Constitutional Court

Judgment number: 10/2001. Political party / Extremism, right-wing / Racism / Xenophobia / Immunity, parliament.

Summary:
Belgium's law of 4 July 1989 introduced rules on the financing of political parties. The law of 12 February 1999 inserted into that first law an Article 15ter, laying down that, on a complaint from a given number of members of parliament, a bilingual chamber of the highest administrative court could withdraw the funding of a political party which was found to display manifest hostility towards fundamental rights or freedoms guaranteed by the European Convention on Human Rights (ECHR) or its protocols.

Leaders of the right-wing extremist party Vlaams Blok, together with the association which received the allocation on the party's behalf, had applied to have the law of 12 February 1999 annulled on the ground of contravention of the principles of equality and non-discrimination (Articles 10 and 11 of the Constitution) and freedom of expression (Article 19 of the Constitution).

The Court held that it was for the legislature to introduce whatever measures it considered necessary or desirable for guaranteeing fundamental rights and freedoms, as Belgium had undertaken to do in particular in ratifying the European Convention on Human Rights. In appropriate cases the legislature could lay down penalties for threatening the basic principles of democratic society. The Court did not have discretionary or decision-making powers comparable to those of democratically elected legislative assemblies. It would be exceeding its jurisdiction if it substituted its own assessment of the matter for the policy decision which the legislature had made. It was, however, required to consider whether the system introduced was in any way discriminatory.

In the Court's view this was not the case: only a political party which "gave a number of manifest and concordant indications of hostility" towards guaranteed rights or freedoms was liable to lose, for a time, a proportion of its grant from the public authorities.

The Court nonetheless considered it important that the challenged provisions be interpreted strictly and not allow a party to be deprived of funding that had merely called for some rule in the European Convention on Human Rights or its protocols to be reinterpreted or revised or which had criticised the underlying philosophy or ideology of those international instruments. In this context "hostility" must be understood to mean incitement to contravene a legal provision in force (in particular, incitement to commit violence or oppose the aforementioned rules); it was also for the relevant upper courts to check that what the hostility was being directed at was indeed a principle crucial to the democratic nature of the political system. Condemnation of racism or xenophobia was undoubtedly one such principle since if these tendencies were tolerated there was a danger (inter alia) of their leading to discrimination against certain sections of the community in the matter of rights, including political rights, on the ground of their origins.

A further point was that the challenged provisions did not interfere with the rights to stand as candidate, to be elected or to sit in a legislative assembly and could not be interpreted as interfering with the parliamentary immunity afforded by Article 58 of the Constitution. Article 15ter could therefore not be applied to an opinion expressed or a vote cast by a member of parliament. Subject to that, the measure was not disproportionate.

The Court concluded that there had not been any contravention of the principles of equality and non-discrimination (Articles 10 and 11 of the Constitution) as such, or even when taken together with the constitutional provision guaranteeing freedom of expression (Article 19 of the Constitution). With regard to freedom of expression the Court took into account Articles 10 and 17 ECHR and Article 19 of the International Covenant on Civil and Political Rights, together with the case law of the European Court of Human Rights (see, in particular, the judgments of 7 December 1976, Handyside v. United Kingdom, para. 49, Special Bulletin ECHR [ECH-1976-S-003]; 23 September 1998, Lehideux and Isorni v. France, para. 55; and 28 September 1999, Öztürk v. Turkey, para. 64).

Further, a political party could lose its funding whether by its own actions or those of its component groups, its lists, its candidates or persons representing it in elective public office. The Court had no objection to the legislature's concerning itself with a party's members or component groups: political parties themselves generally did not have legal personality and it could be either the political party itself or one of its component elements that was doing the incitement, although in the latter case there must be no doubt as to the connection between such elements and the political party. The measure would, however, be manifestly disproportionate if it caused the party to lose some of its funding on account of such elements' expressing hostility within the meaning of Article 15ter.1 when the party itself had clearly and publicly disavowed the elements in question.

The Court rejected the appeal with the proviso that the provisions under challenge must be interpreted strictly, could not affect parliamentary immunity and could not cause a party to lose funding which had clearly and publicly disavowed the group or member manifesting hostility within the meaning of Article 15ter.

Source: Constitutional Court of Belgium, http://www.const-court.be/cgi/arrets_popup.php?lang=en&ArrestID=1129