



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF RABCZEWSKA v. POLAND

(Requête n° 8257/13)

JUDGMENT

Art 10 • Freedom of expression • Lack of sufficient reasons for applicant's conviction and fine for offending religious feelings of others through publicly insulting the Bible • Statements not amounting to hate speech or abusive attack and not threatening public order • Wide margin of appreciation overstepped

*This version was rectified on 15 September 2022
under Rule 81 of the Rules of Court.*

STRASBOURG

15 September 2022

FINAL

30/01/2023

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Rabczewska v. Poland,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Péter Paczolay, *President*,
Krzysztof Wojtyczek,
Alena Poláčková,
Gilberto Felici,
Lorraine Schembri Orland,
Ioannis Ktistakis,
Ksenija Turković, *Judges*,

and Renata Degener, *Section Registrar*,

Having regard to:

the application (no. 8257/13) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Ms Dorota Rabczewska (“the applicant”), on 21 January 2013;

the decision to give notice to the Polish Government (“the Government”) of the complaint concerning Article 10 of the Convention, and to declare inadmissible the remainder of the application;

the observations submitted by the Government and the observations submitted in reply by the applicant;

the comments submitted by Article 19 and Ordo Iuris, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 5 July 2022,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the applicant’s conviction for blasphemous statements made about the Holy Bible.

THE FACTS

2. The applicant was born in 1984 and lives in Ciechanów. She was represented by Mr D. Racziewicz, a lawyer practising in Warsaw.

3. The Polish Government (“the Government”) were represented by their Agent, Ms J. Chrzanowska and, subsequently, by Mr J. Sobczak, of the Ministry of Foreign Affairs.

4. The facts of the case, as submitted by the parties, may be summarised as follows. They are to a large extent based on the facts established by the domestic courts.

5. The applicant is a popular pop singer known as Doda.

6. On 24 July 2009 the applicant gave an interview for a news website called *Dziennik*, which was published on 3 August 2009. Part of the interview

was subsequently reprinted in the tabloid *Super Express*. The title of the article was: “Doda: I don’t believe in the Bible.” One of the questions in the interview was as follows: “You say that the Pope is an authority figure for you, you are a religious person, so why you are seeing somebody who desecrates the Bible and conveys anti-Christian sentiment?” In reply, the applicant described her relationship with her then partner, A.D. She then explained that the biblical message did have some value; however, the facts depicted in it were not reflected in scientific discoveries. For instance, in the description of the creation of the world there was no mention of dinosaurs. The applicant believed in a higher power (*sila wyższa*), she had had a religious upbringing, but had her own views on those matters. She stated that she was more convinced by scientific discoveries, and not by what she described as “the writings of someone wasted from drinking wine and smoking some weed” (*napruty winem i palący jakieś zioła*). When asked who she meant, the applicant replied “all those guys who wrote those incredible [biblical] stories”. The applicant did not submit to the Court the complete text of the interview she gave.

7. After publication of the interview, two individuals, R.N and S.K., complained to a public prosecutor that the applicant had committed an offence proscribed by Article 196 of the Criminal Code (see paragraph 21 below). The case was initially discontinued by the Warsaw District Prosecutor but on 14 October 2009 the Warsaw District Court overturned this decision.

8. On 30 April 2010 the Warsaw Regional Prosecutor issued a bill of indictment against the applicant for offending the religious feelings of the two individuals by insulting the object of their religious worship – the Holy Bible.

9. During the investigation, the applicant pleaded not guilty and argued that she had not intended to offend anybody. She was a peaceful person who respected everybody’s religion. Her interview should not have been taken seriously, as she had given it in a humorous and detached manner, and had been using the language of young people, which was full of metaphors. She explained that “wasted” meant colourful, with a positive outlook, that by wine she had meant communion wine, and that she had also been referring to healing plants which had been used at that time. Before the court the applicant reiterated that her intention had not been to offend or to spark revolt. She had replied to the journalist’s questions in a sincere, subjective and frivolous manner, and her views were based on historical and scientific television programmes, of which she was a fan.

10. The court heard R.N and S.K., who reiterated what they had argued before the prosecuting authorities. The journalist who had interviewed the applicant was also heard. She confirmed in particular that the interview had been viewed a record number of times.

