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

FIFTH SECTION

DECISION

Application no. 64496/17
Richard WILLIAMSON
against Germany

The European Court of Human Rights (Fifth Section), sitting on 8 January 2019 as a Chamber composed of:

André Potocki, *President,*
Angelika Nußberger,
Síofra O'Leary,
Mārtiņš Mits,
Gabriele Kucsko-Stadlmayer,
Lətif Hüseynov,
Lado Chanturia, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having regard to the above application lodged on 28 August 2017,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Richard Williamson, is a British national, who was born in 1940 and lives in Kent. He was represented before the Court by Mr Weiler, a lawyer practising in Böbrach.

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. The applicant is a former member of the Society of Saint Pius X, an international priestly fraternity founded in 1970 by the late Archbishop Marcel Lefebvre, mainly in opposition to the ecclesiastical reforms of the Second Vatican Council. Relations between the Society and the Holy Sea have been difficult for decades, with tensions rising high in particular when Archbishop Lefebvre, in 1988, without pontifical mandate and notwithstanding a formal canonical warning and a personal warning by

Pope John Paul II that he faced excommunication if he did so, performed the consecration of four bishops, including the applicant. As a result, the Congregation for Bishops declared that those so consecrated, including the applicant, were automatically excommunicated under the Code of Canon Law. On 21 January 2009 the Congregation for Bishops decided to lift the excommunication of the applicant and other surviving bishops of the Society of Saint Pius X. This decision attracted significant media coverage around the world. In 2012 the applicant was expelled from the Society of Saint Pius X.

A. The applicant's interview with SVT

4. On 1 November 2008, a journalist working for the Swedish television channel SVT-1 interviewed the applicant for a programme entitled "Uppdrag granskning" ("Mission: Investigate"), devoted to investigative journalism. The interview was recorded at the seminary of the Society of Saint Pius X in Zaitzkofen, Germany, where the applicant was temporarily present to consecrate a Swedish pastor as a deacon. The applicant did not reside in Germany at that time.

5. The journalist and the applicant had agreed in advance to a focus on religious matters. After about forty-five minutes of the interview, which had been devoted exclusively to religious matters, the journalist changed the topic and the following dialogue ensued:

> "Journalist: Bishop Williamson, are these your words: 'There was not one Jew killed by the gas chambers. It was all lies, lies, lies.' Are these your words?
>
> Applicant: (*pauses*) There, you are quoting from Canada, I believe, yes, of many years ago. I believe that the historical evidence, historical evidence is strongly, is hugely against six million Jews having been deliberately gassed in gas chambers as a deliberate policy of Adolf Hitler.
>
> Journalist: But you say not one Jew was killed.
>
> Applicant: In gas chambers. I think ...
>
> Journalist: So there [were] no gas chambers?
>
> Applicant: I believe there were no gas chambers, yes. I think as far as I have studied the evidence – I am not going by emotion, I am going by – as far as I have understood the evidence, I think for instance, people who are against what is very widely believed today about 'the Holocaust' I think that people, those people, conclude – the revisionists as they are called – I think the most serious conclude that between two and three hundred thousand Jews perished in Nazi concentration camps, but not one of them by gassing in a gas chamber. You may have heard of the Leuchter report? Fred Leuchter was an expert in gas chambers. He designed three gas chambers for three states, three of the fifty [States of the] United States for the execution of criminals. So he knew what's involved. And he studied what the supposed gas chambers in Germany at some point in the nineteen eighties – what remains of the supposed gas chambers, the crematoria Birkenau-Auschwitz for instance – and his conclusion, his expert conclusion was: it's impossible that these could ever have served for the

