and asylum can cost an awful lot of money for a rogue member of the bloc, hence they should think twice before engaging in such extremely deconstructive action.

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INTERNATIONALE HUMANITÄRE HILFSORGANISATION V. GERMANY. JUDGMENT. *At* https://hudoc.echr.coe.int/#{%22itemid%22:[%22001-228016%22]}. European Court of Human Rights, October 10, 2023.*

On October 10, 2023, the European Court of Human Rights (ECtHR) issued a judgment upholding the decision of the German authorities to suspend the organization International Humanitarian Aid Association (Hilfsorganisation) because of "knowingly support[ing] international terrorism, directly or indirectly" (para. 102). Germany had shut down Hilfsorganisation, proscribing it and ordering confiscation of its assets, on the grounds that one of the entities it funded was the Gaza-based "Islamic Society" (Salam), which was allegedly affiliated with Hamas (para. 9). According to Germany, this presumed indirect funding of Hamas violated the principle of "international understanding between peoples" (Völkerverständigung) (para. 1), which is entrenched in the German Constitution,[1] and also reflected in the German Associations Act.[2] According to the Federal Constitutional Court, an association "meets the requirements for a prohibition . . . when it actively advocates and promotes violence or similarly serious actions violating international law, such as terrorism in international relations or among parts of the population," and this may also be the case "when an association supports third parties . . . ."[3]

Hilfsorganisation complained before the ECtHR alleging a violation of their freedom of association (Article 11 of the European Convention on Human Rights (ECHR)). The Chamber unanimously found that the interference with the applicants' freedom of association was justified, necessary in a democratic society, and proportionate to the aim pursued by the national authorities, since states, according to the Court, should be able to take measures "so that their territory is not used to facilitate terrorism and the bringing of violence into conflicts abroad" (para. 75). Following the refusal of the Grand Chamber to grant a request for referral under Article 44(2) of the ECHR on February 19, 2024,[4] the judgment of the Chamber became final.

The judgment provided a unique—and arguably missed—opportunity for the Court to examine the fine line between terrorist financing and humanitarian aid, in the context of associations' cross-border activities. It also reveals the inherent limitations in the Court's role,

* Open Access funding provided by the Qatar National Library.

[1] Basic Law for the Federal Republic of Germany, Art. 9 (2) (amended in 2012): "Associations whose aims or activities contravene the criminal laws or that are directed against the constitutional order or the concept of international understanding shall be prohibited."

[2] *Id.*, paras. 1, 29; German Law Association Act (VereinsG) of August 5, 1964 (last amended Nov. 30, 2020).

[3] Order of the First Senate of 13 July 2018, 1 BvR 1474/12, 1 BvR 670/13 and 1 BvR 57/14, at 3(a), 3(c) (stating in 3(c), that: "An association meets the requirements for a prohibition under Article 9(2) third alternative of the Basic Law when it actively advocates and promotes violence or similarly serious actions violating international law, such as terrorism in international relations or among parts of the population.").

[4] ECtHR, Grand Chamber Panel Decisions (Feb. 19, 2024).

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which, operating within the European context, aligns itself with the values and priorities of the European Union.

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Hilfsorganisation was a non-profit association, established under German law in 1997 and it collected donations that were subsequently channeled to Muslim-majority countries. In particular, the donations went to the Occupied Palestinian Territories (OPT), Gaza, and the West Bank, including through charitable institutions ("social societies") that carried out various social projects (paras. 8–10). Salam, the recipient organization, was founded in 1979 in Jabaliya, a refugee city in northern Gaza, and carried out "projects in Gaza benefiting orphaned children of so-called 'martyrs'—people who had died or been wounded in combat against Israel" (para. 9).

In 2010, the German Ministry of Interior proscribed Hilfsorganisation, because it collected funds for the Islamic Society of Gaza—which was in turn part of Hamas (para. 13).[5] At the time of proscription, German law did not specifically criminalize the formation of terrorist organizations and terrorist financing; it did so only in 2015 at the recommendations of the Financial Action Task Force (FATF).[6] Hence, the German Ministry based its decision on the aforementioned German law on associations.[7] In justifying the dissolution of Hilfsorganisation, the German authorities referred to the Charter of Hamas, which among other things, calls for the destruction of Israel "in a proactively aggressive manner and engaged in terrorist attacks" (para. 15). They also noted that "the political, military and social branches of Hamas were equal, intertwined parts of a single organisation" (*id.*).

