



European Convention on Human Rights does not protect negationist and anti-Semitic performances

In its decision in the case of [M'Bala M'Bala v. France](#) (application no. 25239/13) the European Court of Human Rights has by a majority declared the application inadmissible. The decision is final.

The case concerns the conviction of Dieudonné M'Bala M'Bala, a comedian with political activities, for public insults directed at a person or group of persons on account of their origin or of belonging to a given ethnic community, nation, race or religion, specifically in this case persons of Jewish origin or faith.

At the end of a show on 26 December 2008 at the "Zénith" in Paris, Dieudonné M'Bala M'Bala invited Robert Faurisson, an academic who has received a number of convictions in France for his negationist and revisionist opinions, mainly his denial of the existence of gas chambers in concentration camps, to join him on stage to receive a "prize for unfrequentedness and insolence". The prize, which took the form of a three-branched candlestick with an apple on each branch, was awarded to him by an actor wearing what was described as a "garment of light" – a pair of striped pyjamas with a stitched-on yellow star bearing the word "Jew" – who thus played the part of a Jewish deportee in a concentration camp.

The Court found that during the offending scene the performance could no longer be seen as entertainment but rather resembled a political meeting, which, under the pretext of comedy, promoted negationism through the key position given to Robert Faurisson's appearance and the degrading portrayal of Jewish deportation victims faced with a man who denied their extermination. In the Court's view, this was not a performance which, even if satirical or provocative, fell within the protection of Article 10 (freedom of expression) of the European Convention on human rights, but was in reality, in the circumstances of the case, a demonstration of hatred and anti-Semitism and support for Holocaust denial. Disguised as an artistic production, it was in fact as dangerous as a head-on and sudden attack, and provided a platform for an ideology which ran counter to the values of the European Convention.

The Court thus concluded that Dieudonné M'Bala M'Bala had sought to deflect Article 10 from its real purpose by using his right to freedom of expression for ends which were incompatible with the letter and spirit of the Convention and which, if admitted, would contribute to the destruction of Convention rights and freedoms.

Principal facts

The applicant, Dieudonné M'Bala M'Bala, is a French national, who was born in 1966 and lives in Paris. He is a comedian known by the stage name "Dieudonné". He has also engaged in political activities.

On 26 December 2008 Dieudonné M'Bala M'Bala put on a performance at the "Zénith" in Paris in the context of a show entitled "J'ai fait l'con" ("I've been a naughty boy"). At the end of the show he invited Robert Faurisson, an academic who has received a number of convictions in France for his negationist and revisionist opinions, mainly his denial of the existence of gas chambers in concentration camps, to join him on stage. Dieudonné M'Bala M'Bala then called up an actor wearing what was described as a "garment of light", in fact a pair of striped pyjamas reminiscent of the clothing worn by Jewish deportees, with a stitched-on yellow star bearing the word "Jew", to award Mr Faurisson a "prize for unfrequentedness and insolence". The prize took the form of a three-

branched candlestick (the seven-branch candlestick being an emblem of the Jewish religion), with an apple crowning each branch.

The incident was recorded by the police. On 29 December 2008 a preliminary investigation was opened.

On 27 March 2009 the public prosecutor summoned Dieudonné M'Bala M'Bala to appear before the Paris *tribunal de grande instance* on a charge of public insults directed at a person or group of persons on account of their origin or of belonging, or not belonging, to a given ethnic community, nation, race or religion, specifically in this case persons of Jewish origin or faith, by one of the means provided for in section 23 of the Law of 29 July 1881 on freedom of the press.

On 27 October 2009 the Paris court found Dieudonné M'Bala M'Bala guilty as charged and sentenced him to a fine of 10,000 euros, awarding a token euro in damages to each civil party. The judges took the view, in particular, that Dieudonné M'Bala M'Bala could not have been unaware of the fact that Robert Faurisson was one of the leading advocates of Holocaust denial and that the offending remarks would be both insulting and contemptuous towards persons of Jewish origin or faith. They also observed that Dieudonné M'Bala M'Bala could not hide behind the pretext of comedy, for although caricature and satire – even of a deliberately provocative or vulgar nature – clearly fell, in a democratic society, within freedom of expression and creation, involving the communication of ideas and opinions, the right to humour nevertheless had certain limits, and in particular that of respect for the dignity of the human person. In the case at hand, according to the judges, the permissible limits of the right to humour had been crossed to an excessive degree. Dieudonné M'Bala M'Bala, the public prosecutor and a number of civil parties appealed against the judgment.