11. On 16 January 2012 the Warsaw District Court convicted the applicant as charged and fined her 5,000 Polish zlotys (approximately

1,160 euros). The court found that the applicant's case concerned a conflict of two constitutional freedoms: the freedom of conscience and religion guaranteed in Article 53 of the Constitution and the freedom of expression enshrined in Article 54 of the Constitution. The court observed that the legislature had balanced the two conflicting freedoms in Article 196 of the Criminal Code. In its judgment the court stated, *inter alia*:

"It is impossible to accept that the applicant did not understand the meaning of the words she used, and understood their meaning differently. One cannot agree that she did not intentionally mean to offend and was not aware that her statements would be understood and evaluated in that way ... Her statements should not be understood as falling within the [margins of] freedom of expression. ...

The meanings given by the applicant to the expressions 'wasted' or 'smoking weed' should be considered totally absurd, and contrary to logic and basic life experience. Any person with an average [amount of] knowledge and experience can perfectly understand the meaning of those expressions ... The applicant clumsily and mockingly explained the meaning of her statements. Analysing her explanation as a whole, one has to establish that [the statements] were not consistent: when talking of wine she first indicated that she meant communion wine, but afterwards [she said] homemade wine which was allegedly drunk by apostles travelling with Jesus.

The explanations of the applicant were not supported by the evidence collected.

In the light of the explanations of the victims R.N. and S.K., it is indisputable that the statements of the applicant offended their religious feelings."

12. The court referred to the opinion of the journalist who had interviewed the applicant. The latter considered that the statement in question had been "spontaneous" but at the same time "intentionally aimed at shocking the audience" and "gaining media interest". The expressions she had used had been chosen for their iconoclastic character in order to raise maximum public interest. The court also relied on an expert opinion which found that the applicant had deliberately used youth slang words and that her way of communicating had been marked by the tendency to shock, hurt and dominate others.

13. The court noted that the applicant's comments had been made public and they had reached a wide audience. It considered that the question of whether her statements amounted to insult had to be examined taking into account the average person's sensibility in Poland. It also noted that the Bible, along with the Torah, was considered in the different Christian religions and in Judaism to be inspired by God and was an object of veneration. The court accepted the experts' opinions that the applicant's statements had debased the Bible by suggesting that its authors had written it under the influence of alcohol and narcotics. The applicant's behaviour had gone beyond analysis or criticism and become a tool for hurting other persons. She had expressed her views in a way that offended Christians and Jews and displayed contempt of believers.

14. The court concluded that the statements made by the applicant had been objectively insulting and could not be considered to have been made for

artistic or scientific purposes. The applicant's actions had been intentional. In sum, her actions had fulfilled the conditions of the offence proscribed by Article 196 of the Criminal Code.

15. The applicant's lawyers lodged two appeals against the judgment of 16 January 2012. The applicant alleged errors of fact and law and incorrect assessment of evidence. She complained that one of the experts had been a priest and that the courts had wrongly concluded that her intention had been to offend the religious feelings of others. She alleged that the courts had arbitrarily assessed the evidence and should have heard other persons to see whether they had felt offended by her statements. The applicant further complained of a violation of her procedural rights, as one of the hearings had been held in her absence and her lawyer had not been given sufficiently early notice of it. The applicant also contested the manner in which the interview had been approved by her manager. She considered that her actions had not been public and that the interview had been a private conversation taking place in her flat.

16. On 18 June 2012 the Warsaw Regional Court upheld the first-instance judgment, amending it only by specifying the date of the offence as 24 July 2009. The Regional Court agreed with the lower court as regards the facts and the assessment of the applicant's guilt. It considered that, as established by the Warsaw District Court, all the conditions of the offence proscribed by Article 196 of the Criminal Code had been fulfilled: the statement had been public, had offended the religious feelings of other persons, had concerned an object of religious worship, and amounted to insult (*zniewaga*).

17. The applicant's lawyer was notified of the judgment on 23 July 2012.

18. On 22 October 2012, on her behalf, the applicant's lawyer lodged a constitutional complaint alleging that Article 196 of the Criminal Code was unconstitutional. In particular, it was argued that Article 196 had disproportionately limited the applicant's right to freedom of expression.