While the case was pending, the Federal Administrative Court proposed a friendly settlement of the dispute, suggesting that the association continues its activities outside the Palestinian territories. The German government rejected this suggestion. Subsequently the Administrative Court dismissed the applicant's claim, and confirmed that the continuous support of "Islamic Society" violated the principle of international understanding (paras. 18–26). It found it particular that all attempts to offer humanitarian aid constituted a disguised support for Hamas as a whole, including its military branch (para. 22). For this reason, the Ministry was not obliged to hear the association before proscribing it, since this would have given the opportunity for the organization to remove evidence (para. 26). Subsequently, in July 2012, Hilfsorganisation had recourse to the Federal German Constitutional Court, lodging a constitutional complaint for violation of the right to freedom of association under Article 9(2) of the Basic Law. The Constitutional Court rejected the claim, however, upholding the decision that the activities of Hilfsorganisation violated the principle of international understanding (para. 29), and determined that less restrictive measures would not have been effective (para. 31). Among other things, it also stated that proscription is

[5] *See also* para. 99 of the judgment. According to the Court the fact that about half of the contributions supported the Islamic Society, even though it was only one out of six associations funded, underlined the fact that "Hamas had been the applicant association's major interest."

[6] German Criminal Law, Section 89c, "Financing of Terrorism" (prohibiting all kinds of terrorist financing) and Section 129a "Forming Terrorist Organisations."

[7] German Law on Associations, Art. 3 (1): "An association may not be treated as prohibited (Art. 9(2) of the Basic Law) until it has been established by order of the prohibition authority that its purposes or its activities contravene the criminal laws or that it is directed against the constitutional order or the idea of international understanding."

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appropriate not only when an association actively advocates international terrorism, but also "when an association supported third parties in a way that was objectively capable of significantly, seriously and deeply compromising international relations, and where the association was aware of that fact and at least condoned it" (para. 30).[8]

The ECtHR first discussed the admissibility of the complaint. The government had not submitted a separate plea of inadmissibility. It contended however that the application should have been rejected for non-exhaustion of domestic remedies, since the claim concerning the right to obtain effective redress had not been raised earlier before the German courts (para. 43). The ECtHR rejected this argument, finding that the applicant's argument in this respect should be interpreted in light of the overall submissions, which challenged the proportionality of the measure (i.e., whether the outright ban was the least intrusive measure possible) (para. 47). The Court agreed with the applicant that being heard would have been indeed a less intrusive measure and declared the application admissible (para. 50).

On the merits, the applicant argued primarily on the basis of the legality and proportionality tests contending that the German court had interpreted too broadly the proscribed conduct that constitutes "support" for a terrorist organization (para. 54). The respondent state on the contrary emphasized the necessity of the interference in a democratic society, pointing to the substantial and long-standing support of the applicant association to Hamas' social societies (para. 61). According to the respondent government, by providing support to these social societies, the applicant association "significantly, severely and deeply compromised the concept of international understanding" (*id.*).[9] The government further asserted that it had an obligation to proscribe the association under both European and international law, referring to the international legal framework on the prohibition of terrorist funding (para. 60). In particular the government referred to UN Security Council (UNSC) Resolution 1373, adopted in the immediate aftermath of 9/11, and the subsequent Common position listing of the European Union (EU) of Hamas as a terrorist organization (para. 39),[10] as well as the EU's position paper (para. 40).[11]

The ECtHR asserted, firstly, that Germany had interfered with Hilfsorganisation's freedom of association (para. 64). In order to assess whether this interference was legitimate, it applied the three-part test (legality, legitimate aim, and necessity of the interference), in light of ECHR Article 11, paragraph 2. The first component of the test assesses whether the interference was prescribed by law. In this respect the Court found that restrictions to freedom of association fulfilled the "quality of the law" criteria established by the Court (namely that the law should be accessible, foreseeable and formulated with sufficient precision) (para. 67). More specifically, the German government argued before the ECtHR that the applicants should have been aware of another case regarding the proscription of Al-Aqsa (another association allegedly affiliated with Hamas) decided in

[8] Referring to the judgment of July 13, 2018, 1 BvR 1474/12.

[9] In particular, the government highlighted that the support to the social societies "[rose to] about 50% of its funding activities and amount[ed] to about EUR 2,500,000 overall between 2006 and 2010."

[10] European Union, Council Common Position of 27 December 2001 on the Application of Specific Measures to Combat Terrorism, 2001/931/CFSP (Feb. 12, 2024).

