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

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Conviction of man for giving his three-year-old nephew a T-shirt, worn at nursery school, with the slogans "I am a bomb" and "Jihad, born on 11 September": no violation of Article 10 of the Convention

In today's **Chamber** judgment[1] in the case of Z.B. v. France (application no. 46883/15) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 10 (freedom of expression) of the European Convention on Human Rights

The case concerned the conviction of Z.B. for glorification of wilful killing on account of slogans ("I am a bomb" and "Jihad, born on 11 September") on a T-shirt he had given his nephew as a present for his third birthday. The boy had then worn the T-shirt to nursery school. Before the domestic courts and the European Court the applicant had claimed that the slogans were supposed to be humorous in tone.

The Court reiterated that humorous speech or forms of expression used for humorous effect were protected by Article 10 of the Convention provided that they remained within the limits permitted under that provision. The right to humour was not unlimited and anyone relying on the right to freedom of expression had to assume "duties and responsibilities". The Court emphasised that it could not ignore the importance and weight of the general context in this case. Even though over 11 years had elapsed since the events of 11 September 2001, by the time of the facts of the present case, it was nevertheless noteworthy that shortly before there had been other terrorist attacks, which had notably caused the death of three children in a school. The Court also stated that the fact that the applicant had no links with a terrorist group and had not espoused a terrorist ideology could not detract from the significance of the offending message. In the specific circumstances of the case, the Court – which noted that the three-year-old, as the unwitting bearer of the message, had been instrumentalised – found that the reasons given by the domestic courts to convict the applicant, relying on the need to prevent glorification of mass violence, appeared both "relevant" and "sufficient" to justify the interference in question. It further noted that the sanction imposed on the applicant (fine and suspended prison sentence) had not been disproportionate to the legitimate aim pursued. The impugned interference could thus be regarded as necessary in a democratic society and there had been no violation of Article 10 of the Convention.

Principal facts

The applicant, Z.B., is a French national who was born in 1983 and lives in Sorgues (France). He complained of his criminal conviction for glorification of crimes of wilful killing on account of slogans on a T-shirt he had given his nephew as a present for his third birthday. Z.B., who had ordered the T-shirt specially, had asked to have the phrase "I am a bomb" printed on the front and "Jihad, born on 11 September" on the back.

On 25 September 2012 the child wore the T-shirt to nursery school. The head teacher and another adult noticed the slogans when the child went to the toilet. On the same day, the school's head

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

teacher informed the local education authority and the mayor of the municipality. The mayor lodged a complaint with the public prosecutor. Criminal proceedings were brought against Z.B., who was given a suspended two-month prison sentence and fined 4,000 euros.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Z.B. complained about his conviction for glorification of crimes of wilful killing.

The application was lodged with the European Court of Human Rights on 17 September 2015.

Judgment was given by a Chamber of seven judges, composed as follows:

Síofra **O'Leary** (Ireland), *President*,
Mārtiņš **Mits** (Latvia),
Ganna **Yudkivska** (Ukraine),
Stéphanie **Mourou-Vikström** (Monaco),
Ivana **Jelić** (Montenegro),
Arnfinn **Bårdsen** (Norway),
Mattias **Guyomar** (France),

and also Victor **Soloveytchik**, *Section Registrar.*

Decision of the Court

Article 10 (freedom of expression)

The Court noted that the applicant had knowingly devised the slogans, relying on the polysemic nature of the word "bomb", which could also refer, in colloquial French, to the physical characteristics of an attractive person, while associating this description with his nephew's identity. Before both the domestic court and the Court, the applicant argued that the slogans were supposed to be humorous in tone.

The Court reiterated that humorous speech or forms of expression used for humorous effect were protected by Article 10 of the Convention, including where they conveyed transgression or provocation, regardless of the person using such language. While such speech could not be assessed or censored solely on the basis of any negative or indignant reactions it might generate, it was not exempt from the limits set under Article 10 of the Convention. The right to humour was not unlimited and anyone relying on freedom of expression had to assume "duties and responsibilities". In this connection, the Court observed that in the present case, taking into account the applicant's claim of humorous intent, the Nîmes Court of Appeal had taken the view that the slogans at issue could not be understood as mere joke but, on the contrary, reflected a deliberate intention to glorify criminal acts by presenting them in a positive light. It had thus found that certain attributes of the child, such as his first name, date of birth and the use of the word "bomb", had "served as a pretext for the promotion, unequivocally and through the deliberate association of terms referring to mass violence, of wilful killing".

