

GLS Human Rights Webinar

CASE REFERENCE

Animal Defenders International v United Kingdom (48876/08)

European Court of Human Rights (Grand Chamber)

22 April 2013

Westlaw Case Analysis 7 pages

Status:  Positive or Neutral Judicial Treatment

Animal Defenders International v United Kingdom (48876/08)

European Court of Human Rights (Grand Chamber)

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Case Analysis

Where Reported

[\[2013\] E.M.L.R. 28](#); [\(2013\) 57 E.H.R.R. 21](#); 34 B.H.R.C. 137; (2013) 163(7564) N.L.J. 20; Times, April 25, 2013

Case Digest

Subject: Human rights **Other related subjects:** Media and entertainment

Keywords: Advertisement control; Advertisements; Freedom of expression; Non-governmental organisations; Political activities; Proportionality; Television

Summary: The prohibition on political advertising in the [Communications Act 2003 s.321\(2\)](#) was within the United Kingdom's margin of appreciation for interfering with a campaign group's right to freedom of expression. There had therefore been no breach of the European Convention on Human Rights 1950 art.10.

Abstract: The applicant non-governmental organisation (X) complained that a ban on paid political advertising on broadcast media imposed by the respondent state, the United Kingdom, in the [Communications Act 2003 s.321\(2\)](#) breached its rights under the European Convention on Human Rights 1950 art.10. X campaigned against the use of animals in commerce, science and leisure. It had wished to broadcast a television advertisement, but the UK's relevant authority refused to clear it for broadcast as X's objectives were "wholly or mainly of a political nature" within s.321(2). The advertisement could be viewed on the internet. The domestic courts ([\[2008\] UKHL 15](#), [\[2008\] 1 A.C. 1312](#)) rejected X's argument that the prohibition breached its art.10 rights. It was agreed that the prohibition was an interference with art.10 rights but that it pursued the legitimate aim of preserving the impartiality of broadcasting and thereby protecting the democratic process. The issue was the measure's proportionality. X argued that the prohibition was outside the narrow margin of appreciation afforded to the UK; the prohibition was illogical since it was limited to broadcast media while there was no prohibition on newer media; the provision of free party political broadcasts was irrelevant to the question of proportionality; and the prohibition could have been narrowed by allowing advertising by social advocacy groups outside electoral periods.

Complaint dismissed. (Judges Ziemele, Sajo, Kalaydjyeva, Vucinic, de Gaetano, Tulkens, Spielmann and Laffranque dissenting) The margin of appreciation was defined by the type of expression at issue; there was little scope under art.10(2) for restrictions on debates on questions of public interest, including the protection of animals. The margin was narrowed by the strong interest of a democratic society in the press exercising its role as public watchdog. The Court scrupulously examined the proportionality of restrictions of expression by the press in television programmes on subjects of general interest. When an NGO drew attention to matters of public interest, it exercised a public watchdog role similar to that of the press. The margin of appreciation was

therefore narrow. The prohibition had been the culmination of an exceptional examination by parliamentary bodies, having been reported on and commented on by specialist bodies, and having been enacted with cross-party support. All bodies had found the prohibition to have been a necessary interference with art.10 rights. That explained the degree of deference shown by the domestic courts to Parliament's decision to adopt the prohibition. The prohibition's proportionality had nonetheless been debated in some detail in the courts; they had carefully applied the relevant Convention case law to the prohibition. The Court attached considerable weight to the reviews by parliamentary and judicial bodies and to their view that the general measure had been necessary. The prohibition had specifically been circumscribed to address the precise risk of distortion the state sought to avoid with the minimum impairment of the right of expression. A range of alternative media were available to X. A distinction based on the particular influence of the broadcast media was coherent; the choices inherent in the use of the internet and social media meant that the information therefrom did not have the same impact as broadcast information. Broadcast advertisements had an advantage for which advertisers would pay large sums of money, far beyond the reach of most NGOs who wished to participate in public debate. Relaxing the prohibition by providing free party political broadcasts was a relevant factor in the review of the overall balance achieved by the general measure. The UK authorities had been entitled to be concerned that narrowing the scope of the prohibition by allowing advertising outside electoral periods risked abuse and arbitrariness. There was no European consensus on how to regulate paid political broadcasting; that could favour allowing a wider margin of appreciation than normally afforded to restrictions on matters of public interest. The impact of the prohibition did not outweigh the convincing justifications for the measure. There had therefore been no violation of art.10 (see paras 102-104, 114-125 of judgment).

