

EUROPEAN COURT OF HUMAN RIGHTS

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INADMISSIBILITY DECISION IN THE CASE OF GARAUDY v. FRANCE

A Chamber of the European Court of Human Rights has **declared inadmissible** the application lodged in the case of *Garaudy v. France* (no. 65831/01). (The decision is available only in French.)

The applicant

The applicant, Roger Garaudy, is a French national who was born in 1913 and lives in Chennevières-sur-Marne (Val de Marne). He is a philosopher, writer and former politician.

Summary of the facts

Mr Garaudy is the author of a book entitled *The Founding Myths of Modern Israel*, which was distributed through non-commercial outlets in 1995 and subsequently republished at the applicant's own expense in 1996 under the title *Samiszdat Roger Garaudy*. Several criminal complaints, coupled with applications to be joined to the proceedings as civil parties, were lodged against him by associations of former resistance members, deportees and human-rights organisations alleging the following offences: disputing the existence of crimes against humanity, racial defamation in public and incitement to racial hatred. As a result of the complaints, which concerned various passages from both editions of the book, five judicial investigations were started into the applicant's conduct.

Five separate sets of criminal proceedings were brought under the Freedom of the Press Act of 29 July 1881. The applicant applied unsuccessfully for them to be joined. In five judgments of 16 December 1998, the Paris Court of Appeal found Mr Garaudy guilty of disputing the existence of crimes against humanity, public defamation of a group of people – namely the Jewish community – and incitement to discrimination and racial hatred. It found his works to be revisionist and imposed suspended sentences of imprisonment, the longest being for six months, and fines. The convictions were upheld by the Court of Cassation in five judgments of 12 September 2000. The prison sentences were to be served concurrently. The fines totalled in excess of 25,900 euros (EUR) and compensation of more than EUR 33,500 was awarded to the civil parties.

While the five cases were pending before the Court of Cassation, the applicant brought proceedings challenging the authenticity of a passage that appeared in one of the Court of Appeal's judgments. Those proceedings were dismissed by the President of the Court of Cassation on the ground that the allegedly inauthentic text had no bearing on the decision on the merits of the case.

Complaints

The applicant complained under Article 10 (freedom of expression) of the European Convention on Human Rights that his right to freedom of expression had been infringed. Among other points he made, he argued that his book was a political work written with a view to combating Zionism and criticising Israeli policy and had no racist or anti-Semitic content. He argued that, since he could not be regarded as a revisionist, he should have been afforded unlimited freedom of expression. He also complained that the proceedings in the domestic courts were unfair, in breach of Article 6 (right to a fair trial), taken alone or together with Article 4 of Protocol No 7 (right not to be tried or punished twice). Lastly, he alleged violations of Articles 9 (freedom of thought, conscience and religion) and 14 (prohibition of discrimination).

Procedure

The application was lodged with the Court on 23 October 2000.

Decision of the Court¹

Article 10 of the Convention

With regard to Mr Garaudy's convictions for disputing the existence of crimes against humanity, the Court referred to Article 17 (prohibition of abuse of rights), which was intended to prevent people from inferring from the Convention any right to engage in activities or perform acts aimed at the destruction of any of the rights and freedoms set forth in the Convention. Thus, no one could rely on the Convention as a basis for engaging in any act that was contrary to its provisions. Having analysed the book concerned, the Court found that, as the domestic courts had shown, the applicant had adopted revisionist theories and systematically disputed the existence of the crimes against humanity which the Nazis had committed against the Jewish community. There could be no doubt that disputing the existence of clearly established historical events, such as the Holocaust, did not constitute historical research akin to a quest for the truth. The real purpose of such a work was to rehabilitate the National-Socialist regime and, as a consequence, to accuse the victims of the Holocaust of falsifying history. Disputing the existence of crimes against humanity was, therefore, one of the most severe forms of racial defamation and of incitement to hatred of Jews. The denial or rewriting of this type of historical fact undermined the values on which the fight against racism and anti-Semitism was based and constituted a serious threat to public order. It was incompatible with democracy and human rights and its proponents indisputably had designs that fell into the category of prohibited aims under Article 17 of the Convention. The Court found that, since the applicant's book, taken as a whole, displayed a marked tendency to revisionism, it ran counter to the fundamental values of the Convention, namely justice and peace. The applicant had sought to deflect Article 10 of the Convention from its intended purpose by using his right to freedom of expression to fulfil ends that were contrary to the Convention. Consequently, the Court held that he could not rely on Article 10 and declared his complaint incompatible with the Convention.

