European Court of Human Rights: Richard Williamson v. Germany

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

The European Court of Human Rights (ECtHR) delivered a decision in a case of Holocaust denial expressed in an interview broadcast on Swedish television, published on YouTube and reported in German media. The ECtHR found that the statements in the interview at issue were not protected by the right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR). The applicant is Mr Richard Williamson, a British national and former member of the Society of Saint Pius X, opposing the ecclesiastical reforms of the Second Vatican Council. He was excommunicated under the Code of Canon Law, but in 2009 the Congregation for Bishops decided to lift the excommunication, a decision that attracted significant media coverage. In an interview with the Swedish television channel SVT-1 - recorded in Germany -, Williamson made some statements about the Holocaust, denying the existence of gas chambers and stating that about two to three hundred thousand Jews perished in Nazi concentration camps. He also said that the Germans had a guilt complex about the gas chambers and the killing of six million Jews. The broadcast with the interview was soon also available on the video website of SVT-1 and on the video-sharing Internet site YouTube. The German weekly magazine Der Spiegel published an article in which Williamson's statements about the gas chambers during the Nazi regime were quoted verbatim. Subsequently, a variety of major German newspapers, television, and radio stations reported on Williamson's statements.

Williamson applied for a preliminary injunction from the German civil courts, for an order for the removal of the recording of the interview from the Internet, but this request was rejected by the Nuremberg-Fürth Regional Court, mainly finding that the dissemination of his statements, including via the Internet, had been covered by Williamson's general consent to the interview. In 2012 the Regensburg District Court, at the public prosecutor's request, issued a penal order against Williamson, finding him guilty of incitement to hatred under Article 130 § 3 of the Criminal Code. This conviction was upheld by the Regensburg Regional Court in 2013, confirming that Williamson's statements in the interview had been capable of disturbing the public peace in Germany and constituted a criminal act. Williamson was sentenced to 90 day-fines of EUR 20 each. After the Nuremburg Court of Appeal rejected his appeal and the Federal Constitutional Court in 2017 declined his constitutional complaint, Williamson lodged an application before the

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ECtHR, complaining under Article 10 ECHR 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. Williamson also argued that he had never intended that his statement be broadcast in Germany and that he had tried everything in his power to prevent its broadcast there.

The ECtHR observes that Williamson in essence argues that the German courts wrongfully applied domestic law and that the exercise of his right to freedom of expression, which had been lawful in one member Sstate, had been restricted by another member State where it was not lawful. The ECtHR however is of the opinion that Williamson agreed to provide the interview in Germany, while knowing that the statements he made were subject to criminal liability in Germany, and that he did not make a statement during the interview to insist that it not be broadcast in Germany. All he had done was to tell the interviewer to “be careful” as the statements were subject to criminal liability in Germany. The ECtHR accepts the findings by the German courts that the offence was committed in Germany, because the key feature of the offence, the interview, was carried out there and that his statements had been made “publicly” also with respect to Germany. The ECtHR is also satisfied that Williamson’s conviction was prescribed by law, 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.

On the question of whether the interference with Williamson’s right to freedom of expression was necessary in a democratic society, the ECtHR refers to its Grand Chamber judgment in the case of Perinçek v. Switzerland (see IRIS 2016-1/1). In this decision, it confirms the findings by the German courts that Williamson 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. Williamson thus had downplayed acts of genocide. The ECtHR concludes that Williamson sought to use his right to freedom of expression with the aim of promoting ideas contrary to the text and spirit of the Convention and this circumstance weighs heavily in the assessment of the necessity of the interference. Referring to the findings by the German courts that Williamson had acted with intent, and with the awareness that his statements were subject to criminal liability in Germany, the ECtHR sees no reason to depart from that assessment and reiterates that it has always been sensitive to the national historical context when reviewing whether there exists a pressing social need for interference with rights under the ECHR. It reiterates that, in the light of their

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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.

The ECtHR finally observes that the sentence of 90 day-fines of EUR 20 each was very lenient and that the domestic authorities have justified the interference with Williamson's right to freedom of expression with relevant and sufficient reasons, not overstepping their margin of appreciation. As the interference at issue was proportionate to the legitimate aim pursued and was "necessary in a democratic society", Williamson's complaint is declared manifestly ill-founded and therefore inadmissible in accordance with Article 35 § 4 ECHR.

Decision by the European Court of Human Rights, Fifth Section, case of Richard Williamson v. Germany, Application no. 64496/17, 8 January 2019 and notified in writing on 31 January 2019

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