



Complaint about conviction by German courts for denying the Holocaust on Swedish TV is inadmissible

In its decision in the case of [Williamson v. Germany](#) (application no. 64496/17) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the applicant's complaint about his criminal conviction of incitement to hatred.

The Court observed that Mr Williamson had agreed to provide the interview, in which he denied the Holocaust, in Germany despite residing elsewhere at the time while knowing that the statements he made were subject to criminal liability there. He did not insist during the interview that it not be broadcast in Germany and did not clarify with the interviewer or the television channel how the interview would be published.

The Court thus found that the Regional court's assessment of the facts was acceptable with respect to its finding that the offence had been committed in Germany, in particular because the key feature of the offence (the interview) had been carried out there.

Principal facts

The applicant, Richard Williamson, is a British national who was born in 1940 and lives in Kent (the United Kingdom). He is a bishop and a former member of the Society of Saint Pius X.

In November 2008 a journalist working for the Swedish television channel SVT-1 interviewed Mr Williamson at the seminary of the Society of Saint Pius X in Zaitzkofen, Germany. The applicant did not reside in Germany at that time. After having talked about religious matters, the journalist changed the topic and a dialogue ensued in which Mr Williamson stated that he believed there were no gas chambers during the Nazi regime. In January 2009 SVT-1 broadcasted the interview in a Swedish television programme.

In October 2009 the Regensburg District Court issued a penal order (*Strafbefehl*) against Mr Williamson, finding him guilty of incitement to hatred and sentencing him to a fine of 12,000 euros (EUR). Following different appeals, in February 2012 the Nuremberg Court of Appeal discontinued the proceedings finding that the penal order did not meet the necessary requirements as it had not contained a description of the relevant facts defining the offence.

In October 2012 the Regensburg District Court, at the public prosecutor's request, issued another penal order against Mr Williamson for incitement to hatred, sentencing him to a fine of 6,500 EUR. On an appeal by the applicant, the District Court convicted him of incitement to hatred and sentenced him to a fine of 1,800 EUR. Mr Williamson's conviction was upheld on further appeal. The competent Regional Court considered that the applicant's statement denying the existence of gas chambers during the Nazi regime and the killing of Jews in those gas chambers had constituted a denial of acts of genocide committed under the rule of National Socialism. In the Regional Court's view, Mr Williamson, when giving the interview, had understood and accepted that it might be viewed by a larger group of persons, including in Germany, via satellite television or the Internet. It had been clear to him that his statements could attract interest around the world, but particularly so in Germany on account of the country's history, the interview taking place in Germany and the fact that the Pope at that time, Pope Benedict XVI, was German.

An appeal by Mr Williamson on points of law was dismissed as was a request to be heard and an appeal lodged against that judgment. In March 2017 the Federal Constitutional Court declined to accept a constitutional complaint by the applicant for adjudication.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 28 August 2017.

Relying on Article 10 (freedom of expression) Mr Williamson complained that his criminal conviction of incitement to hatred had breached his right to freedom of expression. In particular, he argued that German law was not applicable to his statements as the offence had not been committed in Germany, but in Sweden – where that statement was not subject to criminal liability. Moreover, he had never intended that his statement be broadcast in Germany and had done everything in his power to prevent its broadcast there.

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

André **Potocki** (France), *President*,
Angelika **Nußberger** (Germany),
Síofra **O’Leary** (Ireland),
Mārtiņš **Mits** (Latvia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Lətif **Hüseynov** (Azerbaijan),
Lado **Chanturia** (Georgia),

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

Decision of the Court

Article 10

The Court reiterated that its task under Article 10 was to satisfy itself that the national authorities based their decisions on an acceptable assessment of the relevant facts. The Regional Court had found that Mr Williamson’s denial and downplaying of the genocide perpetrated against the Jews had disparaged the dignity of the Jewish victims and had been capable of severely disturbing the public peace in Germany. The Court found no reason to disagree with that assessment and considered it noteworthy that Mr Williamson had neither distanced himself from the content of those statements nor alleged a wrongful assessment of that content by the German courts. This led the Court to the conclusion that he had sought to use his right to freedom of expression with the aim of promoting ideas contrary to the text and the spirit of the Convention.

The Regional Court had further established that it was clear to Mr Williamson that his statements could attract interest around the world, but particularly so in Germany on account of the country’s history, the interview taking place in Germany and the fact that the Pope at that time, Pope Benedict XVI, was German. He had therefore acted with intent as, despite having been aware that his statements were subject to criminal liability in Germany, he had not reached any specific agreement as to any prohibition or restriction on the use of the interview recording, and thereby had understood that it could be disseminated and viewed in Germany. The Court saw no reason to depart from the assessment of the national courts and reiterated that States which had experienced the Nazi horrors might, in the light of their historical role and experience, be regarded as having a special moral responsibility to distance themselves from the mass atrocities perpetrated by the Nazis.

The Court further observed that the applicant's sentence had been very lenient. It found accordingly that the domestic authorities, adducing relevant and sufficient reasons, had not overstepped their margin of appreciation. The interference had therefore been proportionate to the legitimate aim pursued and had been "necessary in a democratic society".

The application was thus rejected as manifestly ill-founded.

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.