

November 2012

PETA Deutschland v. Germany - 43481/09

Judgment 8.11.2012 [Section V]

Article 10

Article 10-1

Freedom of expression

Injunction against animal rights association's poster campaign featuring photos of concentration camp inmates alongside pictures of animals kept in mass stocks:
no violation

Facts – The applicant association is the German branch of the animal rights organisation PETA (People for the Ethical Treatment of Animals). In 2004 the applicant planned to launch an advertising campaign entitled "The Holocaust on your plate", which had been carried out in a similar way in the United States. It intended to publish a number of posters each bearing a photograph of concentration camp inmates along with a picture of animals kept in mass stocks, accompanied by a short text. For example, one poster showed photographs of piled up human bodies and of a pile of slaughtered pigs under the heading "final humiliation" and another photographs of rows of inmates lying on bunk beds and of rows of chickens in laying batteries under the heading "if animals are concerned, everybody becomes a Nazi". The president and the two vice-presidents of the Central Jewish Council in Germany sought an injunction ordering PETA to refrain from publishing seven specific posters on the Internet or displaying them in public. They had survived the Holocaust as children and one of them had lost her family through the Holocaust. The regional court granted the injunction after finding, that although there was no indication that PETA's primary aim was to debase Holocaust victims and that criticism of the conditions in which animals were kept was a matter of public interest that would generally enjoy a higher degree of protection, the comparison that had been made between concentration camp inmates and Holocaust victims appeared arbitrary in the light of the central role of human dignity in the German Basic Law. That decision was upheld on appeal. In 2009 the Federal Constitutional Court rejected the applicant's constitutional complaint on the grounds that the lower courts had based their decisions on the assumption that the Basic Law drew a clear distinction between human life and dignity on the one hand and the interests of animal protection on the other, and that the campaign had banalised the fate of the victims of the Holocaust.

Law – Article 10: The interference with the applicant's right to freedom of expression had had a legal basis and pursued the legitimate aim of protecting the plaintiffs' personality rights and thus "the reputation or rights of others". As regards proportionality, the intended poster campaign related to animal and environmental protection and so had undeniably been in the public interest. Accordingly, only weighty reasons could justify the interference. The domestic courts had carefully examined whether the requested injunction would violate the applicant's right to freedom of expression. They had also considered that the campaign had confronted the plaintiffs with their suffering and persecution in the interest of animal protection and that this "instrumentalisation" of their suffering

had violated their personality rights in their capacity as Jews living in Germany and as survivors of the Holocaust. The facts of the case could not be detached from the historical and social context in which the expression of opinion had taken place. A reference to the Holocaust had to be seen in the specific context of the German past. The Court accepted the respondent Government's view that they considered themselves under a special obligation towards Jews living in Germany. In these circumstances, the domestic courts had given relevant and sufficient reasons for granting the injunction. That finding was not called into question by the fact that courts in other jurisdictions might address similar issues in a different way. Furthermore, as regards the severity of the sanction, the proceedings had not concerned any criminal sanctions, but only a civil injunction preventing the applicant from publishing seven posters. Finally, the applicant had not established that it did not have other means at its disposal to draw public attention to the issue of animal protection. The injunction had therefore been a proportionate means to protect the plaintiffs' personality rights.

Conclusion: no violation (unanimously).

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