In a judgment of 17 March 2011 the Paris Court of Appeal upheld the judgment as to the guilt of Dieudonné M'Bala M'Bala. The judges found that with the arrival on stage of Robert Faurisson, the performance could no longer be seen as a form of entertainment but rather took on the appearance of a political meeting, observing in their turn that the offending *mise en scène* and the circumstances surrounding it, in particular an obscene hand gesture known as the “*glissage de quenelle*” that had been announced to the audience, served to fulfil the show's stated aim to do “better” in terms of anti-Semitism than in one of the comedian's previous shows.

The Court of Cassation dismissed Dieudonné M'Bala M'Bala's appeal on 16 October 2012.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 10 April 2013.

Relying on Articles 7 (no punishment without law) and 10 (freedom of expression), the applicant complained about his conviction for publicly insulting persons of Jewish origin or faith.

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

Josep Casadevall (Andorra), *President*,
Angelika Nußberger (Germany),
Boštjan M. Zupančič (Slovenia),
Vincent A. de Gaetano (Malta),
André Potocki (France),
Helena Jäderblom (Sweden),
Síofra O'Leary (Ireland), *Judges*,

and also Milan Blaško, *Deputy Section Registrar*.

Decision of the Court

Article 10

Like the domestic courts, the Court had no doubt about the highly anti-Semitic content of the offending part of Dieudonné M'Bala M'Bala's show, as he had honoured an individual who was well known for his negationist ideas, getting the audience to applaud him "heartily" and awarding him a "prize for unfrequentability and insolence". The Court noted that the applicant was a comedian who had shown his strong political commitment by standing for election a number of times and that he had already been convicted for racial insult. It also observed that the audience's reaction showed that the anti-Semitic nature of the scene had been appreciated by them. In addition, Dieudonné M'Bala M'Bala had stated his wish to do better than in one of his previous performances, which had been described as "the biggest anti-Semitic rally since the Second World War", thus guiding the audience's perception of what they were going to see. The Court noted that the body language and words used undeniably reflected a positive attitude on the part of Dieudonné M'Bala M'Bala.

The Court thus agreed with the Court of Appeal that during the offending scene the performance could no longer be seen as entertainment but had taken on the appearance of a political meeting. In addition to the nature of certain exchanges with the audience, it observed that in the context of an outrageously preposterous *mise en scène*, Dieudonné M'Bala M'Bala had brought onto the stage an actor, dressed as a Jewish deportee in a concentration camp, for the purpose of awarding a prize to Robert Faurisson, one of the best known French negationists, to honour him and give him a platform. In this promotion of negationism, through the key position given to Robert Faurisson's appearance and the degrading portrayal of Jewish deportation victims faced with a man who denied their extermination, the Court saw a demonstration of hatred and anti-Semitism and support for Holocaust denial. In the Court's view, this was not a performance which, even if satirical or provocative, fell within the protection of Article 10 of the Convention. In the circumstances of the case, it was an expression of an ideology which ran counter to the values of the Convention, namely justice and peace.

The Court further observed that while Article 17 (prohibition of abuse of rights) of the Convention had in principle been applied in previous cases to explicit and direct remarks which did not require any interpretation, it was convinced that a blatant display of hatred and anti-Semitism disguised as an artistic production was as dangerous as a head-on and sudden attack. It did not therefore deserve protection under Article 10 of the Convention.

Accordingly, since the acts at issue were unmistakably negationist and anti-Semitic in nature, the Court found that Dieudonné M'Bala M'Bala had sought to deflect Article 10 from its real purpose by using his right to freedom of expression for ends which were incompatible with the letter and spirit of the Convention and which, if admitted, would contribute to the destruction of Convention rights and freedoms.

Consequently, the Court found that under Article 17 of the Convention, Dieudonné M'Bala M'Bala was not entitled to the protection of Article 10. It followed that the application had to be dismissed as being incompatible with the provisions of the Convention, in accordance with Article 35 §§ 3 (a) and 4 (admissibility criteria).

The decision is available only in French.

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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.