19. On 6 October 2015 the Constitutional Court gave judgment in the case and found that the provision of the Criminal Code in question was compatible with the Constitution, in particular with Articles 42, 53 and 54. The Constitutional Court analysed the domestic case-law under Article 196 of the Criminal Code, stating that the Supreme Court, for example, had held that the offence of religious insult proscribed by Article 196 was characterised by the "expression of contempt to another person with the intention to humiliate or taunt" (*wyrażeniem pogardy, chęcią poniżenia lub wyszydzenia*). The assessment of whether behaviour contained such an insult had to be based on objective criteria and take into account the cultural rules and social conventions generally accepted in society. The Constitutional Court assessed in detail whether the provision respected the principles of foreseeability and proportionality in the light of the Court's case-law. The court stated, *inter alia*:

“The right to the protection of religious feelings, to which the contested provision refers, concerns both the freedom from behaviour insulting the object of religious worship and the freedom to manifest an individual’s religion. There is also no doubt that the protection of religious feelings, and therefore human emotions associated with an individual’s faith, is also linked to the protection of the inherent and inalienable dignity of human beings, which constitutes a source of freedoms and human and civil rights – Article 30 of the Constitution.

... Under Article 196 of the Criminal Code, what is protected are the religious feelings of other persons directly related to religious freedom and human dignity. The punishment for the offence of offending religious feelings by insulting in public an object of religious worship is therefore meant to counteract such a type of ‘criticism’, which consists in replacing, with reference to freedom of speech, meritorious arguments with insults, which as such cannot be the standard accepted in a democratic State (see the judgment of the Constitutional Court in case no. P 3/06). The insulting of an object of religious worship deliberately offends the religious feelings of other people, and thus also, like other forms of insult, harms their personal dignity. The Constitutional Court maintains the position that in a democratic State, which is to the common good of all citizens, public debate, in which everyone is guaranteed freedom of expression also in the religious sphere, should take place in a civilised and cultural manner, without any detriment to human and civil rights and freedoms (see the judgment of the Constitutional Court in case no. P 12/09). The answer to a rhetorical question of whether the law should prevent the spread in the language of the public debate of phrases that are offensive, aggressive, humiliating, degrading, and that violate human dignity, replacing the authentic exchange of views with insults, is also clear (see the judgment of the Constitutional Court in case no. P 3/06). ...

The Constitutional Court found ... that the punishment of the offence of offending religious feelings by insulting in public an object of religious worship is, from the point of view of Article 31 § 3 of the Constitution, a necessary restriction on the constitutional freedom of expression protected by Article 54 § 1 of the Constitution, and thus the measures applied are necessary for the protection of the interests to which they are connected. In a democratic State, it is necessary to restrict freedom of expression that insults or offends the religious feelings of others. What needs to be assessed, however, is the manner in which the limits of freedom of expression are defined and the intensity of the restrictions themselves.

... The measure restricting the constitutionally protected freedom of expression employed in pursuance of Article 196 of the Criminal Code cannot be considered disproportionate, meaning not necessary and not leading to the intended purpose (Article 31 § 3 of the Constitution).”

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

A. Relevant Constitutional provisions

20. The relevant provisions of the Constitution of the Republic of Poland provide as follows:

Article 25 § 2

“Public authorities in the Republic of Poland shall be impartial in matters of religious and philosophical convictions, and shall ensure freedom to express them in public life.”

Article 30

“The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities.”

Article 31 § 3

“Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic State for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.”

Article 53

“1. Freedom of conscience and religion shall be secured to everyone.

2. Freedom of religion shall include the freedom to profess or to accept a religion by personal choice as well as to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing rites or teaching. Freedom of religion shall also include the availability of sanctuaries and other places of worship designed to meet the needs of believers as well as the right of individuals, wherever they may be, to benefit from religious services.

3. Parents shall have the right to provide their children with a moral and religious upbringing and teaching in accordance with their convictions. The provisions of Article 48 § 1 shall apply as appropriate.

4. The religion of a church or other legally recognised religious organisation may be taught in schools, but other peoples’ freedom of religion and conscience shall not be infringed thereby.

5. The freedom to publicly express religion may be limited only by means of statute and only where this is necessary for the defence of State security, public order, health, morals or the freedoms and rights of others.

6. No one shall be compelled to participate or not to participate in religious practices.

7. No one may be compelled by organs of public authority to disclose his philosophy of life, religious convictions or beliefs.”

Article 54 § 1

“Everyone shall be guaranteed freedom to express opinions and to acquire and to disseminate information.”

