



Lawyer's rights were not breached by his conviction for defamatory statements against an expert called by the prosecution in criminal proceedings

In its decision in the case of [Fuchs v. Germany](#) (application nos. 29222/11 and 64345/11) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the complaint by a lawyer – relying in particular on Article 10 (freedom of expression) of the European Convention on Human Rights – of criminal and disciplinary sanctions imposed on him for, among other things, defamatory statements against an expert for the prosecution, which the lawyer had made while representing a client.

The Court held that the German courts had given relevant and sufficient reasons for their decisions. In particular, the defence of his client's interests had not allowed the lawyer to imply that the expert would falsify evidence. The lawyer's statements had not contained any objective criticism of the expert's work in his client's case, but the statements had been aimed at generally deprecating his work and declaring his findings to be unusable. The Court found that sworn-in experts had to be able to perform their duties in conditions free of undue perturbation if they were to be successful in performing their tasks.

Principal facts

The applicant, Ulrich Fuchs, is a German national who was born in 1958 and lives in Miesbach. He is a practising lawyer.

While representing a client accused of having downloaded child pornography on his computer, Mr Fuchs alleged in writing before the trial court, in October 2004, that a private expert engaged by the prosecution to decrypt the data files – who had been sworn-in before taking up duties with the legal authorities – might have manipulated the files in order to obtain the result sought by the prosecution. In particular, Mr Fuchs stated that the company for which the expert worked had a “personal interest in successful results, no matter whether the findings are correct.”

The expert lodged a criminal complaint against Mr Fuchs, who was ultimately convicted of, among other offences, defamation and sentenced to a fine by a judgment eventually upheld on appeal in September 2007. In subsequent proceedings before a disciplinary court for lawyers Mr Fuchs received a reprimand and a fine for having breached his duty to exercise his profession in a conscientious manner and to be worthy of the trust owed to his professional status. That decision was eventually upheld on appeal in February 2011.

The Federal Constitutional Court, in October 2010 and March 2011 respectively, refused to admit Mr Fuchs's constitutional complaints in respect of the decisions in both sets of proceedings against him.

Complaints, procedure and composition of the Court

The case originated in two applications, lodged with the European Court of Human Rights on 9 May 2011 and 7 October 2011 respectively.

Mr Fuchs complained in particular that the criminal and disciplinary sanctions imposed on him had violated his rights under Article 10 (freedom of expression) and that the proceedings leading to those sanctions had violated his rights under Article 6 (right to a fair trial).

The decision was given by a Chamber of seven, composed as follows:

Mark Villiger (Liechtenstein), *President*,
Angelika Nußberger (Germany),
Ganna Yudkivska (Ukraine),
Vincent A. de Gaetano (Malta),
André Potocki (France),
Helena Jäderblom (Sweden),
Aleš Pejchal (the Czech Republic), *Judges*,

and also Claudia Westerdiek, *Section Registrar*.

Decision of the Court

Article 10

The Court declared the complaint inadmissible as being manifestly ill-founded.

It noted that the sanctions imposed on Mr Fuchs had interfered with his freedom of expression. At the same time, it observed that the sanctions had been prescribed by law – being based on the German Criminal Code and the Code for the legal profession, respectively; and they had pursued the legitimate aim of, in particular, protecting the reputation and rights of the sworn-in expert. Moreover, the Court came to the conclusion that the sanctions had been necessary in a democratic society within the meaning of Article 10.

In reaching that conclusion, the Court had regard to the relevance and sufficiency of the reasons given by the German courts. It agreed with the criminal courts that the defence of his client's interests had not allowed Mr Fuchs to imply, generally, that the expert would falsify evidence. Agreeing also with the court in the disciplinary proceedings, the Court considered that the offensive statements had not contained any objective criticism of the expert's work in his client's case; instead, the statements had been aimed at generally deprecating his work and declaring his findings to be unusable. The Court thus accepted the German courts' conclusions that the statements in question had not been justified by the legitimate pursuit of the client's interests. As to the question of proportionality, the Court moreover noted that the fines imposed in the criminal and disciplinary proceedings had not been disproportionate.

The Court underlined that sworn-in experts had to be able to perform their duties in conditions free of undue perturbation if they were to be successful in performing their tasks. It might therefore be necessary to protect them from offensive and abusive verbal attacks on duty.

Article 6

The Court also declared inadmissible Mr Fuchs's complaint under Article 6 as being manifestly ill-founded. It found that there was no indication that the various arguments he had presented had not been duly examined by the German courts.

The decision is available only in English.

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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.