gassing of large numbers of people. Because cyanide gas is very dangerous. If you, let's suppose you gas three hundred people that you have crowded into one chamber and you gas them, they will be wearing some clothes, for instance they are wearing clothes, it's very dangerous to go in and to pull out the corpses. Because one whiff of gas that's trapped in the clothing, that stays in the clothing, will kill the person. It is extremely dangerous. In order to, once you have gassed people you got to get rid of, you got to evacuate the gas, to be able to get into the chamber to again use it. To evacuate the gas you need a high chimney. If it's a low chimney the gas goes onto the pavement and kills anybody walking by. You need a high chimney, right? I forget how high he says it must be. If you, if there was a high chimney, then the shadow at any, most times of the day, the shadow would have fallen on the ground and the allied aerial photographers that flew over the camps would have picked up the shadow of this chimney. But there were never any such shadows. There was no such chimney. Which is according to Fred Leuchter's testimony: there can't have been gas chambers. He looks at the doors and he says: the door has to be absolutely air tight. Otherwise again the gas escapes and kills the people outside. The doors of the gas chambers that they show to tourists at Auschwitz are absolutely not airtight, absolutely not!

Journalist: What you are saying now is that the Holocaust never occurred, not in the way history is written today.

Applicant: I am saying, I am going by what I judge to be the historical evidence according to people who have observed and examined that evidence. I believe that what they conclude I would follow – if they change their conclusion I would be liable to follow their conclusion – because I think they judged by the evidence. I think that two to three hundred thousand Jews perished in Nazi concentration camps. But nothing like, that none of them by gas chambers. I don't – if you knew ...

Journalist: If this is not anti-Semitism, what is anti-Semitism?

Applicant: Anti-Semitism? If anti-Semitism is bad, it's against truth. If something is true, it's not bad. I am not interested in the word anti-Semitism, I mean, the word is very dangerous.

Journalist: The Bishop calls you an anti-Semite ...

Applicant: The Bishop can call me a dinosaur, he can call me an idiot, he can call me what he likes. This is not a question of name-calling. This is a question of historical truth. Historical truth goes by evidence and not by emotion. There has certainly been a huge exploitation. Germany has paid out billions and billions of Deutschmarks and now Euros because the Germans have a guilt complex about their having gassed six million Jews. But I don't think six million Jews were gassed. Now be careful, I beg of you, this is against the law in Germany, if there was a German, something of the German state, you could have me thrown into prison before I leave Germany. I hope that's not your intention. ..."

6. On 21 January 2009 SVT-1 broadcast the interview excerpt in the "Uppdrag granskning" programme. Other parts of the interview with the applicant were not shown. The broadcast was freely accessible on the Internet via SVT Play (the video-on-demand service offered on the SVT website) for a period of thirty days. Also on 21 January 2009, the said interview excerpts were broadcast on the Swedish pay-television channel SVT World, which was available on satellite in Europe and had a few thousand subscribers in Germany at that time. By no later than 23 January

2009, the interview with the applicant was available on the video-sharing Internet site YouTube.

7. Following the recording of the interview, the journalist who had interviewed the applicant offered the recording to a journalist of the German magazine *Der Spiegel* who had previously reported on the Society of Saint Pius X. On 19 January 2009, prior to the broadcast of the interview on television, *Der Spiegel* published an article in which the applicant's statements about the existence of the gas chambers during the Nazi regime were quoted verbatim. Subsequently, a variety of major German newspapers, television and radio stations reported on the applicant's statements.

8. On 28 January 2009 the applicant applied for a preliminary injunction from the German civil courts, for an order for the removal of the recording of the interview from the SVT website, an order that SVT use the interview with the applicant for no other purposes than the broadcast of "Uppdrag granskning" on the channel SVT-1, and an order that SVT refrain from disseminating the recording of the interview on the Internet. He primarily submitted that his agreement to the broadcast of the interview had only been given in relation to the broadcast of the programme "Uppdrag granskning" on Swedish television. On 6 February 2009 the Nuremberg-Fürth Regional Court rejected that application, mainly finding that the dissemination of the interview excerpts at issue, including via the Internet, had been covered by the applicant's general consent to the interview.

