EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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Politician fined in criminal proceedings for failing to act promptly by deleting comments from his public Facebook account inciting hatred: no violation of the Convention

In today's **Chamber** judgment[1] in the case of Sanchez v. France (application no. 45581/15) the European Court of Human Rights held, by six votes to one, that there had been:

no violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned the criminal conviction of the applicant, at the time a local councillor who was standing for election to Parliament, for incitement to hatred or violence against a group of people or an individual on the grounds of their membership of a specific religion, following his failure to take prompt action in deleting comments posted by others on the wall of his Facebook account.

The Court reiterated that tolerance and respect for the equal dignity of all human beings constituted the foundations of a democratic, pluralistic society. As a result, it could in principle be considered necessary to punish or even prevent all forms of expression which spread, incited, promoted or justified hatred based on intolerance.

The Court emphasised that it attached the highest importance to freedom of expression in the context of political debate and considered that very strong reasons were required to justify restrictions on political speech and that in the run-up to an election, opinions and information of all kinds should be permitted to circulate freely. In the specific circumstances of the case, however, the Court found that the domestic courts' decision to convict the applicant on account of his failure to take prompt action in deleting the clearly unlawful comments posted by others on the wall of his Facebook account, which was used in connection with his election campaign, had been based on relevant and sufficient reasons linked to his lack of vigilance and responsiveness. The interference in question could thus be seen as "necessary in a democratic society" and there had been no violation of Article 10 of the Convention.

Principal facts

The applicant, Julien Sanchez, is a French national who was born in 1983 and lives in Beaucaire (France).

At the time of the events, Mr Sanchez – currently mayor of the town of Beaucaire and chair of the Rassemblement National (National Rally) group in the Occitanie Regional Council – was standing for election to Parliament for the Front National (FN) in the Nîmes constituency. F.P., at that time a member of the European Parliament (MEP) and first deputy to the mayor of Nîmes, was one of his political opponents. On 24 October 2011 Mr Sanchez published a post about F.P. on the wall of his publicly accessible Facebook account, which was managed by him personally: "While the FN has launched its new national website on schedule, spare a thought for the Nîmes UMP [Union for a Popular Movement] MEP [F.P.], whose site, which was supposed to be launched today, is displaying an ominous triple zero on its home page ...". Another user, S.B., wrote the following comment: "This

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.

great man has transformed Nîmes into Algiers, there is not a street without a kebab shop and mosque; drug dealers and prostitutes reign supreme, no surprise he chose Brussels, capital of the new world order of sharia .... Thanks UMPS [amalgam of UMP and Socialist Party], at least that saves us on the flights and hotel ... I love this free version of Club Med ... Thanks [F.] and kisses to Leila ([L.]) ... Finally, a blog that changes our life ...” A further user, L.R., added three other comments directed at Muslims.

On 25 October 2011 L.T., the partner of F.P., became aware of the comments. Feeling directly and personally insulted by what she viewed as “racist” statements, she went straight away to the hairdressing salon managed by S.B., whom she knew personally. S.B. deleted his comment immediately.

On 26 October 2011 L.T. wrote to the Nîmes public prosecutor to lodge a criminal complaint against Mr Sanchez, S.B. and L.R. on account of the offending comments published on Mr Sanchez’s Facebook page. On 27 October 2011 Mr Sanchez posted a message on the wall of his Facebook account inviting users to “monitor the content of [their] comments”, but did not intervene in relation to the comments already posted.

Mr Sanchez, S.B. and L.R. were summoned to appear before the Nîmes Criminal Court in connection with the publication of the comments in question on the wall of the applicant’s Facebook account, to answer charges of incitement to hatred or violence against a group of people, in particular L.T., on the grounds of their origin or their membership or non-membership of a specific ethnic group, nation, race or religion. On 28 February 2013 the Criminal Court found Mr Sanchez, S.B. and L.R. guilty as charged and ordered each of them to pay a fine of 4,000 euros (EUR). S.B. and Mr Sanchez were also ordered, jointly and severally, to pay the sum of EUR 1,000 to L.T., the civil-party claimant, in compensation for non-pecuniary damage. The court concluded that, having set up a public communication service by electronic means on his own initiative for the purpose of exchanging opinions, and having left the offending comments still visible as of 6 December 2011, Mr Sanchez had failed to act promptly in stopping their dissemination and was therefore guilty as the “producer” of an online public communication site, and hence as the principal offender.

