



Prohibition from distributing anti-abortion leaflets near a clinic violated activist's right to freedom of expression

The case of [Annen v. Germany](#) (application no. 3690/10) concerned a civil injunction by the German courts which prohibited an activist from continuing to distribute anti-abortion leaflets in the vicinity of a day clinic which performed abortions, and from continuing to list on his website the names of the doctors running the clinic.

In today's **Chamber** judgment¹ in the case, the European Court of Human Rights held, by a majority, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights, on account of the order to stop distributing the leaflets in question, and **a violation of Article 10** in its procedural aspect, on account of the order to stop listing the names of the doctors on the website in question.

The Court found that the German courts had failed to strike a fair balance between Mr Annen's right to freedom of expression and the doctor's personality rights. In particular, in the leaflets it was made clear that the abortions performed in the clinic were not subject to criminal liability. Moreover, while the leaflets included a reference to the Holocaust, they did not compare the doctors' professional activities to the Nazi regime and did not explicitly equate abortions with the Holocaust.

Principal facts

The applicant, Klaus Günter Annen, is a German national who was born in 1951 and lives in Weinheim (Germany).

In July 2005, as part of a campaign, Mr Annen distributed leaflets in the immediate vicinity of a day clinic which performed abortions. The leaflets alleged, in bold letters, that the two doctors running the clinic, whose full names and address were mentioned, performed "unlawful abortions". This statement was followed by an explanation in smaller letters stating that the abortions were allowed by the German legislator and were not subject to criminal liability. It continued: "The attestation of counselling protects the 'doctor' and the mother from criminal prosecution, but not from their responsibility before God." The back of the leaflets included the following sentence: "The murder of human beings in Auschwitz was unlawful, but the morally degraded NS State allowed the murder of innocent people and did not make it subject to criminal liability." That sentence was followed by a reference to a website run by Mr Annen, www.babycaust.de, which included a list of "abortion doctors", among them the two doctors running the day clinic.

In January 2007 a regional court granted a request by the two doctors for a civil injunction and ordered Mr Annen to stop distributing, in the immediate vicinity of the clinic, leaflets containing their names and the assertion that unlawful abortions were performed there. The court also ordered Mr Annen to stop mentioning the two doctors' names and addresses in the list of "abortion doctors" on the website run by him. Mr Annen's appeal against the injunction was rejected and eventually, on

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.

2 July 2009, the Federal Constitutional Court refused to admit his constitutional complaint for adjudication (file no. 1 BvR 671/08).

Complaints, procedure and composition of the Court

Mr Annen complained of the civil injunction issued against him. He relied, in particular, on Article 10 (freedom of expression).

The application was lodged with the European Court of Human Rights on 18 January 2010. The organisations Alliance Defending Freedom, *Aktion Lebensrecht für Alle* and the European Centre for Law and Justice were granted leave to intervene in the proceedings as third parties (Article 36 § 2 of the Convention – third party intervention) and submitted written observations.

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

Boštjan M. Zupančič (Slovenia), *President*,
Angelika Nußberger (Germany),
Ganna Yudkivska (Ukraine),
Vincent A. de Gaetano (Malta),
André Potocki (France),
Helena Jäderblom (Sweden),
Aleš Pejchal (the Czech Republic),

and also Claudia Westerdiék, *Section Registrar*.

Decision of the Court

Article 10

As regards the order for Mr Annen to stop distributing the leaflets in the vicinity of the clinic, the German courts' had found that the leaflets erroneously gave the impression that the clinic performed abortions outside the law, because the leaflets' layout was designed to draw the reader's attention to the first sentence in bold letters. Moreover, the German courts had found that in the leaflets Mr Annen had singled out the two doctors in severely criticising them, which was aggravated by the reference to the Holocaust.

Concerning the first point, the Court noted, however, that German criminal law made a distinction between, on the one hand, abortions which were considered "unlawful", but exempt from criminal liability – in cases where a pregnant woman requested the termination of the pregnancy and underwent mandatory counselling, and the abortion was performed during the first twelve weeks of pregnancy – and those abortions which were considered justified and lawful – in particular in cases where the termination of the pregnancy was necessary to avert danger to the life or health of the pregnant woman. It followed that the statement in the leaflet that "unlawful abortions" were being performed in the clinic was correct from a legal point of view.

Moreover, while the layout of the leaflet was designed to draw attention to the first sentence, the phrasing of the explanation which followed it, stating that the abortions performed in the clinic were not subject to criminal liability, was sufficiently clear, even from a layperson's perspective. In that regard, the case had to be distinguished from previous applications lodged by Mr Annen with the Court, which it had declared inadmissible, in that those cases had concerned leaflets and posters in which he had criticised "unlawful" abortions without giving any further information on the legal situation.

It was true, as the German courts had pointed out, that Mr Annen had singled out the two doctors. The Court noted, however, that he had used this means of presenting his arguments in a

personalised manner to enhance the effectiveness of his campaign, which undoubtedly contributed to a highly controversial debate of public interest.

As to the reference to concentration camps and the Holocaust, the Court underlined that the impact which an expression of opinion had on another person's personality rights could not be considered separately from the historical context in which the statement had been made. The reference to the Holocaust therefore had to be seen in the specific context of German history. However, given the very wording of the leaflet the Court could not agree with the German courts' interpretation that Mr Annen had compared the doctors and their professional activities to the Nazi regime. Instead his statement might also be understood as a way of creating awareness of the more general fact that law might diverge from morality. While the Court was aware of the subtext of Mr Annen's statement, which had been intensified by the reference to the website www.babycaust.de, it observed that he had not explicitly equated abortion with the Holocaust. The Court was therefore not convinced that the prohibition from continuing to distribute the leaflets had been justified by a violation of the doctors' personality rights due to the Holocaust reference alone.

The Court came to the conclusion that the German courts had failed to strike a fair balance between Mr Annen's right to freedom of expression and the doctor's personality rights. There had accordingly been a violation of Article 10 on that account.

As regards the order for Mr Annen to stop listing on his website the names of the doctors running the clinic, the Court noted in particular that the German courts had limited themselves to finding that the same principles which had been elaborated with regard to the leaflet should also apply to the website. They had not examined its content and the overall context in which the doctors' names had been included in an alphabetical list, nor had they interpreted the expression "abortion doctors" in light of the fact that abortions were indeed performed at the day clinic. Moreover, the German courts had not addressed the questions of whether the doctors had themselves made public on the Internet the fact that abortions were performed in the clinic or whether their being included in the list was likely to incite violence or aggression against them. The Court considered that by not examining any specific elements of the website the German courts had failed to apply standards which were in conformity with the procedural requirements of Article 10. There had accordingly been a violation of Article 10 also on that account.

Just satisfaction (Article 41)

The Court rejected Mr Annen's claim for non-pecuniary damage. It further held that Germany was to pay him 13,696.87 euros (EUR) in respect of costs and expenses.

Separate opinions

Judges Yudkivska and Jäderblom expressed a joint dissenting opinion, which is annexed to the judgment.

The judgment 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.