



German courts' injunction against animal rights organisation's poster campaign evoking the Holocaust was legitimate

In today's Chamber judgment in the case of [Peta Deutschland v. Germany](#) (application no. 43481/09), which is not final¹, 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 a civil injunction which prevented the animal rights organisation PETA from publishing a poster campaign featuring photos of concentration camp inmates along with pictures of animals kept in mass stocks.

The Court held in particular that a reference to the Holocaust had to be seen in the specific context of the German past. In that light, the Court accepted that the German courts had given relevant and sufficient reasons for granting the civil injunction.

Principal facts

The applicant association, PETA Deutschland, is the German branch of the animal rights organisation PETA (People for the Ethical Treatment of Animals).

In March 2004, the organisation planned to launch an advertising campaign entitled "The Holocaust on your plate", which had been carried out in a similar way in the United States. It intended to publish a number of posters each of which bore a photograph of concentration camp inmates along with a picture of animals kept in mass stocks, accompanied by a short text. For example, the posters showed a photo of piled up human bodies alongside a photograph of a pile of slaughtered pigs under the heading "final humiliation" and a photo of rows of inmates lying on bunk beds alongside rows of chicken in laying batteries under the heading "if animals are concerned, everybody becomes a Nazi".

The president and the two vice-presidents of the Central Jewish Council in Germany at the time filed a request to be granted a court injunction ordering PETA to refrain from publishing seven specific posters, on the Internet or by displaying them in public. The plaintiffs had survived the Holocaust as children and one of them had lost her family through the Holocaust. They submitted that the intended campaign was offensive and violated their human dignity as well as the personality rights of the family members one of them had lost. On 18 March 2004, the Berlin Regional Court granted the interim injunction, and confirmed that injunction on 22 April 2004. It held in particular that there was no indication that PETA's primary aim was to debase victims of the Holocaust, as the posters intended to criticise the conditions under which animals were kept. That

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

expression of opinion related to questions of public interest and would thus generally enjoy a higher degree of protection when weighing the competing interests. However, it had to be taken into account that concentration camp inmates and Holocaust victims had been put on the same level as animals, a comparison which appeared arbitrary in the light of the image of man conveyed by the German Basic Law, which put human dignity in its centre. The Regional Court confirmed the injunction in the main proceedings in December 2004, and the Court of Appeal confirmed that decision in November 2005.

On 20 February 2009, the Federal Constitutional Court rejected PETA's constitutional complaint (file nos. 1 BvR 2266/04 and 1 BvR 2620/05). While expressing doubts as to whether the intended campaign violated the human dignity of either the people depicted or of the plaintiffs, that court did not find it necessary to decide on that question. It was sufficient that the lower courts had based their decisions on the assumption that the Basic Law drew a clear distinction between human life and dignity on the one hand and the interests of animal protection on the other, and that the campaign banalised the fate of the victims of the Holocaust.

Complaints, procedure and composition of the Court

PETA Deutschland complained that the injunction preventing it from publishing the poster campaign violated its rights under article 10.

The application was lodged with the European Court of Human Rights on 12 August 2009.

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

Dean **Spielmann** (Luxembourg), *President*,
Mark **Villiger** (Liechtenstein),
Karel **Jungwiert** (Czech Republic),
Boštjan M. **Zupančič** (Slovenia),
Ann **Power-Forde** (Ireland),
Angelika **Nußberger** (Germany),
André **Potocki** (France),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 10

It was undisputed between the parties that the injunction had interfered with PETA's right to freedom of expression under Article 10. The interference had a legal basis under German law and it had pursued the legitimate aim of protecting the plaintiffs' personality rights and thus "the reputation or rights of others" for the purpose of Article 10.

As regards the question of whether the interference was "necessary in a democratic society" within the meaning of Article 10, the Court observed at the outset that PETA's intended poster campaign, relating to animal and environmental protection, was undeniably in the public interest. Accordingly, only weighty reasons could justify such interference. The German courts had carefully examined the question of whether the requested injunction would violate the organisation's right to freedom of expression. While holding that the intended campaign did not aim to debase the depicted concentration camp inmates, the courts had considered that the campaign confronted the plaintiffs with their suffering and their fate of persecution in the interest of animal protection. They had found that this "instrumentalisation" of their suffering violated their

personality rights in their capacity as Jews living in Germany and as survivors of the Holocaust.

The Court considered that the facts of the case could not be detached from the historical and social context in which the expression of opinion took place. A reference to the Holocaust had to be seen in the specific context of the German past. The Court accepted the German Government's stance that they deemed themselves under a special obligation towards the Jews living in Germany. In that light, the Court found that the German courts had given relevant and sufficient reasons for granting the civil injunction. That finding was not called into question by the fact that courts in other jurisdictions might address similar issues in a different way.

Furthermore, as regards the severity of the sanction, the proceedings had not concerned any criminal sanctions, but only a civil injunction preventing PETA from publishing seven specific posters. Finally, PETA had not established that it did not have other means at its disposal to draw public attention to the issue of animal protection.

The Court concluded that there had been no violation of Article 10.

Separate opinion

Judge Zupančič expressed a concurring opinion joined by Judge Spielmann, which is annexed to the judgment.

The judgment is available only in English.

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Press contacts

echrpess@echr.coe.int | tel: +33 3 90 21 42 08

Nina Salomon (tel: + 33 3 90 21 49 79)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Denis Lambert (tel: + 33 3 90 21 41 09)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.