[11] European Union, Council Common Position 2003/651/CFSP of 12 September 2003 Updating Common Position 2001/931/CFSP on the application of Specific Measures to Combat Terrorism and Repealing Common Position 2003/482/CFSP, OJ 229/42 (Sept. 13, 2003).

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2004 (paras. 35–36, 58).[12] This according to the government was especially true since the senior members of Hilfsorganisation were also members of (one of the numerous "umbrella" Islamist associations active in Germany and other European countries) (paras. 6, 16).[13] They therefore knew about the links between Salam and Hamas, and identified with Hamas (paras. 16 and 23). The Court accepted this argument, finding that the earlier court-based proscription should have enabled the applicant association to foresee the likelihood of its own proscription (para. 70).

Furthermore, the Court found that the interference pursued a number of legitimate aims under the ECHR, namely, public safety and prevention of disorder or crime, given that the fight against terrorism has been already recognized to be a legitimate aim under the Convention (para. 72). In order to substantiate this point, the Court referred to the earlier case law of the Court in *Batasuna*[14] and *Refah Partisi.*[15] Furthermore, the Court added that another legitimate aim pursued in this case would be the right to life of "individuals living abroad" (para. 76).

Lastly, with respect to the necessity test, the Court found that the interference was necessary in the context of a democratic society. In this part of the reasoning, the Court reiterated that restrictions are to be interpreted narrowly and that an interference with ECHR rights can be justified only insofar as there exist compelling and convincing reasons —as long as domestic authorities satisfy the Court that a "pressing social need" justifies the restriction (para. 78). The Court subsequently emphasized that the concept of international understanding is both a "prerequisite of the international legal order" and a "value protected by the Convention," explaining that it includes the peaceful settlement of conflicts and the sanctity of human life (paras. 82, 87). The Court examined also the proportionality of the interference, finding that "no less intrusive measure . . . could [have been] imposed" (para. 98). To justify this conclusion, it referred, first, to the presumed close links between this association with Hamas, and secondly, to the national authorities' discretion in deciding that other potentially applicable measures would not have been ineffective. The Court relied to the assessment of the national authorities, noting that it had been duly established that the association presented its activities "under the guise of humanitarian aid" noting also that the association had not dissociated itself from Hamas during the proceedings (para. 102). Interestingly, in this part of the discussion on the merits, the Court also referred to Article 17 of the Convention (the "abuse of rights" clause), stating that associations promoting violence are incompatible *rationa materiae* with the Convention. As a result, the Court concluded that compelling and convincing reasons for the infringement existed in the case at hand, and that the interference was legitimate within the meaning of the Convention.

[12] Referring to Federal Administrative Court, Al-Aqsa, BVerwG 6 A 10.02 (Dec. 3, 2004). This point was in response to the applicant's argument (para. 53) that proscription was not foreseeable.

[13] The founder of the movement, Necmettin Erbakan, was the chairman of the Turkish Welfare Party (Refah Partisi), whose dissolution of that party was upheld by the ECtHR in 1998. *See* Refah Partisi (the Welfare Party) and Others v. Turkey, App. Nos. 41340/98, 41342/98, 41343/98, and 41344/98 (July 31, 2001), *at* https://hudoc.echr.coe.int/#{%22itemid%22:[%22001-59617%22]}. On Mill Gurus, see Ayca Arkilic, *The Limits of European Islam: Turkish Islamic Umbrella Organizations and Their Relations with Host Countries—France and Germany*, 35 J. MUSLIM MINORITY AFF. 17 (2015).

[14] Herri Batasuna and Batasuna v. Spain, App. Nos. 25803/04 and 25817/04 (June 30, 2009).

[15] *Refah Partisi*, *supra* note 13.

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The Chamber's judgment does not distinguish between terrorist activities and humanitarian aid at any part of the application of the three-part test, neither does it engage with the ways that funding of social activities of Hamas abroad impact German society. In examining whether the interference was necessary in a democratic society, the Court followed the established view within the European Union about prohibition of international terrorism and terrorism funding.

Firstly, with respect to the legality component of the three-part test, the ECtHR accepted that the national law fulfilled the "quality of the law" criteria, affording sufficient protection against arbitrary interference. While noting that the law must indicate with sufficient clarity the scope of state's discretion in any possible interference (para. 57), the Court also emphasized that it may be unavoidably couched in terms that are vague (para. 67),[16] and also, that "the level of precision required of domestic legislation depends to a considerable degree on the content of the instrument in question and the field it is designed to cover" (*id.*). It could be argued here that since humanitarian aid was the primary aim of the association, even more precision in the law was necessary. In equal measure, the Court does not discuss in detail the foreseeability of the law, agreeing with Germany that the applicants should have been aware of the previous case regarding the proscription of Al-Aqsa. Yet the fact that the applicants knew about this case, does not necessarily imply that the outright proscription of the association was foreseeable. The all-encompassing provision of the Associations Act and specifically the concept of international understanding between peoples lacks precision, necessarily affecting foreseeability. Such arguments however were not suggested by the applicants, whose application "did not call challenge the quality of the law as such" (para. 69).