B. The first set of criminal proceedings

9. On 22 January 2009 preliminary proceedings against the applicant were launched. On 22 October 2009 the Regensburg District Court issued a penal order (*Strafbefehl*) against the applicant, finding him guilty of incitement to hatred and sentencing him to 120 day-fines of 100 euros (EUR) each. Following an appeal by the applicant, the District Court held a main hearing and, by a judgment of 16 April 2010, convicted the applicant of incitement to hatred, reducing the sentence to 100 day-fines of EUR 100 each. On 11 July 2011 the Regensburg Regional Court upheld the applicant's conviction, but reduced the sentence to 100 day-fines of EUR 65 each. On 22 February 2012 the Nuremberg Court of Appeal quashed the Regional Court's judgment and discontinued the proceedings in accordance with Article 206a of the Code of Criminal Procedure (see paragraph 17 below), finding that the penal order which lay at the origin of the proceedings did not meet the necessary requirements as it had not contained a description of all relevant facts defining the offence in a procedural sense.

C. The criminal proceedings at issue

10. On 2 October 2012 the Regensburg District Court, at the public prosecutor's request, issued another penal order against the applicant, finding him guilty of incitement to hatred and sentencing him to 100 day-fines of EUR 65 each. On an appeal by the applicant, the District Court held a main hearing on 16 January 2013. By a judgment of the same date, it convicted the applicant of incitement to hatred under Article 130 § 3 of the Criminal Code (see paragraph 16 below) and sentenced him to ninety day-fines of EUR 20 each.

11. Following a further appeal by the applicant, the Regensburg Regional Court held a main hearing over two days and upheld the applicant's conviction and sentence by a judgment of 23 September 2013. The applicant primarily argued that he had expected that the interview would only be broadcast on Swedish television. The Regional Court viewed a recording of the interview excerpt and reproduced its transcript in the judgment verbatim. It 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 and that his statement that two to three hundred thousand Jews perished in Nazi concentration camps had downplayed such acts of genocide. The applicant had made those statements "publicly" as the interview excerpt could be viewed in Germany, via the Internet (SVT Play and YouTube) and via SVT World, which had subscribers in Germany (see paragraph 6 above). The applicant'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.

12. In finding that the applicant had made his statements publicly and had acted with indirect intent (*Eventualvorsatz*, see paragraph 16 below) in that respect, the Regional Court also considered that the applicant and the interviewer had not reached any specific agreement as to any prohibition or restriction on the use of the interview recording, neither prior to the interview nor once the interviewer had changed the topic and brought up a previous statement made by the applicant concerning the existence of gas chambers during the Nazi regime. All the applicant had done had been to ask the interviewer to "be careful" towards the end of the dialogue at issue, himself stating that the statement was against the law in Germany and that he could be imprisoned for it before he left the country (see paragraph 5 above). In the Regional Court's view, this statement could only be interpreted to mean that the applicant had understood that his statements could be disseminated in Germany and that he had been aware that the statement was subject to criminal liability in Germany (unlike in Sweden). At the time of making his statements, the applicant had understood and

accepted that they might be viewed by a larger group of persons, including in Germany, via satellite television or the Internet, not least because he had been an Internet user at the material time. 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. His subsequent application for a civil injunction before the German civil courts (see paragraph 8 above) could not lead to a different assessment.

13. German criminal law was applicable in the case because the offence had been committed in Germany under Articles 3 and 9 § 1 alternatives 1 and 3 of the Criminal Code (see paragraph 16 below). The statements that had been made by the applicant in the interview, which had been recorded in Germany – technically the recording had only been a preparatory act if it were to be assessed in isolation – had been sufficient for the applicant to have committed an offence and had constituted the key feature of the criminal act (*Schwerpunkt der Tathandlung*). Moreover, the effect of the offence had been experienced in Germany, bearing in mind that the applicant's criminal liability stemmed from the fact that his statement had been capable of disturbing the public peace in Germany (*abstrakt-konkretes Gefährdungsdelikt*).

