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

THIRD SECTION

DECISION

Application no. 1854/22
Rainer Edmund Maria LANZERATH
against Germany

The European Court of Human Rights (Third Section), sitting on 5 July 2022 as a Committee composed of:

Georgios A. Serghides, *President,*
Anja Seibert-Fohr,
Peeter Roosma, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 1854/22) 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 30 December 2021 by a German national, Mr Rainer Edmund Maria Lanzerath, who was born in 1959 and lives in Rheinbach ("the applicant") and was represented by Mr C. Meyers, a lawyer practising in Cologne;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The present case concerns the applicant's complaints under Article 10 of the Convention about his criminal conviction for comparing the treatment of the right-wing party *Alternative für Deutschland (AfD)* to the persecution of Jews in Nazi Germany.

2. The applicant is a member of the AfD, which was founded in 2013. On 30 June 2018 he participated in a demonstration at the venue of the AfD party conference in Augsburg where he held up a home-made banner with the title "Hate campaigns in Germany". The left side of the poster depicted a *Judenstern* (a yellow Star of David with the inscription "Jew" as used in Nazi Germany to identify Jews) with the caption "1933 to 1945". The right side of the poster depicted the AfD party logo with the caption "2013 to ?". At an unknown date shortly before 22 April 2017 the applicant had already posted

an image identical to the aforementioned poster on his Twitter account, along with the message "The thug squads of the establishment @kgegenrechts @AntifainfoKoeln @ai_koeln @forCologne @KoelnSPD @_verdi have failed!".

3. On 23 August 2019 the Augsburg District Court sentenced the applicant to a fine of 4,500 euros (EUR) for incitement to hatred (*Volksverhetzung*) on two counts pursuant to Section 130 § 3 of the Criminal Code, which provides that whoever publicly or in a meeting approves of, denies or downplays genocidal acts committed under the rule of National Socialism in a manner capable of disturbing public peace shall be liable to imprisonment not exceeding five years or a fine.

4. The applicant appealed, and his appeals were rejected.

5. On 21 September 2021 the Federal Constitutional Court declined to accept the applicant's constitutional complaint for adjudication (no. 1 BvR 1787/20), without providing reasons.

6. The applicant complained under Article 10 of the Convention that his behaviour did not constitute a crime under Section 130 § 3 of the Criminal Code. He submitted that he had merely intended to participate, albeit in a provocative manner, in the political battle of opinions and to draw attention to the political and social marginalisation of the AfD and its members. He maintained that he had not downplayed or approved of the Holocaust, that he had not even mentioned or indirectly referred to the Holocaust, and that the *Judenstern* was not to be equated with the systematic extermination of Jews in Nazi Germany but was in fact a symbol of society's willingness to violate a human being's dignity and human rights.

7. He further complained that his criminal conviction did not pursue a legitimate aim foreseen in Article 10 § 2 of the Convention and was disproportionate because it affected him both as a private individual and as a party member whereas his statement had not, or had barely, affected the dignity of Jews living in Germany.

THE COURT'S ASSESSMENT

8. The Court finds that the applicant's criminal conviction constituted an interference with his freedom of expression as guaranteed by Article 10 of the Convention, which requires strong reasons (see *PETA Deutschland v. Germany,* no. 43481/09, § 46, 8 November 2012), and that this interference was "prescribed by law" (Section 130 § 3 of the Criminal Code).

9. Insofar as the applicant alleged that his behaviour did not constitute a crime under Section 130 § 3 of the Criminal Code, the Court reiterates that it is in the first place for the national authorities, notably the courts, 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

Cangi v. Turkey, no. 24973/15, § 42, 29 January 2019). The Court cannot discern any indications of an arbitrary or manifestly unreasonable interpretation of Section 130 § 3 of the Criminal Code by the national courts.

10. The Court considers that the applicant's conviction pursued legitimate aims foreseen in Article 10 § 2 of the Convention: the "prevention of crime" and the "protection of the reputation or rights of others", namely Holocaust victims and survivors, their families and Jews living in Germany today.

11. As regards the proportionality of the applicant's conviction, the Court reiterates that the impact of an expression of opinion cannot be detached from the historical and social context in which the statement was made, and that a reference to the Holocaust must also be seen in the specific context of the German past (see *Perinçek v. Switzerland* [GC]*,* no. 27510/08, §§ 242-43, 15 October 2015; *PETA Deutschland*, cited above, § 49; and *Hoffer and Annen v. Germany,* nos. 397/07 and 2322/07, § 48, 13 January 2011). The Court further reiterates that one of the factors to be taken into account in assessing whether an interference with the exercise of the right to freedom of expression was "necessary in a democratic society" is whether the statements, fairly construed and seen in their immediate or wider context, could be seen as a justification of intolerance (see *Perinçek,* cited above, § 206).

12. In this light, the Court considers that the domestic courts gave relevant and sufficient reasons for the applicant's criminal conviction. They considered that by comparing the systematic persecution and extermination of Jews in Nazi Germany to the alleged stigmatisation of members of a political party in the current German state founded on the rule of law, the applicant had blatantly downplayed the Holocaust. In this context, they emphasised that the *Judenstern*, as depicted by the applicant, clearly constituted a direct reference to the Holocaust as it was used predominantly during the period of the systematic extermination of Jews to facilitate their identification and deportation. They further stressed that the legislator had intended precisely this kind of relativising of the Holocaust to be punishable by law.

13. The domestic courts also considered that the applicant's behaviour had been capable of disturbing public peace. In this respect, they stressed that the applicant had aimed for the widespread impact of his statement: he had held up his poster on the premises of the AfD party conference – which had attracted significant media attention and public interest – in such a way that the poster had been clearly visible to all those present on and around the premises, and his Twitter post had been publicly accessible. They further stressed that the applicant's statement had affected the dignity and the reputation of Holocaust victims, survivors and their families in a way that was intolerable for society. Citing a decision by the Federal Court of Justice (5 StR 485/01, 10 April 2002), they emphasised that such public statements were inherently capable of poisoning the political climate and disturbing public peace.

14. The Court notes that the criminal sanction at issue (a fine of EUR 4,500) constitutes a more severe interference than, for instance, a civil injunction (compare with *PETA Deutschland,* cited above). However, 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, in particular the finding that the applicant's behaviour had been capable of disturbing public peace (see for the general principles applicable, *Perinçek,* cited above, § 196), the Court accepts that the criminal sanction imposed on the applicant was a proportionate means to protect the reputation of Holocaust victims and survivors, their families and Jews living in Germany today. There is therefore no violation of Article 10 of the Convention.

15. It follows that the applicant's complaints are manifestly ill-founded and must be rejected as inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 28 July 2022.

Olga Chernishova Deputy Registrar	Georgios A. Serghides President