Judge: Judge Spielmann (President)

Appellate History & Status

Divisional Court

R. (on the application of Animal Defenders International) v Secretary of State for Culture, Media and Sport

[\[2006\] EWHC 3069 \(Admin\)](#); [\[2007\] E.M.L.R. 6](#); [\[2007\] H.R.L.R. 9](#); [\[2007\] U.K.H.R.R. 310](#); [\[2007\] A.C.D. 46](#); [Official Transcript](#)

Affirmed

House of Lords

R. (on the application of Animal Defenders International) v Secretary of State for Culture, Media and Sport

[\[2008\] UKHL 15](#); [\[2008\] 1 A.C. 1312](#); [\[2008\] 2 W.L.R. 781](#); [\[2008\] 3 All E.R. 193](#); [\[2008\] E.M.L.R. 8](#); [\[2008\] H.R.L.R. 25](#); [\[2008\] U.K.H.R.R. 477](#); [24 B.H.R.C. 217](#); [\(2008\) 152\(12\) S.J.L.B. 30](#); [Times, March 17, 2008](#); [Official Transcript](#)

Complaint dismissed

European Court of Human Rights (Grand Chamber)

Animal Defenders International v United Kingdom (48876/08)

[\[2013\] E.M.L.R. 28](#); [\(2013\) 57 E.H.R.R. 21](#); [34 B.H.R.C. 137](#);

[\(2013\) 163\(7564\) N.L.J. 20; Times, April 25, 2013](#)

All Cases Cited

Mouvement raelien suisse v Switzerland (16354/06)

[32 B.H.R.C. 646](#); ECHR (Grand Chamber); 2012-07-13

Scoppola v Italy (126/05)

[\[2013\] 1 Costs L.O. 62](#); [\(2013\) 56 E.H.R.R. 19](#); [33 B.H.R.C. 126](#); [Times, June 12, 2012](#); ECHR (Grand Chamber); 2012-05-22

Bayatyan v Armenia (23459/03)

[\(2012\) 54 E.H.R.R. 15](#); ECHR; 2011-07-07

Carson v United Kingdom (42184/05)

[\(2010\) 51 E.H.R.R. 13](#); [29 B.H.R.C. 22](#); ECHR (Grand Chamber); 2010-03-16

Verein Gegen Tierfabriken Schweiz (VGT) v Switzerland (32772/02)

[\(2011\) 52 E.H.R.R. 8](#); ECHR; 2009-06-30

TV Vest AS v Norway (21132/05)

[\(2009\) 48 E.H.R.R. 51](#); ECHR; 2008-12-11

Stoll v Switzerland (69698/01)

[\(2008\) 47 E.H.R.R. 59](#); ECHR (Grand Chamber); 2007-12-10

Dickson v United Kingdom (44362/04)

[\[2008\] 1 F.L.R. 1315](#); [\[2007\] 3 F.C.R. 877](#); [\(2008\) 46 E.H.R.R. 41](#); [24 B.H.R.C. 19](#); [\[2008\] Prison L.R. 334](#); [\[2008\] Fam. Law 211](#); [\(2007\) 157 N.L.J. 1766](#); [Times, December 21, 2007](#); ECHR (Grand Chamber); 2007-12-04

Runkee v United Kingdom (42949/98)

[\[2007\] 2 F.C.R. 178](#); ECHR; 2007-05-10

Evans v United Kingdom (6339/05)

[\[2007\] 1 F.L.R. 1990](#); [\[2007\] 2 F.C.R. 5](#); [\(2008\) 46 E.H.R.R. 34](#); [22 B.H.R.C. 190](#); [\(2007\) 95 B.M.L.R. 107](#); [\[2007\] Fam. Law 588](#); [\(2007\) 157 N.L.J. 599](#); [Times, May 2, 2007](#); ECHR (Grand Chamber); 2007-04-10

Doyle v United Kingdom (Admissibility) (30158/06)

[\(2007\) 45 E.H.R.R. SE3](#); ECHR; 2007-02-06

R. (on the application of Animal Defenders International) v Secretary of State for Culture, Media and Sport

[\[2006\] EWHC 3069 \(Admin\)](#); [\[2007\] E.M.L.R. 6](#); [\[2007\] H.R.L.R. 9](#); [\[2007\] U.K.H.R.R. 310](#); [\[2007\] A.C.D. 46](#); [Official Transcript](#); DC; 2006-12-04

