

Dieudonné before the Strasbourg Court: Negationism isn't freedom of expression

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Satire is protected by the right to freedom of expression. Holocaust denial is not. This is the bottom line of yesterday's [decision](#) by the European Court of Human Rights in the case of the French comedian Dieudonné M'Bala M'Bala, notorious for his frequent run-ins with French courts for antisemitic speech, defamation, or advocacy of terrorism, and also known for his political involvement with right-wing extremists.

Dieudonné, as the comedian is known in France, had been convicted by the highest French criminal court to a 10,000 Euro fine after having honored a well-known Holocaust denier during one of his shows, having an actor dressed in a mock concentration camp prisoner's garb with a stitched-on yellow star hand the man a prize.

This conviction is, according to the ECHR, compatible with the right to freedom of expression which does not apply with regards to historical negationism. Shedding doubt over crimes against humanity committed during the Second World War, or downright denying them, can lawfully lead to prosecution and conviction. With this ruling, the European Court sets to protect the interests of persons of Jewish origin or faith from the «destruction of Convention rights and freedoms».

How does it relate to the right to humor? The Court reminds us that satire is, as such, fully protected under the right to freedom of expression under [article 10 of the Convention](#). Nevertheless, this freedom isn't limitless, as various judgments have illustrated over the years. The use of freedom in any liberal society is limited by the rights and freedoms of others.

Abuse of rights

To support its argument, the Strasbourg Court holds that the negationist and anti-Semite ideology «run(s) counter the fundamental values of the Convention, as stated in the Preamble, that is to say, justice and peace». [Article 17](#), which prohibits the abuse of rights, protects the integrity of Convention rights and freedoms: freedom of expression, and its corollary, the right to humor, find no application in the case at hand.

Thus, not only do the European judges get in line with France, where the [Loi Gayssot](#) has penalized negationist and revisionist views since 1990, but also with the [European Union's 2008 Framework Decision](#) on combating certain forms and expressions of racism and xenophobia by means of criminal law.

This apparent unity cannot conceal the fact that this topic remains highly controversial. Indeed, advocates of an absolute freedom of expression continue to denounce it as contravening the demands of education, and contest the State's ability to pick and choose between different sorts of use of that freedom, to decide which to ban and which to allow. According to Thomas Hochmann of the Paris-Sorbonne University, sanctioning negationism is not so much about the expressed opinion itself [as about its possible evil consequences](#) for the victims of crimes against humanity, whose memory mustn't be impaired upon and who must be protected from the fear of a reoccurrence of these crimes. Should a specific use of freedom of expression have no malicious repercussion on the rights of others, states couldn't prohibit it if they so wished. Whether European countries should implement such laws is not for the Court to say. All that it does is deny the applicant the right to use article 10 «for ends which (are) incompatible with the letter and spirit of the Convention».

A consideration of the «purpose» of the event

What should specifically retain our attention is the application of article 17 to a somewhat hidden sort of negationism. Taking in mind that Dieudonné himself didn't explicitly and directly advocate historical revisionism during his show, judges had to call upon other means of qualification to confirm the conviction. Hence, the

reference to the «content as well as (...) the general tone, and (...) the purpose» of the event. In the judgment, the Court goes into detail about the comedian's more than questionable *mise en scène* and many references to the Shoah, before concluding that the purpose was obviously to promote negationism and could not be interpreted as a rejection of his guest's theses. This extension from explicit to contextual negationism results from the amount of danger they both lead to. Whether Dieudonné's opinion is clearly set for the denial of crimes against humanity or not seems of little importance; what matters is the impact the manifestation had on the audience: in this regard, the show could according to the court be compared to one of Roger Garaudy's publications (see [ECHR Garaudy v France 23.06.2003](#)).

If the extension of article 17 doesn't seem in this instance problematic, we can nonetheless regret the uncertainty of the phrasing for future cases, especially when matters of criminal law are concerned. Must all the elements cited, that is the content, the general tone as well as the purpose of the event, confer a negationist character to the representation, or is one of these sufficient? Further jurisprudence could perhaps enlighten us on the issue.

Comedy show or political rally?

The foggiest part of the decision is certainly the idea developed by the Strasbourg judges that, by inviting on stage Robert Faurisson, a french academic well-known for his negationist views, Dieudonné changed the very nature of his manifestation. The Court insists that, from this moment on, the show «lost its character of entertainment to turn into a political rally». How so?

It is hard to see when this configuration, and all that it entails for the application of article 17, is applicable. Apart from that, this ECHR ruling is mostly uncontroversial, if a little confusing. Whether the future decisions concerning Dieudonné's shows will be as easy to settle is far from certain, though. The Court will have to tackle a thornier issue soon, which is the [pending case on a decision of the Conseil d'Etat](#) to ban Dieudonné's show. Can we prevent a comedian from performing on stage on the mere ground that he might reiterate the antisemitic speech he was convicted for ? That question remains yet to be answered by the Strasbourg Court.

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