Mr Sanchez and S.B. appealed. S.B. subsequently withdrew his appeal.

The Nîmes Court of Appeal upheld the guilty verdict against Mr Sanchez, reducing the fine to EUR 3,000. It also ordered him to pay L.T. EUR 1,000 in costs. The Court of Appeal held that the Criminal Court had been correct in finding that the comments clearly defined the group of people concerned, namely those of Muslim faith, and that associating the Muslim community with crime and insecurity in the city of Nîmes was likely to arouse a strong feeling of rejection or hostility towards that group. Moreover, it held that by knowingly making his Facebook wall public, Mr Sanchez had assumed responsibility for the content of the comments posted – which, according to the statements he had made to justify his position, he considered compatible with freedom of expression – and that his status as a political figure required even greater vigilance on his part.

The applicant appealed on points of law to the Court of Cassation, which in a judgment of 17 March 2015 dismissed his appeal.

Complaints, procedure and composition of the Court

The applicant submitted that his conviction on account of comments posted by others on the wall of his Facebook account was in breach of Article 10 (freedom of expression) of the Convention.

The application was lodged with the European Court of Human Rights on 15 September 2015.

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

Síofra **O'Leary** (Ireland), *President*,
Mārtiņš **Mits** (Latvia),
Ganna **Yudkivska** (Ukraine),
Stéphanie **Mourou-Vikström** (Monaco),
Ivana **Jelić** (Montenegro),
Arnfinn **Bårdsen** (Norway),
Mattias **Guyomar** (France),

and also Victor **Soloveytchik**, *Section Registrar.*

Decision of the Court

Article 10

The Court observed that the Nîmes Criminal Court had found that the applicant, who on his own initiative had set up a communication service open to the public, had left the offending comments visible for some six weeks after they had been posted, without taking prompt action to stop their dissemination. The Nîmes Court of Appeal, upholding the first-instance judgment, had pointed out that, in his capacity as an elected representative and public figure, the applicant had knowingly made the wall of his Facebook account public, thus allowing his friends to post their comments there, and in doing so had assumed responsibility for the content of the statements published. It had held that the applicant had not acted promptly to stop the dissemination of the comments in question and that he had also justified his position by saying that in his view, such comments were compatible with freedom of expression, and had therefore deliberately left them on his Facebook wall.

Regarding the nature of the comments, the Court noted firstly that they were clearly unlawful. Both the Criminal Court and the Court of Appeal had established, on the one hand, that the comments clearly defined the group of people concerned, namely those of Muslim faith, and that the association of the Muslim community with crime and insecurity in the city of Nîmes by equating that group with "drug dealers and prostitutes" who "reign supreme", "scum who sell drugs all day long" or those responsible for "throwing stones at white people's cars", was likely to arouse a strong feeling of rejection or hostility towards the group of people of Muslim faith, or those who were perceived as such; and on the other hand, that the expression "Kisses to [L.]", referring to L.T., who was associated with F.P., the deputy to the mayor of Nîmes who had been portrayed as instrumental in giving the city over to Muslims and hence to insecurity, had been such as to link L.T., on account of her perceived membership of the Muslim community (by virtue of her first name), with the transformation of the city, and thus arouse hatred and violence against her.

The Court reiterated that tolerance and respect for the equal dignity of all human beings constituted the foundations of a democratic, pluralistic society. It could therefore be considered necessary to punish or even prevent all forms of expression which spread, incited, promoted or justified hatred based on intolerance, provided that any "formalities", "conditions", "restrictions" or "penalties" imposed were proportionate to the legitimate aim pursued.