Dickson v United Kingdom (44362/04)

[\[2006\] 2 F.L.R. 449](#); [\[2006\] 2 F.C.R. 1](#); [\(2007\) 44 E.H.R.R. 21](#); [21 B.H.R.C. 236](#); [\[2008\] Prison L.R. 323](#); [\[2006\] Fam. Law 532](#); [Times, May 16, 2006](#); ECHR; 2006-04-18

Stec v United Kingdom (65731/01)

[\(2006\) 43 E.H.R.R. 47; 20 B.H.R.C. 348; Times, May 26, 2006;](#)
ECHR (Grand Chamber); 2006-04-12

Zdanoka v Latvia (58278/00)

[\(2007\) 45 E.H.R.R. 17;](#) ECHR (Grand Chamber); 2006-03-16

Hirst v United Kingdom (74025/01)

[\(2006\) 42 E.H.R.R. 41; 19 B.H.R.C. 546; \[2006\] 1 Prison L.R. 220;](#)
[\(2005\) 155 N.L.J. 1551; Times, October 10, 2005;](#) ECHR (Grand Chamber); 2005-10-06

Editions Plon v France (58148/00)

[\(2006\) 42 E.H.R.R. 36;](#) ECHR; 2004-05-18

Hirst v United Kingdom (74025/01)

[\(2004\) 38 E.H.R.R. 40; 16 B.H.R.C. 409; \(2004\) 154 N.L.J. 553;](#)
[Times, April 8, 2004;](#) ECHR; 2004-03-30

Murphy v Ireland (44179/98)

[\(2004\) 38 E.H.R.R. 13;](#) ECHR; 2003-07-10

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[\(2003\) 37 E.H.R.R. 28; 15 B.H.R.C. 259; Times, July 10, 2003;](#)
ECHR (Grand Chamber); 2003-07-08

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[\[2003\] UKHL 23; \[2004\] 1 A.C. 185; \[2003\] 2 W.L.R. 1403; \[2003\] 2](#)
[All E.R. 977; \[2003\] E.M.L.R. 23; \[2003\] H.R.L.R. 26; \[2003\]](#)
[U.K.H.R.R. 758; \[2003\] A.C.D. 65; \(2003\) 100\(26\) L.S.G. 35; \(2003\)](#)
[153 N.L.J. 823; \(2003\) 147 S.J.L.B. 595; Times, May 16, 2003;](#)
[Official Transcript;](#) HL; 2003-05-15

Appleby v United Kingdom (44306/98)

[\(2003\) 37 E.H.R.R. 38; Times, May 13, 2003;](#) ECHR; 2003-05-06

Pretty v United Kingdom (2346/02)

[\[2002\] 2 F.L.R. 45; \[2002\] 2 F.C.R. 97; \(2002\) 35 E.H.R.R. 1; 12](#)
[B.H.R.C. 149; \(2002\) 66 B.M.L.R. 147; \[2002\] Fam. Law 588; \(2002\)](#)
[152 N.L.J. 707;](#) ECHR; 2002-04-29

Hatton v United Kingdom (36022/97)

[\[2002\] 1 F.C.R. 732; \(2002\) 34 E.H.R.R. 1; 11 B.H.R.C. 634; Times,](#)
[October 8, 2001;](#) ECHR; 2001-10-02

VgT Verein gegen Tierfabriken v Switzerland (24699/94)

[\(2002\) 34 E.H.R.R. 4; 10 B.H.R.C. 473;](#) ECHR; 2001-06-28

Bladet Tromsø v Norway (21980/93)

[\(2000\) 29 E.H.R.R. 125; 6 B.H.R.C. 599;](#) ECHR; 1999-05-20

Fressoz v France (29183/95)

[\(2001\) 31 E.H.R.R. 2; 5 B.H.R.C. 654;](#) ECHR; 1999-01-21

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[\(1998\) 26 E.H.R.R. 1; 4 B.H.R.C. 25; \[1998\] H.R.C.D. 273; Times,](#)
[February 23, 1998;](#) ECHR; 1998-02-19

