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

FOURTH SECTION

DECISION

Application no. 20397/25
Patrick HAHN
against Germany

The European Court of Human Rights (Fourth Section), sitting on 18 November 2025 as a Committee composed of:

Lorraine Schembri Orland*, President*,
Anja Seibert-Fohr,
András Jakab*, judges*,
and Veronika Kotek, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 20397/25) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 2 July 2025 by a German national, Mr Patrick Hahn ("the applicant"), who was born in 1976 and lives in Munich, and was represented by Mr H. Hembach, a lawyer practising in Bergisch Gladbach;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the applicant's criminal conviction for comparing, in a post on Facebook, a feared obligation to be vaccinated against COVID-19 to the systematic and murderous persecution of Jews and other persecuted groups in concentration camps under the Nazi regime. The applicant relied on Articles 7 and 10 of the Convention.

2. On 11 November 2020 the applicant posted an image on his publicly accessible Facebook account which, in the lower half, showed a photograph of the Auschwitz concentration camp entrance gate with the inscription "Work sets you free" (*Arbeit macht frei*). The upper half of the image depicted a drawing of a gate imitating the photograph, with the inscription "Vaccination sets you free" (*Impfen macht frei*), to the side of which were depicted two uniformed men holding oversized syringes. The image was

accompanied by the sentence "It has all happened before" (*Alles schon mal dagewesene* [sic]). The post remained publicly accessible for a substantial part of the criminal proceedings, at least until the judgment was delivered by the Regional Court (see paragraph 4 below).

3. On 24 March 2022 the Munich District Court convicted the applicant of incitement to hatred (*Volksverhetzung*) under Article 130 § 3 of the Criminal Code (for the wording of the provision, see *Lanzerath v. Germany* (dec.), no. 1854/22, § 3, 5 July 2022) and sentenced him to 130 day-fines of 15 euros (EUR) each.

4. On 9 August 2022 the Munich Regional Court upheld the conviction but reduced the sentence to 120 day-fines.

5. On 29 March 2023 the Bavarian Supreme Court dismissed an appeal on points of law lodged by the applicant. The court concluded that the applicant had trivialised the murderous and systematic persecution of (in particular) Jews under the Nazi regime. It pointed out that it had to determine the meaning of the Facebook post in the light of the applicant's freedom of expression and the public discourse regarding COVID-19 restrictions and potential privileges for people having received a vaccination against COVID-19. In the sphere of a public debate criticism had to be tolerated even if expressed in an exaggerated or polemical manner. However, a limit to tolerable criticism was stipulated in Article 130 § 3 of the Criminal Code. The court stressed that the depiction of the Auschwitz entrance gate had implicitly referred to the purpose of such concentration camps under the Nazi regime, namely the internment under inhumane conditions, forced labour and systematic extermination of Jews and other persecuted groups. The drawing imitating the gate and the uniformed men, resembling representatives of a state security apparatus, had suggested that there was (or would soon be) an obligation to be vaccinated, which could even be enforced coercively in internment camps. The applicant had thus deliberately, albeit implicitly, equated the murder of (in particular) six million Jews with restrictions during the COVID-19 pandemic, such as not being able to go on an airplane without being vaccinated. The court emphasised that the image did not allow for a different interpretation; it could not be understood as a mere exaggeration of pandemic-related restrictions, because separating the two aspects contained in the comparison would be artificial.

6. The Bavarian Supreme Court further held that the particular trivialisation of the Holocaust had been capable of disturbing public peace. The post had had the potential to reach a wider audience, as it had been publicly accessible on Facebook. Furthermore, it had not only affected the dignity and reputation of Holocaust victims, survivors and their families in a way that was intolerable for society but had also been capable of jeopardising their trust in living peacefully in Germany. At the time of the post there had been a heated political climate concerning a feared obligation to be vaccinated and concerning COVID-19-related restrictions in general. The

debate had become increasingly aggressive and had led to demonstrations occasionally involving violent acts. The post had therefore had the potential to aggressively provoke those who considered themselves victims of allegedly unjustified government restrictions, legitimising them as "resistance fighters" and thereby increasing the risk of violence and violent acts.

7. On 3 March 2025 the Federal Constitutional Court refused to admit a constitutional complaint lodged by the applicant (1 BvR 626/23) for adjudication, without providing reasons.

8. The applicant complained under Article 10 of the Convention that his conviction had been neither prescribed by law nor necessary in a democratic society. He argued that his Facebook post had contributed to a debate of general public interest and that the conviction had been disproportionate. He further submitted that Article 130 § 3 of the Criminal Code was not sufficiently precise and that the factual basis for determining a heated political climate was deficient. In regard to his arguments concerning Article 130 § 3 of the Criminal Code, the applicant also relied on Article 7 of the Convention.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

9. The Court finds that the applicant's conviction constituted an interference with his freedom of expression as guaranteed by Article 10 of the Convention (see *Sanchez v. France* [GC], no. 45581/15, § 122, 15 May 2023).