1. This summary by the Registry does not bind the Court.

As regards Mr Garaudy's convictions for racial defamation and incitement to racial hatred, the Court found that they could constitute an interference with his right to freedom of expression. The interference was prescribed by the Act of 29 July 1881 and had at least two legitimate aims: "the prevention of disorder or crime" and "the protection of the reputation or rights of others". However, for the same reasons as those set out above and in view of the overall revisionist tone of the work, the Court had serious doubts as to whether the passages on which his convictions were based could qualify for protection under Article 10. While criticism of State policy, whether of Israel or any other State, indisputably came within that Article, the Court noted that the applicant had not confined himself to such criticism: his writings had a clear racist objective. However, the Court did not consider it necessary to decide that issue, as it found that the reasons given by the domestic courts for convicting the applicant were relevant and sufficient and the interference with his right to respect for his freedom of expression was "necessary in a democratic society", in accordance with Article 10 § 2 of the Convention. Accordingly, the Court declared this complaint ill-founded.

Article 6 of the Convention

As to the complaint of a violation of Article 6, taken together with Article 4 of Protocol No. 7, the Court noted that the various sets of criminal proceedings had proceeded concurrently and concerned different offences. Accordingly, it found that Article 4 of Protocol No. 7 was inapplicable. As to the allegation that the refusal to order the joinder of the proceedings amounted to a breach of Article 6 taken alone, it found that the complexity of the case and the nature of the offences could reasonably be regarded as requiring them to be dealt with at the same time. Joinder was refused for reasons pertaining to the proper administration of justice and the domestic courts' decision was compatible with the fair balance that had to be struck when weighing up the various aspects of that requirement. Furthermore, there was nothing to suggest that the applicant had not had a fair trial. Consequently, the Court found that that part of the complaint was ill-founded.

With regard to the allegation that the domestic courts had shown bias, notably by dismissing the proceedings challenging the authenticity of the Court of Appeal's judgment, the Court observed that Article 6 § 1 of the Convention was inapplicable to such proceedings because they were ancillary to the main criminal proceedings complained of by the applicant. With regard to the applicant's allegation that the courts had been generally biased, there was no evidence to cast doubt on the subjective impartiality of the judges who had tried the cases. Moreover, the Court found that the applicant's concerns as to their objective impartiality could not be regarded as legitimately founded. Consequently, the Court declared this complaint ill-founded.

With regard to Mr Garaudy's allegation that he had been the victim of a smear campaign and trial by the press, the Court noted that his book had been controversial from the outset and that the fierce debate provoked by his trial had been predictable. In its view, the applicant had failed to show that he had been the subject of a virulent media campaign that had or might have influenced the judge's opinions or the verdict. Consequently, the Court found this complaint to be ill-founded.

The Court dismissed the applicant's other complaints of a violation of Article 6 § 3 of the Convention. It considered that the applicant had been duly informed of the nature and cause of the accusation against him. It further considered that the rights of the defence had not been infringed by the decision of the domestic courts to exclude – on the ground that it was of little relevance – additional oral evidence which Mr Garaudy had applied for leave to call.

The Court declared the complaints under Articles 9 and 14 inadmissible for failure to exhaust domestic remedies.

The decision is available on the Court's Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.