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[\[1998\] Q.B. 294](#); [\[1997\] 3 W.L.R. 1094](#); [\[1997\] 2 All E.R. 561](#); [\[1997\] E.M.L.R. 201](#); [\[1997\] C.O.D. 382](#); (1997) 147 N.L.J. 489; [Times, January 21, 1997](#); [Independent, December 20, 1996](#); CA (Civ Div); 1996-12-17

Wingrove v United Kingdom (17419/90)

[\(1997\) 24 E.H.R.R. 1](#); [1 B.H.R.C. 509](#); [Times, December 5, 1996](#); [Independent, November 28, 1996](#); ECHR; 1996-11-25

Jersild v Denmark (A/298)

[\(1995\) 19 E.H.R.R. 1](#); [Times, October 20, 1994](#); ECHR; 1994-09-23

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[\[1991\] 2 F.L.R. 492](#); [\[1993\] 2 F.C.R. 97](#); [\(1991\) 13 E.H.R.R. 622](#); [\[1991\] Fam. Law 362](#); [Times, October 17, 1990](#); ECHR; 1990-09-27

Mellacher v Austria (A/169)

[\(1990\) 12 E.H.R.R. 391](#); [Times, January 3, 1990](#); ECHR; 1989-12-19

James v United Kingdom (A/98)

[\(1986\) 8 E.H.R.R. 123](#); [\[1986\] R.V.R. 139](#); ECHR; 1986-02-21

Handyside v United Kingdom (A/24)

[\(1979-80\) 1 E.H.R.R. 737](#); ECHR; 1976-12-07

Key Cases Citing

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R. (on the application of London Christian Radio Ltd) v Radio Advertising Clearance Centre

[\[2013\] EWCA Civ 1495](#); [\(2013\) 157\(45\) S.J.L.B. 37](#); [Official Transcript](#); CA (Civ Div); 2013-11-19

All Cases Citing

Followed

R. (on the application of London Christian Radio Ltd) v Radio Advertising Clearance Centre

[\[2013\] EWCA Civ 1495](#); [\(2013\) 157\(45\) S.J.L.B. 37](#); [Official Transcript](#); CA (Civ Div); 2013-11-19

Significant Legislation Cited

[Communications Act 2003 \(c.21\) s.321\(2\)](#)

European Convention on Human Rights 1950 art.10

European Convention on Human Rights 1950 art.10(2)

Legislation Cited

[Administration of Justice Act 1969 \(c.58\) s.12](#)

[Broadcasting Act 1990 \(c.42\)](#)

[Communications Act 2003 \(c.21\) s.319](#)

[Communications Act 2003 \(c.21\) s.320](#)

[Communications Act 2003 \(c.21\) s.321](#)

[Communications Act 2003 \(c.21\) s.321\(2\)](#)

[Communications Act 2003 \(c.21\) s.333](#)

European Convention on Human Rights

European Convention on Human Rights 1950 art.10

European Convention on Human Rights 1950 art.10(2)

European Convention on Human Rights Protocol 1 art.1

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Journal Articles

Advertising: political advertisement - advertisement control - Animal Defenders International v United Kingdom (48876/08)

Advertisement control; Animal welfare; Broadcasting; Freedom of expression; Political parties; Proportionality; Television.

[E.H.R.L.R. 2013, 4, 448-452](#)

Animal Defenders International: speech, spending, and a change of direction in Strasbourg

Advertisement control; Broadcasting standards; Freedom of expression; Political activities; Television; United States.

[J.M.L. 2013, 5\(1\), 1-13](#)

Human rights: political advertising ban

Advertisement control; Freedom of expression; Political activities.

[Lit. L. 2013, Jul, 80-81](#)

European Convention on Human Rights

Council of Europe; EU law; European Court of Human Rights; Immigration.

[N.Q.H.R. 2013, 31\(3\), 372-377](#)

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Advertisement control; Broadcasting standards; Freedom of expression; Hate speech; Political activities; Television.

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Strasbourg backs UK on political advertising

Advertisement control; Broadcasting standards; Freedom of expression; Margin of appreciation; Political activities; Proportionality; Television.

[S.J. 2013, 157\(17\), 4](#)

Books

Arlidge, Eady & Smith on Contempt 4th Ed. Incorporating First Supplement

Chapter: Chapter 2 - Contempt of Court: the Constitutional Dimensions

Documents: [Sub-section I. - The so called "margin of appreciation"](#)

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