In an electoral context, while political parties enjoyed a wide freedom of expression, racist or xenophobic discourse contributed to stirring up hatred and intolerance. The Court pointed out that the particular responsibility of politicians in combating hate speech had been emphasised by the Committee of Ministers of the Council of Europe in Recommendation R(97)20 on "hate speech" and by the European Commission against Racism and Intolerance.

After examining the offending comments posted by S.B. and L.R., the Court found that the conclusions reached by the domestic courts had been entirely justified. The language used had clearly incited hatred and violence. In the Court's view, personal attacks by means of insults, ridicule or defamation directed at certain sectors of the population, or incitement to hatred and violence against a person on account of membership of a particular religion, were sufficient for the authorities to make it a priority to combat such behaviour when faced with irresponsible use of freedom of expression that undermined the dignity, or even the safety, of the population groups or sectors in question.

With regard to the applicant's responsibility for statements published by third parties, the Court noted that the comments were to be seen in the context of local political debate, particularly relating to the parliamentary election campaign. While it was true that the Court attached the highest importance to freedom of expression in the context of political debate and considered that very strong reasons were required to justify restrictions on political speech, and that in the run-up to an election, opinions and information of all kinds should be permitted to circulate freely, it nevertheless referred to its finding that the comments made in the present case had been clearly unlawful. Furthermore, the Court observed that the applicant had not been criticised for making use of his right to freedom of expression, particularly in the context of political debate, but had been accused of a lack of vigilance and responsiveness in relation to the comments posted on the wall of his Facebook account. The Court thus concluded that both the Criminal Court and the Court of Appeal had based their reasoning regarding the applicant's responsibility on relevant and sufficient grounds for the purposes of Article 10 of the Convention.

As to the steps taken by the applicant, the Court observed that the domestic courts had established responsibility on his part on the basis of several factors. The applicant had knowingly made the wall of his Facebook account public, thereby allowing his friends to post comments there. He had thus been under a duty to monitor the content of the statements published. In addition, the Criminal Court had emphasised that the applicant could not have been unaware that his account was likely to attract comments of a political nature, which by definition were polemical and should therefore have been monitored even more carefully by him. The Court of Appeal had held, along similar lines, that his status as a political figure required even greater vigilance on his part. The Criminal Court had specifically noted that the comments by L.R. had still been visible some six weeks after they had been posted. In those circumstances, the Court found that the reasons given by the Criminal Court and the Court of Appeal regarding the steps taken by the applicant had been relevant and sufficient for the purposes of Article 10 of the Convention.

With regard to the responsibility of the authors of the comments, the Court observed that they had been identified. The applicant had been held responsible, under section 93-3 of the Law of 29 July 1982, as the producer of an online public communication site. The domestic courts had made out the facts establishing responsibility on the part of the applicant, who had not been prosecuted in place of S.B. and L.R. – both of whom, indeed, had also been convicted – but on account of specific conduct directly linked to his status as the owner of the wall of his Facebook account. The comments made in the present case had been clearly unlawful and in breach of the Facebook terms of use. The Court considered that the domestic courts had therefore based their decisions on relevant and sufficient grounds.

Regarding the consequences of the domestic proceedings for the applicant, the Court observed that he had been ordered to pay a fine of EUR 3,000. It held that, bearing in mind the sentence he could have faced and the lack of any other established consequences, the interference with the applicant's right to freedom of expression had not been disproportionate.

In the specific circumstances of the case, the Court found that the domestic courts' decision to convict the applicant on account of his failure to take prompt action in deleting the unlawful comments posted by others on the wall of his Facebook account, which was used in connection with

his election campaign, had been based on relevant and sufficient reasons, having regard to the margin of appreciation afforded to the respondent State. Accordingly, the interference complained of could be seen as "necessary in a democratic society". There had therefore been no violation of Article 10 of the Convention.

Separate opinions

Judge **Mourou-Vikström** expressed a separate opinion, which is annexed to the judgment.

The judgment is available only in French.

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