

**Press release****GRAND CHAMBER JUDGMENT  
VEREIN GEGEN TIERFABRIKEN SCHWEIZ (VgT) v. SWITZERLAND (No. 2)**

The European Court of Human Rights has today delivered at a public hearing its Grand Chamber judgment<sup>1</sup> in the case of *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (No. 2)* (application no. 32772/02).

The Court held by 11 votes to six that there had been **a violation of Article 10 (freedom of expression) of the European Convention on Human Rights on account of the continued prohibition on broadcasting a television commercial in which the applicant association expressed criticism of battery pig-farming.**

Under Article 41 (just satisfaction) of the Convention, by 11 votes to six, the Court awarded the applicant association 4,000 euros (EUR) for costs and expenses. (The judgment is available in English and French.)

**1. Principal facts**

Verein gegen Tierfabriken Schweiz (VgT) is a Swiss-registered animal-protection association which campaigns in particular against animal experiments and battery farming.

**In response to various advertisements produced by the meat industry, VgT made a television commercial which included a scene showing a noisy hall with pigs in small pens.**

**Permission to broadcast the commercial was refused on 24 January 1994 by the Commercial Television Company (AG für das Werbefernsehen – now Publisuisse SA) and at final instance by the Federal Court, which dismissed an administrative-law appeal by the applicant association on 20 August 1997.**

The applicant association lodged an **initial application** (no. 24699/94) with the European Court of Human Rights, which in a judgment of **28 June 2001** held that the Swiss authorities' refusal to broadcast the commercial in question was in breach of freedom of expression. It found a violation of Article 10 of the Convention and awarded the applicant association 20,000 Swiss francs (approximately EUR 12,000) for costs and expenses.

**On 1 December 2001, on the basis of the Court's judgment, the applicant association applied to the Federal Court for a review of the final domestic judgment prohibiting the commercial from being broadcast. In a judgment of 29 April 2002 the Federal Court dismissed the application, holding among other things that the applicant association had not demonstrated that there was still any purpose in broadcasting the commercial.**

The Committee of Ministers of the Council of Europe, which is responsible for supervising the execution of the Court's judgments, had not been informed that the Federal Court had dismissed the application for a review, and thus concluded its examination of the applicant association's initial application (no. 24699/94) by adopting a final resolution in July 2003. However, the resolution noted the possibility of applying to the Federal Court to reopen the proceedings.

**In July 2002 the applicant association lodged its application with the Court in the present case, concerning the Federal Court's refusal of its application to reopen the proceedings and the continued prohibition on broadcasting its television commercial.**

**2. Procedure and composition of the Court**

The application was lodged with the **European Court of Human Rights** on 25 July 2002. In a Chamber **judgment of 4 October 2007** the Court held by five votes to two that there had been a **violation of Article 10**. **On 31 March 2008 the panel of the Grand Chamber accepted a request by the Swiss Government for the case to be referred to the**

**Grand Chamber** under Article 43 of the Convention<sup>2</sup> (referral to the Grand Chamber). Third-party comments were received from the Czech Government, who had been given leave by the President to intervene in the written procedure. A hearing took place in public in the Human Rights Building, Strasbourg, on 9 July 2008.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Jean-Paul **Costa** (France), *President*,  
 Christos **Rozakis** (Greece),  
 Françoise **Tulkens** (Belgium),  
 Josep **Casadevall** (Andorra),  
 Corneliu **Bîrsan** (Romania),  
 Anatoly **Kovler** (Russia),  
 Alvina **Gyulumyan** (Armenia),  
 Ljiljana **Mijović** (Bosnia and Herzegovina),  
 Egbert **Myjer** (the Netherlands),  
 Dragoljub **Popović** (Serbia),  
 Isabelle **Berro-Lefèvre** (Monaco),  
 Päivi **Hirvelä** (Finland),  
 Giorgio **Malinverni** (Switzerland),  
 András **Sajó** (Hungary),  
 Ledi **Bianku** (Albania),  
 Ann **Power** (Ireland),  
 Mihai **Poalelungi** (Moldova), *judges*,

and also Erik **Fribergh**, *Registrar*.

### 3. Summary of the judgment<sup>3</sup>

#### Complaint

The applicant association alleged that the continued prohibition on broadcasting the television commercial, after the Court had found a breach of its freedom of expression on 28 June 2001, constituted a fresh violation of Article 10 of the Convention.

#### Decision of the Court

##### Admissibility of the application

The Swiss Government argued that the application was inadmissible, firstly because the applicant association had not exhausted domestic remedies as required by Article 35 § 1 of the Convention, and secondly because it concerned a subject – execution of the Court’s judgments – which, by virtue of Article 46, fell within the exclusive jurisdiction of the Committee of Ministers of the Council of Europe.

As regards the first issue, the Court, confirming the findings of the Chamber judgment, held that domestic remedies had indeed been exhausted since in its judgment of 29 April 2002 dismissing the applicant association’s application to reopen the proceedings, the Federal Court had ruled, albeit briefly, on the merits of the case.

As regards the second issue, the Court reiterated that its findings of a violation were essentially declaratory and that it was the Committee of Ministers’ task to supervise execution. The Committee of Ministers’ role in that sphere did not mean, however, that measures taken by a respondent State to remedy a violation found by the Court could not raise a new issue and thus form the subject of a new application. In the present case the Federal Court’s judgment of 29 April 2002 refusing the applicant association’s application to reopen the proceedings had been based on new grounds and therefore constituted new information of which the Committee of Ministers had not been informed and which would escape all scrutiny under the Convention if the Court were unable to examine it. Accordingly, the Government’s preliminary objection on that account was likewise dismissed.

## Merits

The Court reiterated that freedom of expression was one of the preconditions for a functioning democracy and that genuine, effective exercise of this freedom did not depend merely on the State's duty not to interfere but could also require positive measures. In the present case, in view of the importance in the Convention system of effective execution of the Court's judgments, Switzerland had been under an obligation to execute the 2001 judgment in good faith, abiding by both its conclusions and its spirit. In that connection the reopening of domestic proceedings had admittedly been a significant means of ensuring the execution of the judgment but could certainly not be seen as an end in itself. In the absence of any new grounds that could justify continuing the prohibition from the standpoint of Article 10, the Swiss authorities had been under an obligation to authorise the broadcasting of the commercial, without taking the place of the applicant association in judging whether the debate in question was still a matter of public interest. The Court therefore held that there had been a fresh violation of Article 10.

Judge Malinverni, joined by Judges Bîrsan, Myjer and Berro-Lefèvre, expressed a dissenting opinion. Judges Sajó and Power also submitted dissenting opinions. The opinions are annexed to the judgment.

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The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

### Press contacts

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*The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.*

<sup>1</sup> Grand Chamber judgments are final (Article 44 of the Convention).

<sup>2</sup> Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

<sup>3</sup> This summary by the Registry does not bind the Court.

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