

Mishcon de Reya, solicitors on behalf of the Embassy of Israel and Ariel Sharon v The Independent

Clauses noted: 12

Mishcon de Reya, Solicitors, complained to the Press Complaints Commission on behalf of the Embassy of Israel and Ariel Sharon that a cartoon published in The Independent on Monday 27 January 2003 was prejudicial and pejorative in breach of Clause 13 (Discrimination) of the Code of Practice.

The complaint was rejected.

The cartoon was published the day before the Israeli general election and two days after an Israeli attack on Gaza City. It depicted the Israeli Prime Minister Ariel Sharon eating an infant while saying the words "What's wrong... You never seen a politician kissing babies before?" In the background were helicopters from which the words "Sharon... Vote Sharon... Vote" were being broadcast, and a tank and burning rubble conveyed a general battlefield scene. The cartoonist included the words 'after Goya' at the bottom of the cartoon, a reference to Francisco Goya's painting "Saturn devouring one of his children" to which the cartoon alluded.

The solicitors said that the cartoon breached Clause 13 of the Code because it was tainted by anti-Semitism. Depicting Mr Sharon eating a baby alluded to the 'blood libel' which held that Jews preyed on Christian children. The most common form of the blood libel in England historically ascribed malevolence to Jews as their motive for killing the children – although other versions held that they were motivated by theological reasons. In any case, the cartoon clearly referred to the blood libel and was therefore prejudicial of Mr Sharon's race and religion.

The editor denied that the cartoon was anti-Semitic. He said that no Jewish symbols or Israeli insignia were present, and that there was no allusion to the blood libel. Instead, he said that the cartoon suggested that the attack on Gaza City may have been connected to the Israeli election three days later. He added that the newspaper had subsequently published a number of articles and letters about the subject, including pieces from prominent Jews who were on different sides of the argument as to whether or not the cartoon was anti-Semitic. He also said that the baby in the figure represented the Israeli electorate being ruthlessly devoured by its Prime Minister. He concluded by saying that it was vitally important to freedom of expression that the newspaper was able to publish an opinion piece which was critical of an individual's politics without inevitably being accused of racism.

The solicitors said that it was irrelevant whether or not the cartoon contained any "Jewish symbols and Israeli insignia" – the fact that Mr Sharon is Jewish was well-known and the anti-Semitism arose because he, as a Jew, was associated with the blood libel. They added that the justification that the baby represented the Israeli electorate was at odds with the newspaper's previous arguments and was a convenient attempt to avert allegations of repeating the blood libel.

Adjudication

The Commission recognised that the cartoon had caused great offence to a significant number of people. Indeed, it had received a hundred or so complaints from members of the public who thought that it was anti-Semitic. It was therefore pleased to have this opportunity of a complaint from the person directly affected by the cartoon to consider at length the suggestion that the newspaper had breached Clause 13 of the Code, which is designed to protect individuals from prejudicial or pejorative comment about, among other things, their race and religion. While the Commission accepted that some people may have felt that the cartoon impugned the Jewish faith generally, it wished to point out that the Code does not cover complaints about alleged discrimination against groups of people.

It was important in this context for the Commission to state that, as far as it was concerned, Mr Sharon had been singled out as the subject of the cartoon not only as an individual, but also as the head of a government, and the leader of a political party, whose policies the newspaper clearly intended to satirise. Prime ministers and presidents of countries frequently appear in cartoons as visual representatives of their countries, and the Commission was reluctant to come to a decision that would in any way compromise the ability of newspapers to make critical or satirical comments about nations or governments through the use of cartoons.

Having made that general point, the Commission nonetheless dealt with the substance of the complaint under Clause 13 and considered whether the cartoon amounted to a prejudicial or pejorative reference to Mr Sharon's race or religion. It rejected the complaint for a number of reasons. At its heart, this complaint concerned an allegation that the cartoon had alluded to the 'blood libel' – and it was clear that a number of readers had inferred this too. However, it was also clear from the feedback that the newspaper itself published that other readers and commentators had not. In view of this, and for other reasons set out below, the Commission was not prepared to make a connection between the cartoon and the alleged blood libel. The Commission regretted any offence that had been caused to the individual concerned and to others who had complained, but this in itself was not enough to conclude that a breach of the Code had occurred.

The Commission examined the newspaper's explanation about what had motivated the cartoon, and found its arguments to be convincing. There was no reason for the Commission to disbelieve the cartoonist's position – published in the newspaper and submitted as part of its evidence – that he had taken the view that the attack on Gaza City was a form of 'macabre electioneering' whose equivalent in a less fraught situation might be the more traditional stunt of kissing babies. He explained that this thought brought to mind the Goya painting and its depiction of the insanity of Saturn who is driven by paranoia into consuming his own children. The Commission accepted this explanation. It represented an approach which could apply equally to other governments and politicians. It did not consider that there was anything particularly prejudicial to Mr Sharon's race or religion about satirising him in this way – especially as there is nothing inherently anti-Semitic about the Goya image or about the myth of Saturn devouring his children, which has been used previously to satirise other politicians accused of sacrificing their own 'children' for political purposes.

The solicitors had said that the absence of any Jewish emblems or Israeli insignia in the cartoon was irrelevant, and that the association of someone who was a known Jew with a hostile image of a practice commonly attributed by anti-Semites to Jews was sufficient to conclude that the image was discriminatory. The Commission did not agree with this position – having already accepted the cartoonist's explanation it could not ignore the fact that there was nothing in the cartoon that referred to Mr Sharon's religion at all. Of course it is well-known that the Israeli Prime Minister is Jewish, but he is also a public figure of the sort that newspapers frequently satirise or criticise, and it is not the Commission's job to interfere with newspapers' rights to comment on individuals in this way unless there is an issue under the Code.

Clearly some people had felt strongly that the cartoon had made a direct reference to the blood libel – a position that might have been more justifiable without a convincing explanation from the newspaper. The fact remained, however, that the newspaper's explanation was accepted by the Commission and it considered that it would be unreasonable to expect editors to take into account all possible interpretations of material that they intend to publish, no matter what their own motive for publishing it. That would be to interpret the Code in a manner that would impose burdens on newspapers that would arguably interfere with their rights to freedom of expression.

Adjudication issued 2003