Concerning the legitimate aim of the interference, the German Ministry proscribed the association because, in its view, the activities of the Association, *inter alia*, "indirectly contributed to the violence brought by Hamas into the relationship between the Palestinian and the Israeli people" (para. 73). In this respect, the Court took for granted the position of the German courts that the fight against terrorism was a legitimate aim, finding also that the right to life of individuals living abroad was at stake, as mentioned above. One would have expected here a more thorough discussion about how exactly funding the Islamic Societies in the Occupied Palestinian Territories impacts the German public order, or German public safety—and also who are the individuals living abroad whose life should be protected and what abroad meant in this context. This is especially true since the cases to which the Court referred to in order to find a legitimate aim of the interference under public safety (*Batasuna* and *Refah Partisi*) relate to terrorist activities confined in a single state (Spain and Turkey respectively).

With respect to the necessity criterion, the Court found that there was a "pressing social need" justifying an interference with the Convention's rights. Yet unlike other cases where associations were banned in states parties because violence was imminent (justifying therefore a "pressing social need"),[17] in the case at hand, such violence was only presumed

[16] Para. 67, by reference to Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan, No. 37083/03, paras. 56–60 (Oct. 8, 2009) (noting however that in *Tebieti* the association had been dissolved simply for not fulfilling certain legal requirements related to its operation).

[17] *Cf.* Les Authentiks and Supras Auteuil 91 v. France, Nos. 4696/11 and 4703/11 (Oct. 27, 2016) (in which the Court finds the legitimate "in order to prevent and eliminate all risk of public disorder").

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(para. 21).[18] The ECtHR in particular took for granted that the association in question made an incitement to violence, in order to justify a wider margin of appreciation for the state (paras. 82–83). In other cases, however, including *Vajnai v. Hungary* concerning the public display of the Red Star, the ECtHR pointed to the fact that a mere speculative danger is not sufficient to justify a "pressing social need." Moreover, the ECtHR did not debate the claim by the German authorities that all branches of Hamas were equal, ignoring the fact Hamas is not a singular belligerent entity, but rather a multi-faceted organization with a political and administrative authority administering the every-day life of people in Gaza (such as running hospitals, schools, and infrastructure). A difference could have been drawn, for example, between those funds that are directed to associations that prepare terrorist acts, and those that aim at non-terrorist acts, including humanitarian aid and local youth empowerment. The approach of the Court to terrorism support in this respect is reminiscent of the strict provision of "material support" (U.S. approach), while its rationale is reminiscent of the *Holy Lands Foundation* (HLF) case. In *HLF*, members of an association that channeled donations to charitable institutions' (*zakat committees*) to Gaza and the West Bank were prosecuted for material support to terrorism—the government's logic in that case was precisely that "HLF's humanitarian donations strengthened Hamas's image, presumably winning the group new recruits and community support."[19] A different type of discussion, however, has traditionally taken place in Europe, whereby restrictions to fundamental rights placed by European states are thoroughly scrutinized by the ECtHR, which is the world's leading human rights body.

With respect to the applicability of the margin of appreciation on the necessity test, the Court observed that this was necessarily wider, in light of the need to fight against international terrorism and the fact that the case concerned the proscription of an association for this very purpose (para. 86). Here again, the fact that social societies indirectly support terrorism is taken for granted based on the assessment of the national courts, with the ECtHR confining itself to ensure that the of domestic authorities were taken after an acceptable assessment of the relevant facts (para. 81). The Court did not develop offer any views on whether member states should be banning all type of funding to Hamas societies, and even those concerned with humanitarian aid. Rather, it referred to the legitimacy of the concept of "international understanding" not only in German law, but also as a core value of the Convention, which includes, in the eyes of the Court, both the "peaceful settlement of international conflicts and the sanctity of human life" (para. 87). Yet even in *Hamas v. Council* (in which Hamas objected to its listing under EU law), the question of whether Hamas should be listed as terrorist organization under EU law, was the object of debate.[20] Moreover, the Court relies on the European and international legal framework on the fight

[18] According to domestic courts, the social societies contributed to "enhancing its overall acceptance and facilitating the recruitment of activists for violent action."