B. Criminal Code

21. Article 196 of the Criminal Code provides as follows:

“Whoever offends the religious feelings of other persons by publicly insulting an object of religious worship, or a place designated for public religious ceremonies, is liable to pay a fine, have his or her liberty restricted, or be deprived of his or her liberty for a period of up to two years.”

22. Article 256 § 1 of the Criminal Code prohibits hate speech:

“Whoever publicly promotes fascist or other totalitarian State systems or incites to hatred on grounds of national, ethnic, racial or religious differences or on grounds of irreligiosity shall be subject to a fine, or the penalty of limitation or deprivation of liberty for up to two years.”

II. INTERNATIONAL MATERIAL

A. United Nations standards

23. Article 20 § 2 of the 1966 United Nations International Covenant on Civil and Political Rights provides:

“Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”

24. On 16 December 2005 the General Assembly of the United Nations adopted Resolution 60/150 on combating defamation of religions (UN Doc. A/RES/60/509/Add.2 (Part II)), the relevant parts of which read as follows:

“The General Assembly,

...

Noting with concern that defamation of religions is among the causes of social disharmony and leads to violations of human rights,

Noting with deep concern the increasing trend in recent years of statements attacking religions, Islam and Muslims in particular, especially in human rights forums,

1. *Expresses deep concern* at the negative stereotyping of religions and manifestations of intolerance and discrimination in matters of religion or belief still in evidence in some regions of the world;

2. *Strongly deplores* physical attacks and assaults on businesses, cultural centres and places of worship of all religions as well as targeting of religious symbols;

3. *Notes with deep concern* the intensification of the campaign of defamation of religions and the ethnic and religious profiling of Muslim minorities in the aftermath of the tragic events of 11 September 2001;

4. *Expresses its deep concern* that Islam is frequently and wrongly associated with human rights violations and terrorism;

5. *Also expresses its deep concern* at programmes and agendas pursued by extremist organizations and groups aimed at the defamation of religions, in particular when supported by Governments;

6. *Deplores* the use of the print, audio-visual and electronic media, including the Internet, and any other means to incite acts of violence, xenophobia or related intolerance and discrimination against Islam or any other religion;

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7. *Recognizes* that, in the context of the fight against terrorism and the reaction to counter-terrorism measures, defamation of religions becomes an aggravating factor that contributes to the denial of fundamental rights and freedoms of target groups, as well as their economic and social exclusion;

8. *Stresses* the need to effectively combat defamation of all religions, Islam and Muslims in particular, especially in human rights forums;

9. *Urges* States to take resolute action to prohibit the dissemination through political institutions and organizations of racist and xenophobic ideas and material aimed at any religion or its followers that constitute incitement to discrimination, hostility or violence;

10. *Also urges* States to provide, within their respective legal and constitutional systems, adequate protection against acts of hatred, discrimination, intimidation and coercion resulting from defamation of religions, to take all possible measures to promote tolerance and respect for all religions and their value systems and to complement legal systems with intellectual and moral strategies to combat religious hatred and intolerance;

11. *Urges* all States to ensure that all public officials, including members of law enforcement bodies, the military, civil servants and educators, in the course of their official duties, respect different religions and beliefs and do not discriminate on the grounds of religion or belief, and that necessary and appropriate education or training is provided;

12. *Underscores* the need to combat defamation of religions by strategizing and harmonizing actions at the local, national, regional and international levels through education and awareness-raising;

13. *Urges* States to ensure equal access to education for all, in law and in practice, including access to free primary education for all children, both girls and boys, and access for adults to lifelong learning and education based on respect for human rights, diversity and tolerance, without discrimination of any kind, and to refrain from any legal or other measures leading to racial segregation in access to schooling;

14. *Calls upon* the international community to initiate a global dialogue to promote a culture of tolerance and peace based on respect for human rights and religious diversity, and urges States, non-governmental organizations, religious bodies and the print and electronic media to support and promote such a dialogue;

15. *Calls upon* the United Nations High Commissioner for Human Rights to promote and include human rights aspects in the dialogue among civilizations, *inter alia*, through:

(a) Integrating them into topical seminars and special debates on the positive contributions of cultures, as well as religious and cultural diversity, including through educational programmes, particularly the World Programme for Human Rights Education proclaimed on 10 December 2004;

(b) Collaboration by the Office of the United Nations High Commissioner for Human Rights with other relevant international organizations in holding joint conferences designed to encourage this dialogue and promote understanding of the universality of human rights and their implementation at various levels;

16. *Requests* the Secretary-General to submit a report on the implementation of the present resolution to the General Assembly at its sixty-first session.”

