European Court of Human Rights: Zemmour v. France

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The European Court of Human Rights (ECtHR) has once again confirmed the necessity in a democratic society of criminalising "hate speech" (see also IRIS 2009-8/1, IRIS 2019-1/1, IRIS 2020-3/21, IRIS 2021-4/5 and IRIS 2021-9/15).

In a case involving the former French presidential candidate Éric Zemmour, the ECtHR found that the politician's conviction and sentencing for the offence of inciting discrimination and religious hatred against the French Muslim community for statements made on a television show did not violate his right to freedom of expression as guaranteed by Article 10 of the European Convention on Human Rights (ECHR). The ECtHR found that the remarks made by Mr Zemmour were not to be considered as criticism of Islam: in view of the context of terrorist violence in which they had occurred, the offensive statements had been made with discriminatory intent such as to call on viewers to reject and exclude the Muslim community.

In September 2016, Mr Zemmour had appeared as a guest on a television chat show on the channel France 5, to promote his book *Un quinquennat pour rien* ("A wasted presidency"). During the TV show he stated, in particular, that Muslims had colonised and occupied French territory by invasion, especially in the outskirts of French cities, where veiled young women were also part of jihad and the fight to Islamise French territory. He expressed his view that if Muslims wanted to be real French citizens they had to abandon their religion. These statements resulted in proceedings being brought against Mr Zemmour under section 24, paragraph 7 of the Freedom of the Press Act of 29 July 1881 ("the 1881 Act"), which considers it an offence to incite discrimination, hatred or violence against a person or group on grounds of origin or of membership or non-membership of a particular ethnicity, nation, race or religion (see also IRIS 2010-7/1). Mr Zemmour was convicted for inciting discrimination and religious hatred, and sentenced to pay a fine of EUR 3 000. The Court of Cassation dismissed his appeal in September 2019.

Mr Zemmour lodged a complaint with the ECtHR complaining that his conviction and sentence for the offence of inciting discrimination and religious hatred had been contrary to Article 10 ECHR. The ECtHR dismissed the French government's preliminary objection under Article 17 ECHR (prohibition of abuse of rights) (see also IRIS 2016-1/1), but relied on that provision as an aid to interpreting Article 10

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ECHR for the purposes of assessing whether the interference complained of had been necessary in a democratic society.

The ECtHR observed that Mr Zemmour had made the statements in issue while appearing as a guest on a prime-time television show in his role as a journalist and polemicist. It accepted that because of his public profile and who he was, and because of the nature of the issues discussed during the interview, concerning the place of Islam in French society, particularly against a backdrop of terrorist violence, his statements – which had been statements of potential interest to the public that might attract its attention or cause it significant concern – had been made in the context of a debate on a matter of public interest. Accordingly, a determination had to be made as to whether the domestic courts had duly reasoned their assessment that the statements in issue were to be regarded as criminal hate speech and, if so, whether the penalty imposed on Zemmour could be characterised as proportionate to the legitimate aim pursued, regard being had to the various factors and the context which came into play to constitute hate speech. The ECtHR referred to the findings by the domestic courts that Mr Zemmour had portrayed Muslims as a threat to public security and the values of the Republic. By stating that Muslims necessarily supported the violence perpetrated in the name of their faith, Mr Zemmour had been fostering a generalised rejection of Muslims and had not merely been criticising Islam or the rise of religious fundamentalism in France's peri-urban neighbourhoods. Looking at the virulent language used to describe them, and at the ultimatum issued to them to choose between their religion or a life in France, the statements had indeed called for the rejection and exclusion of the Muslim community as a whole, which was thus harmful to social cohesion. The ECtHR reiterated that it was vitally important to combat racial discrimination in all its forms and manifestations. It also noted that the statements in issue had been made on live, prime-time television and had therefore been capable of reaching a wide audience. The ECtHR referred to the immediate and powerful effect of the broadcast media, an impact reinforced by the continuing function of radio and television as familiar sources of entertainment in the intimacy of the home. Mr Zemmour himself was a journalist and a pundit known for his polemical outbursts, and although he had been speaking as an author on the show, he had not been exempt from the duties and responsibilities of a journalist. He had thus been fully capable of measuring his words and assessing their consequences.

Having regard to the broad margin of appreciation afforded to the respondent State in cases of hate speech, the ECtHR concluded, unanimously, that the grounds on which the domestic courts had convicted Mr Zemmour and sentenced him to a fine, the amount of which had not been excessive, had been sufficient and relevant. Therefore there had been no violation of Article 10 ECHR.

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Arrêt de la Cour européenne des droits de l'homme, cinquième section, rendu le 20 décembre 2022 dans l'affaire Zemmour c. France, requête n° 63539/19

Judgment by the European Court of Human Rights, Fifth Section, in the case of Zemmour v. France, Application no. 63539/19, 20 December 2022

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