14. On 10 April 2014 the Nuremberg Court of Appeal dismissed an appeal by the applicant on points of law, finding no error of law to his detriment in the Regional Court's judgment. On 24 April 2014 it dismissed a request by the applicant to be heard and an appeal lodged against that judgment.

15. On 7 March 2017 the Federal Constitutional Court declined to accept a constitutional complaint by the applicant for adjudication, without providing reasons (no. 1 BvR 1269/14).

D. Relevant domestic law

16. Article 3 of the Criminal Code provides that German criminal law applies to acts committed on German territory (*Inlandstaten*). Article 9 § 1 of the Code provides that an offence is deemed to have been committed, *inter alia*, everywhere where the acts were carried out (alternative 1) or took effect (alternative 3). Under Article 130 § 3 of the Code to deny or downplay acts of genocide committed under the National Socialist regime, either publicly or at an assembly in a manner capable of disturbing the public peace, is punishable as incitement to hatred. According to the well-established case-law of the domestic courts, a person, who seriously considers it to be possible that the effect of a criminal offence will materialise as a result of his action and who accepts this, acts with indirect

intent (see, among many others, Federal Court of Justice, no. 4 StR 84/15, judgment of 14 January 2016).

17. Article 206a of the Code of Criminal Procedure provides for the discontinuation of criminal proceedings if a procedural impediment arises after the opening of the main proceedings. If the procedural impediment is resolved at a later stage, the criminal proceedings can be continued or new criminal proceedings can be initiated.

COMPLAINT

18. The applicant complained under Article 10 of the Convention 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 the statement at issue as the offence had not been committed in Germany: criminal liability for the offence of incitement to hatred could only be triggered once his statement became "public", that is, once it had been broadcast in Sweden – where that statement was not subject to criminal liability – and when it was uploaded on the Internet. Moreover, he had never intended that his statement be broadcast in Germany and had tried everything in his power to prevent its broadcast there.

THE LAW

19. Article 10 of the Convention, in so far as relevant, provides as follows:

> "1. Everyone has the right to freedom of expression. ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society ... for the prevention of disorder or crime ..."

20. The former Commission and the Court have dealt with a number of cases under Article 10 of the Convention concerning denial of the Holocaust and other statements relating to Nazi crimes and declared them inadmissible, either as being manifestly ill-founded or as being incompatible *ratione materiae* with the provisions of the Convention in view of Article 17 of the Convention (see *Perinçek v. Switzerland* [GC], no. 27510/08, §§ 196-97 and §§ 209-12, ECHR 2015 (extracts), with further references).

21. The Court notes, that in the circumstances of the present case, the application is, in any event, inadmissible. To the extent that the applicant

can rely on Article 10 of the Convention, there is no doubt that his criminal conviction for incitement to hatred amounted to an interference with his right to freedom of expression. Such interference will infringe the Convention if it does not meet the requirements of Article 10 § 2 of the Convention.

22. The gist of the applicant's complaint is not that his statements were misunderstood by the German courts (which reproduced a verbatim transcript of the interview excerpt, see paragraph 11 above), but that those courts wrongfully applied domestic law as regards the place where the offence had been committed, the applicability of German law, and the constituent elements of the offence of incitement to hatred under Article 130 § 3 of the Criminal Code. Notably the finding that he had acted with the intention that the statement at issue be broadcast in Germany was incorrect. Thus the exercise of his right to freedom of expression which had been lawful in one member State had been restricted by another member State where it was not lawful.

23. The Court reiterates that it is in the first place for the national authorities, especially the courts, to interpret and apply domestic law and that its task is only to review under Article 10 the decisions delivered by the competent domestic courts pursuant to their power of appreciation. In so doing, it must satisfy itself that the national authorities based their decisions on an acceptable assessment of the relevant facts (see *M'Bala M'Bala v. France* (dec.), no. 25239/13, § 30, ECHR 2015 (extracts), with further references).