[19] Wadie Said, *The Material Support Prosecution and Foreign Policy*, 86 IND. L.J. 543, 586 (2011) (at n. 246, referring to ACLU's position on *Holy Lands*).

[20] Hamas v. Council, Judgment of the General Court (Second Chamber), T-400/10, EU:T:2014:1095, paras. 110, 131 (Dec. 17, 2014) (noting that the lower EU Court had originally approved the delisting of Hamas because, *inter alia*, "the factual basis of a European Union decision freezing funds in a terrorism matter be based not on material that the Council has obtained from the press or from the internet, but on material actually examined and accepted in decisions of national competent authorities"). This judgment was annulled, however. *See* Hamas v. Council of the EU, Judgment of the General Court (First Chamber, Extended Composition) (Dec. 14, 2018).

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against international terrorism and terrorism funding, as well as obligations under international law in order to state that the restriction was necessary in a democratic society (*id.*). However, it missed a unique opportunity to offer its views on how to balance state obligations under this framework with obligations stemming from Article 11 of the European Convention.[21]

Finally, with respect to the proportionality test, the ECtHR found that that the interference with the applicants' rights was proportionate. Hence while the outright dissolution of an association is a very harsh measure entailing significant consequences for its members" (para. 84),[22] it accepted the view of the German government that merely "restrict[ing] [the activities of the association] would not have been effective" (para. 99) emphasizing that the "Federal Constitutional Court's balancing exercise was comprehensive and transparent" (para. 95). Implicitly therefore, the Court sanctioned the position of the German courts, that an outright ban without opportunity to be heard is justified for the purposes of banning the funding of Hamas as a whole, without delineating between its various branches (para. 92)[23]—and regardless of whether part of its actions are directed toward humanitarian aid. In this respect, the ECtHR seems to be entirely ignoring the literature on the role of social societies as substantially helping the peace process between Palestine and Israel,[24] and contributing of such societies to non-violent community building.[25] In Jabaliyah in particular, where the recipient association "Islamic Society" was based, aid would have been even more necessary since many civilians had been killed by the Israeli authorities in particular during "Operation Days of Penitence" in 2004 and 2009 attacks, as evidenced by the UN Human Rights Council Fact Finding Mission report following its visit in 2009.[26] In addition, alternative measures and lesser restrictions would have been clearly possible, not only because there was no previous inquiry undertaken by the German authorities and no evidence of actual imminent violence, but also, because in any event the "Islamic Society" was only one out of six associations supported by Hilfsorganisation—and the funding it received represented half of the overall financial support (paras. 7, 99).

In addition to the above, the ECtHR referred *proprio motu* to Article 17 of the Convention (prohibition of abuse of rights), which "prohibits the use of the Convention in order to destroy or excessively limit the rights guaranteed by it" (para. 88). So far, the abuse of rights clause has primarily served to justify findings of non-violation in case of revisionism

[21] In other cases, the Court has balanced obligations stemming from the international framework with those stemming from the ECHR. *See e.g.*, Nada v. Switzerland [GC], No. 10593/08, para. 198 (2012) (balancing freedom of movement against public safety).

[22] *E.g.*, Maestri v. Italy [GC], App. No. 39748/98, ECHR 2004-I, para. 30 (Feb. 17, 2004); De Tomasso v. Italy [GC], No. 43395/09 (went on to discuss the alleged violation of the ECHR and Judgment 23.2.2017 [GC]); Yefimov and Youth Human Rights Group v. Russia, App. Nos. 12385/15 and 51619/15, para. 58 (Dec. 7, 2021).

[23] According to the Court, "the overall organisation of Hamas, including its so-called 'social societies,' [is] to be considered a terrorist organisation."

[24] SARA ROY, THE GAZA STRIP: THE POLITICAL ECONOMY OF DE-DEVELOPMENT 395 et seq. (3d ed. 2016); *see also Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967*, 20 PALESTINE Y.B. INT'L L. 291 (2020).

[25] *Id.* at 283–85 (e.g., on the society for the care of the handicapped in Gaza); *see generally* SARA ROY, HAMAS AND CIVIL SOCIETY IN GAZA: ENGAGING THE ISLAMIST SOCIAL SECTOR (2013).

[26] UN General Assembly, Human Rights in Palestine and Other Occupied Arab Territories, Report of the United Nations Fact-Finding Mission on the Gaza Conflict, paras. 41, 350, UN Doc. A/HRC/12/48 (Sept. 25, 2009).

