similar considerations are called for as regards the question of cloning. The Court observes that the domestic authorities may in good faith have considered it indispensable, for the protection of health and morals and for the prevention of crime, to prohibit the poster advertising campaign, given that the applicant association displayed, on its website, a link to that of Clonaid, a company that it had itself set up (see paragraph 14 above, point 5.5.1). Moreover, as the association itself admitted, it had a favourable opinion of cloning, an activity that was clearly prohibited by Article 119 paragraph 2 (a) of the Federal Constitution (see paragraph 15 above).

58. As regards the proportionality of the impugned measure, the Court observes that it was strictly limited to the display of posters on the public highway. According to the Federal Court, the applicant association remained free to express its beliefs through the numerous other means of communication at its disposal (point 5.7.2 of the Federal Court’s judgment, paragraph 14 above; see, to the same effect, *Appleby*, cited above, § 48, *Murphy*, cited above, § 74, and *Women on Waves and Others*, cited above, § 40). In particular, there was never any question of banning the applicant association itself or its website.

59. Having regard to the foregoing, it appears that after balancing the interests at stake in the present case, and in the light of all relevant evidence, the domestic authorities did not overstep the margin of appreciation afforded to them as regards the extended use of public space. Moreover, the authorities gave relevant and sufficient grounds in support of their

arguments. Consequently, the prohibition of the impugned poster advertising campaign can be regarded as a measure that was proportionate to the legitimate aim pursued and did not impair the very essence of the applicant association's right to freedom of expression.

60. Accordingly, there has been no violation of Article 10 of the Convention.

2. Complaint under Article 9 of the Convention

61. The Court, having regard to the finding that there has been no violation of Article 10 of the Convention, does not find it necessary to examine the matter additionally under Article 9. This finding dispenses it from ruling on the Government's objection that Article 9 is not applicable in the present case.

FOR THESE REASONS, THE COURT

1. *Declares* the application admissible, unanimously;
2. *Holds*, by five votes to two, that there has been no violation of Article 10 of the Convention;
3. *Holds*, unanimously, that there is no need to examine separately the complaint under Article 9 of the Convention.

Done in French, and notified in writing on 13 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Rozakis and Vajić is annexed to this judgment.

C.L.R.
S.N.

DISSENTING OPINION OF JUDGES ROZAKIS AND VAJIĆ

(Translation)

It is with regret that we are unable to follow the majority's position in this case and to find no violation. For the following reasons we are bound to depart from their findings.

1. The present case raises the interesting and novel question of advertising in public space under Article 10 of the Convention (see paragraph 50 of the judgment). It can be distinguished from *Appleby and Others* because it does not concern a private space, such as the privately-owned shopping centre in that case, but a public space (see *Appleby and Others v. the United Kingdom*, no. 44306/98, ECHR 2003-VI). Above all, in the present case the issue is not one of positive obligations, in which the extent of the State's responsibilities must not be interpreted as imposing on the authorities an unbearable or excessive burden (see *Özgür Gündem v. Turkey*, no. 23144/93, § 43, ECHR 2000-III); whilst it is true that, in both hypotheses – positive and negative obligations – the State enjoys a certain margin of appreciation, the Court has found that this margin of appreciation is narrower as regards the negative obligations under the Convention (see *Women On Waves and Others v. Portugal*, no. 31276/05, § 40, 3 February 2009).

The present case appears to be closer to that of *Women On Waves and Others v. Portugal*, where the prohibiting of a vessel from entering Portuguese territorial waters had prevented the applicants from imparting information and holding the scheduled meeting and events that were supposed to have taken place on board. In that case the Court criticised the use of radical measures against the applicants and observed that the Portuguese authorities had, at least with regard to a particular point, other means that would have been less harmful to the applicants' rights than the total prohibition of the vessel from entering their waters (*ibid.*, §§ 42-43).

2. It should be pointed out in this connection that Article 10 also protects the form in which the ideas and opinions in question are conveyed (see *Thoma v. Luxembourg*, no. 38432/97, § 45, ECHR 2001-III).

3. We consider that that it would have been more appropriate to follow the approach taken by the Court in *Women On Waves and Others v. Portugal*, where it found that the margin of appreciation was narrower as regards the negative obligations under the Convention (contrast paragraph 52 *in fine* of the judgment); and since, under these circumstances, the margin of appreciation is a narrow one in the present case, the following elements should be taken into account in assessing whether or not there has been a violation:

(a) It is not in dispute in the present case that the impugned poster in itself did not contain anything that was unlawful or that could offend the

general public (see paragraph 53 of the judgment). Rather, it was the telephone number and the address of the applicant's website at the bottom of the poster that gave rise to the decision in question. Nor is it in dispute that the applicant association is not prohibited as such and that it has existed in Switzerland since 1977. It is, in our view, undeniable that an association is a legal entity, which, when it operates lawfully in society, usually has the capacity to propagate freely its ideas and opinions, and attain its aims, without hindrance, through the means that society offers to all its members. The legal system of a State may, of course, refuse the establishment of an association which is regarded as violating moral, political or other values of the society that it represents. However, once it has accepted the association's initial aims, it must presumably allow it to freely mingle with society and to propagate the key ideas that stem from those aims. The dichotomy applied by the Swiss authorities in legalising, on the one hand, the association in question, but, on the other, prohibiting it from advertising, in a neutral manner, activities that had already been stated in the goals of the association without having been found to violate the *ordre public* of Swiss society, seems to us to be very problematic.

(b) When dealing with a negative obligation of the State, as in the present case, unlike that of *Appleby*, a tendency to restrict freedom of expression in favour of the State's margin of appreciation does not seem to be consonant with the Court's case-law or with the Council of Europe's activities in the promotion of new technologies. Nowadays, considering the importance of and role played by means of direct communication such as mobile telephones and the Internet, it seems difficult to understand how a lawful association with its website, that is not prohibited, cannot use public space to promote the same ideas through posters that are not unlawful and do not offend the general public. Nor does the argument to the effect that, by accepting a poster advertising campaign, the municipal authorities might suggest that they are endorsing the opinions in question (see paragraph 52) seem to correspond to the realities of the contemporary role of such authorities, which act in this context as private managers of public space. It is, therefore, neither realistic nor necessary in a democratic society to limit such access by restrictions of this kind.

For these reasons we have voted in favour of a violation.