



## Unjustified injunction against distribution of leaflet in local election campaign warning of allegedly extreme right-wing candidate

In today's Chamber judgment in the case of [Brosa v. Germany](#) (application no. 5709/09), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 10 (freedom of expression) of the European Convention on Human Rights**

The case concerned a court injunction prohibiting Mr Brosa from distributing a leaflet in which he called not to vote for a candidate for local mayor who allegedly provided cover for a neo-Nazi organisation.

The Court held in particular that the German courts had failed to establish that it was necessary to put the protection of the candidate's personality rights above Mr Brosa's freedom of expression.

### Principal facts

The applicant, Ulrich Brosa, is a German national who was born in 1950 and lives in Amöneburg (Germany).

In the run-up to the Amöneburg elections for mayor in 2005, Mr Brosa drew up and distributed a leaflet in which he stated that several neo-Nazi organisations were active in the town and in which he called not to vote for one particular candidate for mayor, town councillor F.G., as he was providing a cover for one association which was particularly dangerous. Mr Brosa referred to a letter to the editor of a local newspaper which F.G. had written in response to an article Mr Brosa had published in that newspaper. In the letter, F.G. contended that the association, contrary to what Mr Brosa had stated in the article, had no extreme right-wing tendencies.

At F.G.'s request, the district court issued an injunction, upheld in a judgment of August 2005, prohibiting Mr Brosa from distributing the leaflet and making other assertions of fact which might depict F.G. as a supporter of neo-Nazi organisations. The court held in particular that the statement in the leaflet infringed F.G.'s personality rights and that Mr Brosa had failed to provide sufficient evidence to support his allegation that F.G. had covered for a neo-Nazi association. Consequently, Mr Brosa could not rely on the right to freedom of expression under the German Basic Law. Mr Brosa's appeal was dismissed and, on 1 July 2008, the Federal Constitutional Court declined to consider his constitutional complaint (file no. 1 BvR 597/07).

### Complaints, procedure and composition of the Court

Mr Brosa complained that the injunction prohibiting him from distributing the leaflet breached his rights, in particular, under Article 10 (freedom of expression).

The application was lodged with the European Court of Human Rights on 12 January 2009.

<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

Judgment was given by a Chamber of seven judges, composed as follows:

Mark Villiger (Liechtenstein), *President*,  
Angelika Nußberger (Germany),  
Boštjan M. Zupančič (Slovenia),  
Ann Power-Forde (Ireland),  
Ganna Yudkivska (Ukraine),  
Helena Jäderblom (Sweden),  
Aleš Pejchal (the Czech Republic),

and also Claudia Westerdiek, *Section Registrar*.

## Decision of the Court

### Article 10

It was undisputed between the parties that the injunction against distributing the leaflet had constituted an interference with Mr Brosa's right to freedom of expression. It was also uncontested that the interference was prescribed by law and that it had pursued a legitimate aim, namely the protection of the reputation or rights of others within the meaning of Article 10 § 2.

Concerning the question of whether the interference had been "necessary in a democratic society" within the meaning of Article 10, the Court observed that Mr Brosa, by distributing the leaflet, had participated in a public discussion on the political orientation of an association. Noting that the plaintiff in the proceedings before the German courts, F.G., was an elected town councillor and was running for the office of mayor at the time, the Court underlined that, under its case-law, the limits of acceptable criticism were wider as regards a politician than as regards a private individual. Moreover, the leaflet, distributed in the run-up to the mayoral elections, had set out Mr Brosa's view of a candidate's suitability for the office and was therefore of a political nature and concerned a question of public interest at the time.

As regards Mr Brosa's statement that the association in question was a particularly dangerous neo-Nazi organisation, the Court was unable to accept the German courts' view that it had been a mere allegation of fact. The Court noted in particular that the regional court which issued the injunction had emphasised that the domestic intelligence service was continuing to monitor the association on suspicion of extremist tendencies. There had accordingly been an ongoing debate on the association's political orientation. The Court also underlined that the term "neo-Nazi" was capable of evoking in those who read it different notions as to its content and significance. It thus carried a clear element of value judgment which was not fully susceptible to proof. However, while the German courts had found, in substance, that the opinion expressed by Mr Brosa was not devoid of a factual basis, they had required "compelling proof" for his statement and thus applied a degree of precision that came close to the one usually required for establishing the well-foundedness of a criminal charge. In the Court's opinion that degree of precision could hardly be compared to that to be observed when someone's opinion on a matter of public concern was concerned. The German courts had therefore required a disproportionately high degree of factual proof.

Concerning the second allegation – that F.G. had "covered" for the association – the Court observed that the term referred to the letter to the editor F.G. had written in response to Mr Brosa's article. The statement thus formed part of an ongoing debate, a context which was discernible to the public. However, the German courts had interpreted the term "covered" in a restrictive manner, as contending that F.G. had knowledge of the association's neo-Nazism and endorsed it. They had thus seen the statement as an allegation of fact for which no sufficient factual basis existed. The Court could not endorse this view, as it found that a sufficient factual basis for the statement lay in F.G.'s contribution to the debate by way of his letter to the editor. Considering the fact that F.G. was a

politician and given the context of the upcoming local elections, the Court found that Mr Brosa's statement had not exceeded the acceptable limits of criticism.

The Court concluded that by considering the statement in question to be mere allegations of fact requiring a disproportionately high degree of proof, the German courts had failed to strike a fair balance between the relevant interests and to establish that it was necessary to put the protection of F.G.'s personality rights above Mr Brosa's right to freedom of expression. There had accordingly been a violation of Article 10.

#### **Just satisfaction (Article 41)**

The court held that Germany was to pay Mr Brosa 3,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,683.02 in respect of costs and expenses.

*The judgment is available only in English.*

---

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on [www.echr.coe.int](http://www.echr.coe.int). To receive the Court's press releases, please subscribe here: [www.echr.coe.int/RSS/en](http://www.echr.coe.int/RSS/en) or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

#### **Press contacts**

[echrpess@echr.coe.int](mailto:echrpess@echr.coe.int) | tel: +33 3 90 21 42 08

**Nina Salomon (tel: + 33 3 90 21 49 79)**

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Jean Conte (tel: + 33 3 90 21 58 77)

**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.