

Baldassi and others v France – unofficial translation of key paragraphs

21. [The Court quotes and endorses the French version of the report of the UN Special Rapporteur on freedom of religion or belief. The English version is dated 23 Sept. 2019: [https://www.ohchr.org/Documents/Issues/Religion/A\\_74\\_47921ADV.pdf](https://www.ohchr.org/Documents/Issues/Religion/A_74_47921ADV.pdf)

“18. ... the Special Rapporteur ... recalls that international law recognizes boycotts as constituting legitimate forms of political expression, and that non-violent expressions of support for boycotts are, as a general matter, legitimate speech that should be protected. However, he stresses that expression which draws upon antisemitic tropes or stereotypes, **rejects the right of Israel to exist**, or advocates discrimination against Jewish individuals because of their religion should be condemned.”

BDS opponents may shift their attention to the phrase in bold above. BDS supporters should stress that all human beings living in Israel-Palestine have a right to exist. Governments practising racial discrimination do not.]

[The following paragraphs are my unofficial translation from the French original. The Court’s official English version might not be published for a year or more.]

63. Boycott is above all a means of expressing opinions that involve protest. A call for boycott, which seeks to communicate these opinions, while calling for specific actions linked to them, therefore enjoys in principle the protection of article 10 of the Convention.

64. However, a call for boycott constitutes a particular means of exercising freedom of expression in that it combines expression of a protesting opinion and incitement to differential treatment, which means that, depending on the circumstances, it is capable of constituting a call to discrimination against others. A call to discrimination is a form of call for intolerance which, like a call for violence or a call for hate, is one of the limits not to be crossed in any case in the course of exercising freedom of expression ... Nevertheless, inciting to treat differently is not necessarily the same as inciting to discriminate. [discrimination = a difference in treatment without objective and reasonable justification]

75. The Court notes however that, as interpreted and applied in this case, French law prohibits any call for a boycott of products because of their geographic origin, whatever the content of the call, its motivation or the surrounding circumstances.

77. ... the French courts did not demonstrate that, in the circumstances of this case, the conviction of the applicants for calling for a boycott of products from Israel was necessary in a democratic society to achieve the legitimate aim of protecting the rights of others, mentioned in Article 10(2).

78. Reasoning taking into account the circumstances was all the more essential in this case, in which Article 10 requires a raised level of protection of the right to freedom of expression. On the one hand, the actions and words for

which the applicants were criticised concerned a subject of general interest, respect for public international law by the State of Israel and the human rights situation in the occupied Palestinian territories, and was part of a contemporary debate, in France as in the whole international community. On the other hand, these actions and words were a form of political and activist expression ... The Court has stressed on numerous occasions that Article 10(2) leaves very little room for restrictions on freedom of expression in the area of political discourse or questions of general interest. ...

79. As the Court recalled in its *Perinçek* judgment [prosecution in Switzerland of a Turkish politician accused of denying the Armenian genocide], by its nature, political discourse is a source of polemics and is often virulent. It remains nonetheless of public interest, unless it degenerates into a call for violence, hate, or intolerance. That is the limit not to be crossed. That is also what the Special Rapporteur on freedom of religion or belief stressed, in relation to a call for boycott, in his report [para. 21 above] ...