European Court of Human Rights: Brosa v. Germany

IRIS 2014-6:1/1

Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy

The European Court of Human Rights has delivered an interesting judgment on the right to freedom of political expression, during pre-election time. The applicant, Mr Ulrich Brosa alleged that a court injunction in Germany, prohibiting him from distributing a leaflet that he had drawn up on the occasion of mayoral elections, had violated his right to freedom of expression. The injunction at issue prohibited Brosa from distributing a leaflet in which he called not to vote for a candidate, F.G. for the office of local mayor, who allegedly provided cover for a neo-Nazi organisation, Berger-88. The injunction also prevented Brosa from making other assertions of fact or allegations that might depict F.G. as a supporter of neo-Nazi organisations. Any contravention was punishable by a fine of up to EUR 250,000 or by imprisonment of up to six months. The German courts found that to claim that someone was supporting a neo-Nazi organisation amounted to an infringement of that individual's honour and social reputation and to his personality rights, while Brosa had failed to provide sufficient evidence to support his allegation against F.G. In Strasbourg, Brosa complained that the injunction had breached his right to freedom of expression, as provided for in Article 10 of the Convention.

Examining the particular circumstances of the case, the Court refers to the following elements to be taken into account: (1) the position of the applicant, (2) the position of the plaintiff in the domestic proceedings, (3) the subject-matter of the publication and finally (4) the classification of the contested statement by the domestic courts.

As to the position of Brosa, the Court notes that he is a private individual, participating however in a public discussion on the political orientation of an association. F.G. was an elected town councillor who was running for the office of mayor at the time in question. This status of F.G. as a politician made the limits of acceptable criticism wider than as regards a private individual. The subject-matter of the publication concerned a leaflet asking citizens not to vote for F.G. as mayor, primarily on the basis of his attitude vis-à-vis an association having an extremist right-wing orientation. Brosa's leaflet, disseminated in the run-up to the mayoral elections was therefore of a political nature on a question of public interest at the material time and location, leaving little scope for restrictions on political speech or on debate of questions of public interest. As regards the qualification of the impugned statement by the domestic courts, the Court considers it to consist of two elements: firstly, the allegation that the association Berger-88 was a neo-Nazi

© European Audiovisual Observatory (Council of Europe) 2026

organisation that, moreover, was particularly dangerous; and, secondly, the allegation that F.G. had “covered” for the organisation. The Court admits that, in substance, the reference to the neo-Nazi background and the dangerous character of Berger-88 was not devoid of factual basis, while the Court also reminds us of the fact that the association was monitored by the German Intelligence Services on suspicion of extremist tendencies. The European Court holds the opinion that that the German courts in this case required a disproportionately high degree of factual proof to be established. It also considers that the statement that F.G. has covered the neo-Nazi organisation at issue was part of an ongoing debate. The Court finds that this statement had a sufficient factual basis, referring to F.G.’s public statements, emphasizing that the association had no extreme right-wing tendencies and calling Brosa’s statements “false allegations”. According to the Court, Brosa’s leaflet did not exceed the acceptable limits of criticism. Therefore the Court comes to the conclusion that the German courts failed to strike a fair balance between the relevant interests and to establish a "pressing social need" for putting the protection of the personality rights of F.G. above Brosa’s right to freedom of expression, even in the context of a civil injunction rather than criminal charges or monetary compensation claims. Under these circumstances, the Court considers that the domestic courts overstepped the margin of appreciation afforded to them and that the interference was disproportionate to the aim pursued and not “necessary in a democratic society”. There has been, accordingly, a violation of Article 10 of the Convention. The Court held that Germany was to pay Mr Brosa EUR 3,000 in respect of non-pecuniary damage and 2,683 euros in respect of costs and expenses.

Judgment by the European Court of Human Rights (Fifth Section), case of Brosa v. Germany, Appl. No. 5709/09 of 17 April 2014

https://hudoc.echr.coe.int/eng?i=002-9368

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026