

Balsytė-Lideikienė v. Lithuania - 72596/01

Judgment 4.11.2008 [Section III]

Article 10

Article 10-1

Freedom of expression

Confiscation of a publication promoting ethnic hatred: *no violation*

Article 6

Article 6-3-d

Examination of witnesses

Inability to question experts on whose expert opinion the court based its judgment: *violation*

Facts: The applicant owned a publishing company, which issued calendars describing various historic dates from the perspective of the applicant and other authors. In March 2001 the domestic courts concluded that the "Lithuanian calendar 2000" promoted ethnic hatred. Their conclusions were based on several written expert opinions, which stated that the calendar contained xenophobic and offensive statements with regard to the Jewish, Polish and Russian population, and promoted territorial claims and national superiority vis-à-vis other ethnic groups. The applicant was issued with an administrative warning and the unsold copies of the publication were confiscated. The experts failed to appear in court and the court gave its decision on the basis of their written findings.

Law: Article 6 § 3 (d) – The general character of the legal provision infringed by the applicant together with the deterrent and punitive purpose of the penalty imposed sufficed to show that the offence in question was criminal in nature. The domestic courts had appointed experts to produce political science, bibliographical, psychological and historical reports in order to establish whether the impugned publication promoted ethnic hatred. When finding the applicant guilty, the courts had extensively quoted the expert opinions, which had a key place in the proceedings against her. However, she had not been given the opportunity to question the experts in order to subject their credibility to scrutiny or cast doubt on their conclusions. The refusal to entertain her request to have the experts examined in open court had therefore failed to meet the requirements of Article 6 of the Convention.

Conclusion: violation (six votes to one).

Article 10 – The administrative penalty and the confiscation of the publication, which were both aimed at protecting the reputation and rights of ethnic groups living in Lithuania, furthermore interfered with the applicant's right to freedom of

expression. The Court took into account the Government's explanation that after the re-establishment of Lithuanian independence in 1990 the questions of territorial integrity and national minorities had been sensitive. The publication at issue had received negative reactions from some diplomatic representations and under international law Lithuania had an obligation to prohibit any advocacy of national hatred and to take measures to protect persons who might be subject to such threats as a result of their ethnic identity. The applicant had expressed aggressive nationalism and ethnocentrism and made statements inciting hatred against the Poles and the Jews which were capable of giving the Lithuanian authorities cause for serious concern. Even though the confiscation measure imposed on the applicant could be deemed relatively serious, she had not been given a fine, but only a warning, which was the mildest administrative punishment available. Having regard to the margin of appreciation left to the Contracting States in such circumstances, the Court concluded that the interference with the applicant's freedom of expression could reasonably have been considered necessary in a democratic society.

Conclusion: no violation (unanimously).

Article 41 – EUR 2,000 in respect of non-pecuniary damage.

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