25. On 27 March 2008 the Human Rights Council adopted at its 40th session Resolution 7/19 on combating defamation of religions, the relevant parts of which read as follows:

“The Human Rights Council,

...

1. *Expresses deep concern* at the negative stereotyping of all religions and manifestations of intolerance and discrimination in matters of religion or belief;

...

4. *Expresses its grave concern* at the recent serious instances of deliberate stereotyping of religions, their adherents and sacred persons in the media and by political parties and groups in some societies, and at the associated provocation and political exploitation;

...

7. *Strongly deplores* physical attacks and assaults on businesses, cultural centres and places of worship of all religions and targeting of religious symbols;

8. *Urges* States to take actions to prohibit the dissemination, including through political institutions and organizations, of racist and xenophobic ideas and material aimed at any religion or its followers that constitute incitement to racial and religious hatred, hostility or violence;

9. *Also urges* States to provide, within their respective legal and constitutional systems, adequate protection against acts of hatred, discrimination, intimidation and coercion resulting from the defamation of any religion, to take all possible measures to promote tolerance and respect for all religions and their value systems and to complement legal systems with intellectual and moral strategies to combat religious hatred and intolerance;

10. *Emphasizes* that respect of religions and their protection from contempt is an essential element conducive for the exercise by all of the right to freedom of thought, conscience and religion;

...

12. *Emphasizes* that, as stipulated in international human rights law, everyone has the right to freedom of expression, and that the exercise of this right carries with it special duties and responsibilities, and may therefore be subject to certain restrictions, but only those provided by law and necessary for the respect of the rights or reputations of others, or for the protection of national security or of public order, or of public health or morals;

13. *Reaffirms* that general comment No. 15 of the Committee on the Elimination of Racial Discrimination, in which the Committee stipulates that the prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with the freedom of opinion and expression, is equally applicable to the question of incitement to religious hatred;

14. *Deplores* the use of printed, audio-visual and electronic media, including the Internet, and of any other means to incite acts of violence, xenophobia or related intolerance and discrimination towards Islam or any religion;

15. *Invites* the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to continue to report on all

manifestations of defamation of religions, and in particular on the serious implications of Islamophobia, on the enjoyment of all rights to the Council at its ninth session;

16. *Requests* the High Commissioner for Human Rights to report on the implementation of the present resolution and to submit a study compiling relevant existing legislations and jurisprudence concerning defamation of and contempt for religions to the Council at its ninth session.”

26. On 22 March 2013 the Human Rights Council adopted at its 50th session Resolution 22/31 on combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief, the relevant parts of which read as follows:

“The Human Rights Council,

...

1. *Expresses deep concern* at the continued serious instances of derogatory stereotyping, negative profiling and stigmatization of persons based on their religion or belief, as well as programmes and agendas pursued by extremists organizations and groups aimed at creating and perpetuating negative stereotypes about religious groups, in particular when condoned by Governments;

2. *Expresses its concern* that incidents of religious intolerance, discrimination and related violence, as well as of negative stereotyping of individuals on the basis of religion or belief, continue to rise around the world, and condemns, in this context, any advocacy of religious hatred against individuals that constitutes incitement to discrimination, hostility or violence, and urges States to take effective measures, as set forth in the present resolution, consistent with their obligations under international human rights law, to address and combat such incidents;

3. *Condemns deeply* any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence, whether it involves the use of print, audiovisual or electronic media or any other means;

4. *Welcomes* international, regional and national initiatives aimed at promoting interreligious, intercultural and interfaith harmony and combating discrimination against individuals on the basis of religion or belief, in particular the series of experts meetings in the framework of the Istanbul Process, and notes also in this regard the efforts of the Office of the United Nations High Commissioner for Human Rights and the holding of five regional workshops on separate but related issues, including the final workshop in Morocco and its outcome document, the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, and the recommendations and conclusions contained therein.

