

European Commission of Human Rights: Adoption of negative report in the Case of DE HAES and GIJSELS v. Belgium

IRIS 1996-3:1/3

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In its report of 29 November 1995 in the case of De Haes and Gijssels against Belgium, the Commission decided in favour of the applicants, two journalists on the weekly HUMO. Their application concerned the verdict given against them in an action for damages brought by four judges in the Antwerp Appeal Court. The Commission decided that their right to freedom of expression under Article 10 of the European Convention on Human Rights had not been respected (6 votes to 3) and that the proceedings against them had not satisfied the requirements of Article 6 (unanimously).

In a judgment given on 29 September 1988, the Brussels Court had ordered them to pay one Belgian franc in moral damages and to publish the judgment in HUMO and six daily papers at their own expense. This judgment was subsequently upheld by the Brussels Appeal Court. The Belgian courts considered that the journalists had been at fault in attacking the honour and reputation of the applicant judges through unjustified accusations and insulting insinuations in the HUMO articles complained of. On 13 September 1991, the Court of Cassation dismissed a further appeal, confirming that there had been no violation of Article 10 of the Convention. The Commission considers, however, that the interference with the applicants' freedom of expression was not necessary in a democratic society, as required by Article 10, para. 2 of the Convention. It refers to the decision given by the European Court of Human Rights in the Prager and Oberschlick case (26 April 1995, paras. 34 to 36; see IRIS 1995-6:5), in which it stressed the importance of the role played by the press in communicating information and opinions on political questions and the workings of justice: "The press is one of the means by which politicians and public opinion can verify that judges are discharging their heavy responsibilities in a manner that is in conformity with the aim which is the basis of the task entrusted to them." In its report, the Commission concludes that the statements complained of appeared in lengthy articles based on investigation of a question of public interest, namely the workings of justice. It points out that the general interest in public discussion, even when the use of offensive or unpleasant language is involved, carries more weight, if its purpose is serious, than the legitimate aim of protecting another person's reputation.

The case has been referred to the European Court of Human Rights for a final decision.

European Commission of Human Rights, case of De Haes and Gijssels against Belgium, 29 November 1995, Application No. 19983/92.

