European Court of Human Rights: Mouvement Raëlien Suisse v. Switzerland

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The applicant association is the Swiss branch of the Raëlien Movement, an international association whose members believe life on earth was created by extraterrestrials. The association sought to conduct a poster campaign, but the local authorities refused permission on the grounds of public order and morals. The domestic courts upheld this decision, arguing that although the poster itself was not objectionable, because the Raëlien website address was included, one had to have regard to the documents and content published on that website. The courts held that the poster campaign could be banned on the basis that: (a) there was a link on the website to a company proposing cloning services; (b) the association advocated “geniocracy” i.e. government by those with a higher intelligence; and (c) there had been allegations of sexual offences against some members of the association. Mouvement raëlien made an application to the European Court arguing that the ban on its poster campaign was a violation of its right to freedom of expression under Article 10 of the European Convention. In January 2011, the First Section of the Court held that there had been no violation of Article 10. In its judgment of 13 July 2012 the Grand Chamber has affirmed this finding, with a 9-8 vote.

The Court reasoned that because the main aim of the poster and website was to merely draw people to the cause of the Raëlien Movement, the speech at issue was to be categorised as somewhere between commercial speech and proselytising speech. The Court takes the view that the type of speech in question is not political because the main aim of the website in question is to draw people to the cause of the applicant association and not to address matters of political debate in Switzerland. The Court clarifies that for this reason the management of public billboards in the context of poster campaigns that are not strictly political may vary from one State to another, or even from one region to another within the same State. The examination by the local authorities of the question whether a poster satisfies certain statutory requirements - for the defence of interests as varied as, for example, the protection of morals, road traffic safety or the preservation of the landscape - thus falls within the margin of appreciation afforded to States, as the authorities have a certain discretion in granting authorisation in this area.

The Court takes the view that the national authorities were reasonably entitled to consider, having regard to all the circumstances of the case, that it was

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indispensable to ban the campaign in question in order to protect health and morals, to protect the rights of others and to prevent crime. The judgment also comments on the controversial approach of banning the poster mainly on account of the content of the association's website the poster referred to, while the association remained free to communicate via that same website, the website indeed itself not being prohibited, blocked or prosecuted for illegal content. In the Court's view, however, such an approach is justified: to limit the scope of the impugned restriction to the display of posters in public places was a way of ensuring the minimum impairment of the applicant association's rights. The Court reiterates that the authorities are required, when they decide to restrict fundamental rights, to choose the means that cause the least possible prejudice to the rights in question. In view of the fact that the applicant association is able to continue to disseminate its ideas through its website, and through other means at its disposal such as the distribution of leaflets in the street or in letter-boxes, the impugned measure cannot be said to be disproportionate. The majority of the Grand Chamber concluded that the Swiss authorities did not overstep the broad margin of appreciation afforded to them in the present case, and the reasons given to justify their decisions were "relevant and sufficient" and met a "pressing social need". Accordingly, there has been no violation of Article 10 of the Convention.

Arrêt de la Cour européenne des droits de l'homme (Grande chambre), affaire Mouvement raëlien suisse c. Suisse, requête n° 16354/06 du 13 juillet 2012

Judgment by the European Court of Human Rights (Grand Chamber), case of Mouvement raëlien suisse v. Switzerland, nr. 16354/06 of 13 July 2012

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