24. In this connection, the Court has regard, in particular, to the fact that the applicant agreed to provide the interview in Germany despite residing elsewhere at the time (see paragraph 4 above) while knowing that the statements he made were subject to criminal liability in Germany (see paragraph 5 above). He did not make a statement during the interview to insist that it not be broadcast in Germany and did not clarify with the interviewer or the television channel how the interview would be published. All he had done was to tell the interviewer to "be careful" as the statements were subject to criminal liability in Germany and that he could be criminally sanctioned prior to leaving the country (see paragraph 5 above). The applicant must have been aware that the interview could be viewed in Germany, notably via a video-on-demand service or via a subscription to the Swedish television channel from abroad. The Court thus finds that the Regional Court's assessment of the relevant facts was acceptable, insofar as the finding was based on Article 9 § 1 alternative 1 of the Criminal Code, that is, that the offence was committed in Germany, because the key feature of the offence (*Schwerpunkt der Tathandlung*), the interview, was carried out there, its additional finding that the applicant's statements had been made "publicly" also with respect to Germany, his indirect intent in that respect, the commission of the offence in Germany and the applicability of

German law (see paragraphs 12-13 and 16 above). It is satisfied that the applicant's conviction was prescribed by law, notably Article 130 § 3 of the Criminal Code, that the application of German criminal law was foreseeable on the basis principally of Articles 3 and 9 § 1 of the Criminal Code (see paragraph 16 above) and that it pursued the legitimate aim of preventing a disturbance of the public peace in Germany and thus the prevention of disorder and crime.

25. The Court thus has to determine whether the interference with the applicant's right to freedom of expression was "necessary in a democratic society". The relevant principles are well established in the Court's case-law and have been summarised in *Perinçek* (cited above, §§ 196-97).

26. The Regional Court, which viewed a recording of the interview excerpt and reproduced its transcript in the judgment verbatim, considered that the applicant explicitly denied the existence of gas chambers and the killing of Jews in those gas chambers under the Nazi regime and explicitly stated that not more than two or three hundred thousand Jews had perished in Nazi concentration camps and had thus downplayed such acts of genocide (see paragraphs 5 and 11 above). It found that the applicant'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 finds no reason to disagree with that assessment and considers it noteworthy that the applicant neither distanced himself from the content of those statements nor alleged a wrongful assessment of that content by the German courts. He merely tried subsequently, by applying for a civil injunction (see paragraph 8 above), to impede the broadcast and accessibility of the interview in Germany in order to avoid criminal liability. This leads the Court to the conclusion that the applicant sought to use his right to freedom of expression with the aim of promoting ideas contrary to the text and spirit of the Convention. This weighs heavily in the assessment of the necessity of the interference (see *Perinçek*, cited above, §§ 209-12).

27. The Regional Court further found that the applicant had acted with intent as he had, despite being aware that his statements were subject to criminal liability in Germany, not reached any specific agreement as to any prohibition or restriction on the use of the interview recording, and thereby understood that it could be disseminated and viewed in Germany (see paragraph 12 above). It found that 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. The Court sees no reason to depart from that assessment and reiterates that it has always been sensitive to the historical context of the High Contracting Party concerned when reviewing whether there exists a pressing social need for interference with rights under the Convention and

that, in the light of their historical role and experience, States which have experienced the Nazi horrors may be regarded as having a special moral responsibility to distance themselves from the mass atrocities perpetrated by the Nazis (see *Perinçek*, cited above, §§ 242-43, with further references; see also *Nix v. Germany* (dec.), no. 35285/16, 13 March 2018). Observing that the applicant's sentence of ninety day-fines of EUR 20 each was very lenient, the Court finds that the domestic authorities, adducing relevant and sufficient reasons, accordingly did not overstep their margin of appreciation. The interference was therefore proportionate to the legitimate aim pursued and was "necessary in a democratic society".

28. The foregoing considerations are sufficient to enable the Court to conclude that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It must therefore be declared inadmissible in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 31 January 2019.

Claudia Westerdiek
Registrar

André Potocki
President