European Court of Human Rights: Jean-Marie Le Pen v. France

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A few years ago, Le Pen, the president of the French National Front party, was fined EUR 10,000 for incitement to discrimination, hatred and violence towards a group of people because of their origin or their membership or non-membership of a specific ethnic group, nation, race or religion, on account of statements he had made about Muslims in France in an interview with the Le Monde daily newspaper. In the interview, Le Pen asserted, among other things, that “the day there are no longer 5 million but 25 million Muslims in France, they will be in charge”. He was subsequently sentenced to another fine after he commented on the initial fine, in the following terms, in a weekly magazine: “When I tell people that when we have 25 million Muslims in France we French will have to watch our step, they often reply: ‘But Mr Le Pen, that is already the case now!’ - and they are right." The French courts held that Le Pen’s freedom of expression was no justification for statements that were an incitement to discrimination, hatred or violence towards a group of people. The Court of Cassation dismissed an appeal lodged by Le Pen in which he argued that his statements were not an explicit call for hatred or discrimination and did not single out Muslims because of their religion and that the reference to Islam was aimed at a political doctrine and not a religious faith.

In a decision of 20 April 2010 the European Court declared the application of Le Pen, which relied on Article 10 ECHR (freedom of expression), manifestly ill-founded and hence inadmissible.

The Court was of the opinion that the French authorities’ interference with Le Pen’s freedom of expression, in the form of a criminal conviction, was prescribed by law (Arts. 23-24 of the French Press Freedom Act - Loi sur la Liberté de la Presse) and pursued the legitimate aim of protecting the reputation or rights of others. Again it was crucial to decide whether or not the conviction of Le Pen was to be considered necessary in a democratic society, taking into account the importance of freedom of expression in the context of political debate in a democratic society. The Court reiterated that freedom of expression applies not only to “information” or “ideas” that were favourably received, but also to those that offend, shock or disturb. Furthermore, anyone who engages in a debate on a matter of public interest can resort to a degree of exaggeration, or even provocation, provided that they respect the reputation and rights of others. When

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the person concerned is an elected representative, like Le Pen, who represents his voters, takes up their concerns and defends their interests, the Court has to exercise the strictest supervision of this kind of interference with freedom of expression. Le Pen's statements had indeed been made in the context of a general debate on the problems linked to the settlement and integration of immigrants in their host countries. Moreover, the varying importance of the problems concerned, which could conceivably generate misunderstanding and incomprehension, required that considerable latitude be left to the State in assessing the need for interference with a person's freedom of expression.

In this case, however, Le Pen's comments had certainly presented the Muslim community as a whole in a disturbing light likely to give rise to feelings of rejection and hostility. He had set the French as a group against a community whose religious convictions were explicitly mentioned and whose rapid growth was presented as an already latent threat to the dignity and security of the French people. The reasons given by the domestic courts for convicting Le Pen had thus been relevant and sufficient. In addition, the penalty imposed had not been disproportionate. The Court recognised that the fine imposed on Le Pen was significant, but underlined the fact that Le Pen under French law had risked a sentence of imprisonment. Therefore, the Court did not consider the sanction to be disproportionate. On these grounds the Court found that the interference with Le Pen's enjoyment of his right to freedom of expression had been "necessary in a democratic society". LePen's complaint was accordingly rejected.

Le Pen is confronted with a boomerang effect of the Court's case law, as in an earlier case the Grand Chamber of the European Court had found that defamatory and insulting statements about Le Pen published in a book were not protected by Article 10 of the Convention, as these statements were to be considered as a form of hate speech. The Grand Chamber in Lindon, Otchakovsky-Laurens and July v. France had regard "to the nature of the remarks made, in particular to the underlying intention to stigmatise the other side, and to the fact that their content is such as to stir up violence and hatred, thus going beyond what is tolerable in political debate, even in respect of a figure who occupies an extremist position in the political spectrum" (Lindon, Otchakovsky-Laurens and July v. France, 22 October 2007, §57). It is precisely this argument, that hate speech is beyond what is tolerable in political debate, which has now turned against Le Pen.

Beschluss des Europäischen Gerichtshofs für Menschenrechte (fünfte Sektion), Rechtssache Jean-Marie Le Pen gegen Frankreich, Nr. 18788/09 vom 20. April 2010

Decision by the European Court of Human Rights (Fifth Section), case of Jean-Marie Le Pen v. France, No. 18788/09 of 20 April 2010

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