



## Court rejects complaint about prosecution for posting picture of a Nazi leader and swastika in a blog

In its decision in the case of [Nix v. Germany](#) (application no. 35285/16) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned Mr Nix's conviction for posting a picture on his blog in 2014 of the former SS chief Heinrich Himmler in SS uniform wearing a swastika armband.

In January 2015 the Munich District Court convicted Mr Nix of, among other things, using symbols of unconstitutional organisations after posting the picture of Himmler. The decision was upheld on appeal.

Relying on Article 10, Mr Nix complained about his conviction, arguing in particular that the domestic courts had failed to take into account that his blog post was intended as a protest against school and employment offices' discrimination against children from a migrant background.

The Court found that Article 10 of the convention applied to the Internet and thus to Mr Nix's blog post. An interference with his rights would nevertheless only infringe the Convention if the requirements of Article 10 § 2 were not met, including whether the interference was "necessary in a democratic society". Such an assessment had to take account of German history as a weighty factor.

The Court largely endorsed the domestic courts' approach, including their view of why Mr Nix had used the picture of Himmler with the swastika, in particular that it had been used as an "eye-catching device". However, banning the use of such images in that way had been one of the aims of the national legislation criminalising the use of symbols of unconstitutional organisations.

The Court found that the domestic authorities had provided relevant and sufficient reasons for interfering with Mr Nix's right to freedom of expression and had not gone beyond their room for manoeuvre ("margin of appreciation") in the case.

### Principal facts

The applicant, Hans Burkhard Nix, is a German national who was born in 1954 and lives in Munich (Germany).

The applicant has a blog on which he writes about various issues concerning economics, politics and society. In March 2014, the employment office sent a letter to his daughter, who is of German-Nepalese origin. It asked the daughter, who was eighteen and scheduled to complete her schooling in the summer of 2015 at the earliest, to complete a questionnaire on whether she intended to continue schooling beyond September 2014, or to commence vocational training or tertiary studies.

In reaction Mr Nix published six posts about his daughter's dealings with the employment office. In one of his posts, he stated that the background to the letter, written by a staff member at the office, was that that institution intended to push his daughter, in a racist and discriminatory manner, into a low-paid job as cheap labour. Furthermore, he posted a statement with the heading "[Name of the staff member] offers 'customised' integration into the low-wage [economy]". Underneath was a picture of Himmler in SS uniform wearing the Nazi party badge with a swastika on his front pocket and a swastika armband. Mr Nix posted a quote from Himmler about the schooling of children in Eastern Europe during the Nazi occupation next to the picture while below it he addressed the staff member by name and stated that he would proceed to discuss the employment office's requests.

In January 2015 the Munich District Court convicted Mr Nix of, among other things, using symbols of unconstitutional organisations. On appeal, the Regional Court upheld the conviction. It concluded that he had not clearly distanced himself from Nazi ideology in his blog post, and had used the picture as an eye-catching device. Further appeals were rejected and in December 2015 the Federal Constitutional Court refused to admit his constitutional complaint for examination.

## Complaints, procedure and composition of the Court

The applicant complained about his conviction under Article 10.

The application was lodged with the European Court of Human Rights on 14 June 2016.

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

Erik **Møse** (Norway), *President*,  
Angelika **Nußberger** (Germany),  
Yonko **Grozev** (Bulgaria),  
Síofra **O’Leary** (Ireland),  
Mārtiņš **Mits** (Latvia),  
Lətif **Hüseynov** (Azerbaijan),  
Lado **Chanturia** (Georgia),

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

## Decision of the Court

### Article 10

The Court held that any interference with the right to freedom of expression had to meet the various requirements of Article 10 § 2, in particular it had to be “necessary in a democratic society”. It reiterated that there was little scope under Article 10 § 2 of the Convention for restrictions on political expression or on debate on questions of public interest.

In this respect, the Court noted that Germany’s decision to criminalise the use of Nazi symbols had to be seen on the background of its history, although domestic legislation provided for an exemption from liability on various grounds, including if opposition to the ideology in question was clearly stated.

The Court first observed that the symbol used by Mr Nix – Himmler in SS uniform with a swastika armband – could not be considered to have any other meaning than that of Nazi ideology (compare and contrast the cases of [Vajnai v. Hungary](#), no. 33629/06, §§ 52 et seq., ECHR 2008, and [Fratanoló v. Hungary](#), no. 29459/10, § 25, 3 November 2011, concerning the use of the red star). It then held that Mr Nix must have been aware of the legislation in question, not least because he had been convicted for publishing a picture of Chancellor Angela Merkel in Nazi uniform with a swastika armband and a painted Hitler moustache some six weeks before he had published the blog post at issue.

The Court accepted that Mr Nix had not intended to spread Nazi ideology and might have thought he was contributing to a debate of public interest so the question arose whether the domestic courts should have examined the blog post in question together with his other posts on the employment office and his daughter. The post however did not contain any reference or visible link to the earlier posts and it had not been immediately understandable for a reader that it was part of a series of entries. Furthermore, Mr Nix had made no reference to his daughter’s German-Nepalese origin or the fact that he himself received social welfare benefits. It had not been clear why the

request from the employment office staff member could be compared to what had happened in the Nazi regime.

The Court held that the domestic courts could therefore not be reproached for concluding that Mr Nix had used the picture of Himmler with the swastika as an “eye-catching” device, which was one of the things the law penalising the use of symbols of unconstitutional organisations had been intended to prevent (the so-called “communicative taboo”). Domestic case-law was clear that the critical use of such symbols was not enough to exempt someone from criminal liability and that what was required was clear and obvious opposition to Nazi ideology.

The Court saw no reason to depart from the domestic courts’ assessment that Mr Nix had not clearly and obviously rejected Nazi ideology in his blog post. The domestic authorities had given relevant and sufficient reasons for interfering with his right to freedom of expression and had not exceeded their margin of appreciation. The interference with his rights under Article 10 had therefore been “necessary in a democratic society” and the complaint had to be rejected as inadmissible because it was manifestly ill-founded.

*The judgment is available only in English.*

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