



NEWS REPORT

Date: 8 September 2009
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Title: The condemnation of the chairman of the “Front National” for incitation of hatred did not violate his right to free speech
Country: Belgium

Context

Issue at stake: Did Belgium violate Article 10 of the ECHR by condemning Mr. Féret, the chairman of the extreme-right wing political party “Front National” and member of the House of Representatives, for incitation of hatred and hate speech?

Ground of discrimination: Race/ethnic origin

Source: ECtHR (2nd Ch.), *Féret v. Belgium*, 16 July 2009

Field: Other (Hate speech and incitation of hatred)

Legislative provisions: Art. 10 of the ECHR (freedom of speech)

Content

Case: At the time of the case, Mr. Féret was the chairman of the extreme-right wing political party “Front National-Nationaal Front” (hereafter, the “Front National”), the editor in chief of the party’s publications and the owner of its website, as well as a member of the House of Representatives (one of the two Chambers of the federal parliament). Between July 1999 and October 2001, the distribution of leaflets and posters by his party, in connection with the election campaigns of the Front National, led to numerous complaints by individuals, associations and the Centre for Equal Opportunities and Opposition to Racism for incitation of hatred, discrimination and violence, filed under the Act of 30 July 1981 which criminalised certain acts inspired by racism or xenophobia (“the Moureaux” Act).

After several proceedings, the Brussels Court of Appeal held a trial on the merits on 18 April 2006 and sentenced Mr Féret to 250 hours of community service related to the integration of immigrants, together with a 10-month suspended prison sentence. It declared him ineligible to be an electoral contestant in parliamentary or local elections for ten years and it ordered him to pay one euro to each of the civil parties. The Court found that the offending conduct on the part of Mr Féret had not fallen within his parliamentary activity and that the leaflets contained

parts that represented a clear and deliberate incitation of discrimination, segregation or hatred, and even violence, for reasons of race, colour or national or ethnic origin. On 4 October 2006, the Court of Cassation dismissed an appeal on points of law submitted by Mr Féret.

Mr. Féret lodged an application to the European Court of Human Rights on 29 March 2007. He alleged that his conviction for the content of his political party's leaflets represented an excessive restriction on his right to freedom of expression (art. 10 ECHR).

Judgment of the ECtHR, 16 July 2009 (no. 15615/07): The interference with Mr Féret's right to freedom of expression had been provided for by law (Act of 30 July 1981 on racism and xenophobia) and had the legitimate aims of preventing disorder and protecting the rights of others (§§ 58 and 59). The ruling chiefly focused on the issue of the necessity of the interference in a democratic society (§§60 & sq.).

While freedom of expression is important for everybody, it is especially so for an elected representative of the people: he represented the electorate and defended their interests. Only stringent reasons could lead to constrain the political debate. However, the Court reiterated that it is crucial for politicians, when expressing themselves in public, to avoid comments that might foster intolerance.

The impact of racist and xenophobic discourse is magnified in an electoral context, in which arguments naturally become more forceful. To recommend solutions to immigration-related problems by advocating racial discrimination was likely to cause social tension and undermine trust in democratic institutions. In the present case there had been a compelling social need to protect the rights of the immigrant community, as the Belgian courts had done.

The Court underlined the tremendous importance of fighting against racial discrimination. The Court also considered that incitation of hatred does not necessarily require inciting to commit a peculiar act of violence: to insult, make a fool of or libel specific groups as well as to incite of discrimination is enough.

With regard to the penalty imposed to Mr Féret, the Court noted that the authorities had preferred a 10-year period of ineligibility rather than a penal option, in accordance with the Court's principle of restraint in criminal proceedings.

As to article 17 ECHR (abuse of rights), the Court considered that no violation occurred.

Internet link source and additional information: decision available (in French only) on the website of the ECtHR (<http://www.echr.coe.int>).