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bans, Holocaust denial and anti-semitism;[27] the dissolution of neo-Nazi or extreme right-wing associations that engage in racist, xenophobic, or anti-semitic views;[28] and also, occasionally, Islamophobia,[29] and other types of speech inciting to violence (more recently homophobia).[30] It is therefore surprising that the Chamber referred to Article 17 to corroborate its conclusion that indirect support for terrorism is contrary to the "concept of international understanding," entailing therefore a "wider margin of appreciation" (para. 89). There have been precedents of associations that have been banned across jurisdictions in Europe for alleged connections with Hamas, including also *Hizb-ut-Tahrir* (dissolved by a decision of the German Federal Court in 2012)[31] to which the Court refers. In *Hizb ut-Tahrir*, the Article 11 complaint was found inadmissible by reason of Article 17. Contrary to *Hilfsorganisation* however, *Hizb-ut-Tahrir* was a religious organization that self-identified as a "global Islamic Political Party" aiming at overthrowing Muslim governments and re-establishing the Islamic Caliphate, as well as advocating in favor of violent *jihad*.[32] While even the ECtHR itself notes that the circumstances of the two cases are different (*id.*), still one is left wondering why a strong parallel with this case was made and why the Court chose to stretch the understanding of the abuse of rights clause in this case—entirely ignoring the need of humanitarian aid in Palestine specifically through Islamic societies.

* * * *

In *Hilfsorganisation*, the European Court fully endorses the German argument on prohibition of activities against international cooperation, without engaging in a substantial discussion of the notion of international understanding. This is surely not an ECHR Article 10 (freedom of expression) case, such that would justify a higher level of protection on a debate of general interest (as was the case in, say, *Baldassi and Others v. France*, concerning the legitimacy of protests of the boycott, divestment, sanctions (BDS) movement).[33] The value of freedom of expression nonetheless lies firmly at the heart of the question of labeling the acts of an association as supportive of terrorism. Undoubtedly, the role of the ECtHR is not that of a fourth instance court and in principle is not deemed to review the national courts assessment, in the sense of finding that national courts erred in the application of national law. This, however, should not be conflated with the requirement of a substantial analysis in the context of each case—and the need to ensure that any restrictions placed by states on fundamental rights and freedoms protected by the ECHR abide by the most strict scrutiny criteria and are convincingly established and narrowly construed.[34]

[27] Garaudy v. France, No. 65831/01, ECHR 2003-IX; Lehideux et Isorni v. France, App. No. 24662/94 (Sept. 23, 1998).

[28] Ayoub and Others v. France, Nos. 77400/14 and 2 Others (Oct. 8, 2020); Vona v. Hungary, No. 35943/10 (July 9, 2013); *see also* J. Glimmerveen and J. Hagenbeek v. The Netherlands, Nos. 8348/78 and 8406/78, Commission Decision, at 187 (Oct. 11, 1979).

[29] Norwood v. UK, No. 23131/03, Decision (Nov. 15, 2004).

[30] Lenis v. Greece, No. 47833/20 (June 27, 2023) (regarding an article written by a senior official of the Greek Orthodox Church which went as far as "denying LGBTI people their human nature," at para. 54).

[31] Hizb ut-Tahrir and Others v. Germany, App. No. 31098/ 08, Judgment (June 12, 2012).

[32] *Id.*, paras. 27–28.

[33] Baldassi and Others v. France, Nos. 15271/16 and 6 Others, Judgment, para. 78 (June 11, 2020).

[34] *Cf.* United Communist Party of Turkey and Others v. Turkey, paras. 46–47 (Jan. 30, 1998); Gorzelik and Others v. Poland [GC], No. 44158/98, ECHR 2004-I, paras. 95–96. Association Rhino and Others v. Switzerland, No. 48848/07, Judgment, 4 (concur. op., Pinto de Albuquerque, J.) (2011).

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A discussion explaining how the German laws on "international cooperation" were justified would have been also warranted given the increasing trends of Islamophobia, and the sweeping extraterritorial, effects of the "War on Terror" precisely through principles as vague as going against international understanding. In the view of the author, this judgment, by its succinct reasoning with respect to democratic values, the lack of discussion on the balancing between rights under the ECHR and obligations under the international legal framework, shows that the ECtHR is increasingly following the U.S. and EU paradigm in the fight against terror, with little say about the impact of member states' foreign policies on fundamental rights.

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