10. The legal basis for the conviction – Article 130 § 3 of the Criminal Code – meets the requirements of foreseeability of the law for the purposes of Article 10 § 2 of the Convention (see *Lanzerath v. Germany* (dec.), no. 1854/22, § 8, 5 July 2022). As regards the application of that provision, the Court reiterates that it is in the first place for the national authorities to interpret and apply domestic law. Unless the interpretation is arbitrary or manifestly unreasonable, the Court's role is confined to ascertaining whether the effects of that interpretation are compatible with the Convention (see *Cangı v. Turkey*, no. 24973/15, § 42, 29 January 2019). The Court cannot discern any indications of an arbitrary or manifestly unreasonable interpretation of Article 130 § 3 of the Criminal Code by the domestic courts. The Court is therefore satisfied that the interference was "prescribed by law" within the meaning of Article 10 § 2 of the Convention.

11. The Court further considers that the applicant's conviction pursued the legitimate aims set out in Article 10 § 2 of the Convention, namely the prevention of crime and the protection of the reputation or rights of others (compare *Lanzerath*, cited above, § 10; see paragraph 6 above).

12. The Court must therefore determine whether the interference with the applicant's right to freedom of expression was necessary in a democratic society. The relevant principles are well established in the Court's case-law (for a summary, see *Perinçek v. Switzerland* [GC], no. 27510/08, § 196, 15 October 2015).

13. The Court reiterates in particular that while there is little scope under Article 10 § 2 of the Convention for restrictions on debates concerning matters of public interest, it remains open to the competent State authorities to adopt, in their capacity as guarantors of public order, measures, even of a criminal-law nature, intended to react appropriately to unjustified attacks and criticisms; a wider margin of appreciation applies where such remarks incite violence against an individual, a public official or a sector of the population (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, 8 July 1999). Moreover, the impact of an expression of opinion cannot be detached from the historical and social context in which the statement was made, and a reference to the Holocaust must also be seen in the specific context of German history (see *Perinçek*, cited above, §§ 242-43; *PETA Deutschland v. Germany*, no. 43481/09, § 49, 8 November 2012; and *Hoffer and Annen v. Germany*, nos. 397/07 and 2322/07, § 48, 13 January 2011).

14. Turning to the facts of the present case, the Court notes that the domestic courts, in particular the Bavarian Supreme Court, gave relevant and sufficient reasons for the applicant's criminal conviction. It considered that the Facebook post had referred to questions of public debate. The court also held, however, that by referencing the crimes committed in concentration camps in Nazi Germany the applicant had equated pandemic-related restrictions to those crimes. The Bavarian Supreme Court further held that while it had to construe the image in question in the light of the applicant's freedom of expression, the image could not be interpreted as merely exaggerating restrictions resulting from the pandemic because the trivialisation of the Holocaust was equally contained in the comparison (see, in respect of all of these points, paragraph 5 above).

15. The Bavarian Supreme Court also considered that the applicant's Facebook post had been capable of disturbing public peace. In that regard, it stressed that the image, which had been publicly accessible on Facebook, had had the potential to reach a wider audience and had affected the dignity and reputation of Holocaust victims, survivors and their families in a way that was intolerable for society (compare *Lanzerath*, cited above, § 13; see also *Sanchez*, cited above, § 162, where the Court, in the context of comments on a Facebook "wall", noted that defamatory and other types of clearly unlawful speech could be disseminated as never before, worldwide, in a matter of seconds, and sometimes remain available online for lengthy periods, and reiterated that the possibility of imposing liability for defamatory or other types of unlawful speech must, in principle, be retained). Moreover, the image had also negatively affected their sense of safety in Germany

(see paragraph 6 above). Lastly, the Bavarian Supreme Court took into account the social and political context with respect to the COVID-19 pandemic, emphasising the ability of the Facebook post to further incite a heated public debate and to increase the risk of violence (see paragraph 6 above).

16. Concerning the severity of the sanction, the Court notes that a criminal conviction constitutes a more severe interference than, for instance, a civil injunction (compare *PETA Deutschland*, cited above, § 50). However, the Court reiterates that it has always been sensitive to the historical context of the High Contracting Party concerned when reviewing whether there existed a pressing social need for interference with rights under the Convention and that States which experienced the Nazi horrors could be regarded as having a special moral responsibility to distance themselves from the mass atrocities perpetrated by the Nazis (see *Williamson v. Germany* (dec.), no. 64496/17, § 27, 8 January 2019). This applied, in particular, where statements – such as that in the present case – were found to be capable of inciting or justifying violence (see *Perinçek*, cited above, § 206). The Court therefore considers that the applicant's sentence of 120 day-fines of EUR 15 each (see paragraphs 3-4 above) is not disproportionate (compare *Williamson*, cited above, § 27, and *Nix v. Germany* (dec.), no. 35285/16, § 55, 13 March 2018).

17. In the light of the considerations above and having regard to the margin of appreciation afforded to the State in this area and the careful examination of the case by the domestic courts, the Court accepts that the applicant's conviction was a proportionate means to protect the reputation of Holocaust victims and survivors, their families and Jews living in Germany today (compare *Lanzerath*, cited above, § 14) and to prevent disorder and crime.

18. It follows that the applicant's complaint under Article 10 is manifestly ill-founded and must be rejected as inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

19. In so far as the applicant complained under Article 7 of the Convention, the Court notes that he has neither explicitly nor in substance raised this complaint before the Federal Constitutional Court. This complaint must therefore also be rejected as inadmissible under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies (see, among many authorities, *Kandarakis v. Greece*, nos. 48345/12 and 2 others, § 77, 11 June 2020).

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 11 December 2025.

Veronika Koktek
Acting Deputy Registrar

Lorraine Schembri Orland
President