The Court also noted that the public prosecutor had made a connection between the facts of the case and the recent terrorist attacks in France, while stressing the importance of distancing the case from that context. It agreed with this approach. Such a context, however serious, could not in itself justify the interference at issue in the present case. However, the Court could not ignore the importance and weight of that general context. Although more than eleven years separated the attacks of 11 September 2001 from the events giving rise to the present case, the fact remained that the slogans at issue had been displayed only a few months after other terrorist attacks, which had

resulted in the death of three children in a school. In view of the terrorist ideology behind those two attacks, the passage of time could not be regarded as having diminished the significance of the message at issue. The fact that the applicant had no links with any terrorist group and did not espouse a terrorist ideology could not detract from the significance of that message either.

It further noted that, in addition to the general context of the present case, the national authorities had assessed the specific context in which the slogans had been displayed. In this connection, it particularly emphasised the findings of the Nîmes Court of Appeal regarding the instrumentalising of a three-year-old child, who was the unwitting bearer of the offending message, without any possible awareness of the fact, and the specific context in which the message had been disseminated, namely not only in "a public place" but also "on the premises of a school" where young children were present.

The T-shirt bearing the slogans at issue was not directly visible to third parties but was discovered when the child was being dressed by adults. Nor was it accessible to the general public, since it was worn only on school premises. The message could thus only be read by two adults. In this connection, the Court had previously stressed the importance of a lack of publicity when examining the proportionality of an interference with the exercise of freedom of expression. While it could not speculate on the exact nature of the applicant's intentions on this point, the Court observed that he had not denied that he had specifically asked his nephew to wear the T-shirt in question to school or that he had intended to share its message. On the contrary, he had presented it as a humorous gesture.

In the Court's view, Z.B. could not have been unaware of the particular connotation – over and above the mere provocation or bad taste on which he relied – of such slogans on the premises of a nursery school, shortly after attacks that had claimed the lives of children in another school and in the context of a proven terrorist threat. In that connection, it noted the public prosecutor's arguments concerning the emotion and tensions aroused by the message and its impact on social harmony. It reiterated that the national authorities were, in principle, by reason of their direct and continuous contact with the realities of their countries, in a better position than an international court to give an opinion on the "necessity" of a "restriction" or "penalty" intended to fulfil the legitimate aims that they pursued. They were also better able to understand and appreciate the specific societal problems in particular communities and contexts. From this perspective, the Nîmes Court of Appeal's close knowledge of the regional context in which the facts of the case had taken place placed it in a good position to assess the need for the conviction and sentence handed down.

In the light of all the foregoing considerations, the Court found that the Nîmes Court of Appeal, in deciding on the applicant's conviction, had been careful to assess his guilt on the basis of the assessment criteria laid down in the Court's case-law, having regard to the requirements of Article 10 of the Convention, after weighing up the various interests involved. The Court of Cassation, ruling in particular in the light of the advocate-general's opinion, which also incorporated these assessment criteria, had endorsed the decision. The Court saw no serious reason to substitute its own assessment for that of the domestic courts in this case. It thus took the view that the grounds on which the applicant's conviction had been based, namely to prevent the glorification of mass violence, appeared in the specific circumstances of the present case to be both "relevant" and "sufficient" in order to justify the interference at issue, and in this sense it had met a pressing social need.

Lastly, the Court reiterated that the nature and severity of the penalties imposed were factors to be taken into account when assessing the proportionality of an interference with the right to freedom of expression. It considered that in the specific circumstances of the present case the amount of the fine imposed remained proportionate. Moreover, particularly taking into account the fact that a suspended term had been decided for the custodial part of the sentence, the Court was able to conclude that the sanction had not been disproportionate to the legitimate aim pursued.

Accordingly, the interference could be regarded as "necessary in a democratic society" and there had been no violation of Article 10 of the Convention.

The judgment is available only in French.

Press contacts
echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Inci Ertekin (tel : + 33 3 90 21 55 30)
Tracey Turner-Tretz (tel : + 33 3 88 41 35 30)
Denis Lambert (tel : + 33 3 90 21 41 09)
Neil Connolly (tel : + 33 3 90 21 48 05)
Jane Swift (tel : + 33 3 88 41 29 04)