5. Recognizes that the open, public debate of ideas, as well as interfaith and intercultural dialogue, at the local, national and international levels, can be among the best protections against religious intolerance and can play a positive role in strengthening democracy and combating religious hatred, and convinced that continuing dialogue on these issues can help to overcome existing misperceptions;

6. Notes the speech given by Secretary-General of the Organization of the Islamic Conference at the fifteenth session of the Human Rights Council, and draws on his call on States to take the following actions to foster a domestic environment of religious tolerance, peace and respect by:

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- (a) Encouraging the creation of collaborative networks to build mutual understanding, promoting dialogue and inspiring constructive action towards shared policy goals and the pursuit of tangible outcomes, such as servicing projects in the fields of education, health, conflict prevention, employment, integration and media education;
- (b) Creating an appropriate mechanism within Governments to, *inter alia*, identify and address potential areas of tension between members of different religious communities, and assisting with conflict prevention and mediation;
- (c) Encouraging the training of government officials in effective outreach strategies;
- (d) Encouraging the efforts of leaders to discuss within their communities the causes of discrimination, and evolving strategies to counter these causes;
- (e) Speaking out against intolerance, including advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence;
- (f) Adopting measures to criminalize incitement to imminent violence based on religion or belief;
- (g) Understanding the need to combat denigration and negative religious stereotyping of persons, as well as incitement to religious hatred, by strategizing and harmonizing actions at the local, national, region and international levels through, *inter alia*, education and awareness-building;
- (h) Recognizing that the open, constructive and respectful debate of ideas, as well as interfaith and intercultural dialogue at the local, national and international levels, can play a positive role in combating religious hatred, incitement and violence;

7. Calls upon all States:

- (a) To take effective measures to ensure that public functionaries, in the conduct of their public duties, do not discriminate against an individual on the basis of religion or belief;
- (b) To foster religious freedom and pluralism by promoting the ability of members of all religious communities to manifest their religion, and to contribute openly and on an equal footing to society;
- (c) To encourage the representation and meaningful participation of individuals, irrespective of their religion in all sectors of society;
- (d) To make a strong effort to counter religious profiling, which is understood to be the invidious use of religion as a criterion in conducting questionings, searches and other law enforcement investigative procedures;

8. Encourages States to consider providing updates on efforts made in this regard as part of ongoing reporting to the Office of the High Commissioner;

9. Calls upon States to adopt measures and policies to promote full respect for and protection of places of worship and religious sites, cemeteries and shrines, and to take measures in cases where they are vulnerable to vandalism or destruction;

10. Requests the High Commissioner to prepare and submit to the Human Rights Council, at its twenty-fifth session, a report based upon information provided by States on the efforts and measures taken by them for the implementation of the action plan outlined in paragraphs 6 and 7 above, as well as their views on potential follow-up measures for further improvement of the implementation of that plan;

11. Calls for strengthened international efforts to foster a global dialogue for the promotion of a culture of tolerance and peace at all levels, based on respect for human rights and diversity of religions and beliefs.”

27. The UN Human Rights Committee adopted at its 102nd session (11–29 July 2011) General Comment No. 34 on Article 19 (Freedoms of opinion and expression), the relevant parts of which read as follows:

“3. Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.

...

47. Defamation laws must be crafted with care to ensure that they comply with paragraph 3, and that they do not serve, in practice, to stifle freedom of expression. All such laws, in particular penal defamation laws, should include such defences as the defence of truth and they should not be applied with regard to those forms of expression that are not, of their nature, subject to verification. At least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice. In any event, a public interest in the subject matter of the criticism should be recognized as a defence. Care should be taken by States parties to avoid excessively punitive measures and penalties. Where relevant, States parties should place reasonable limits on the requirement for a defendant to reimburse the expenses of the successful party. States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty. It is impermissible for a State party to indict a person for criminal defamation but then not to proceed to trial expeditiously – such a practice has a chilling effect that may unduly restrict the exercise of freedom of expression of the person concerned and others.

48. Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant. [...] Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.

49. Laws that penalize the expression of opinions about historical facts are incompatible with the obligations that the Covenant imposes on States parties in relation to the respect for freedom of opinion and expression. The Covenant does not permit general prohibition of expressions of an erroneous opinion or an incorrect interpretation of past events. Restrictions on the right of freedom of opinion should never be imposed and, with regard to freedom of expression, they should not go beyond what is permitted in paragraph 3 or required under article 20.”

B. The Organization for Security and Cooperation in Europe (OSCE)’s Office for Democratic Institutions and Human Rights (ODIHR)

28. The final 2019 *Report on Hate Crime* prepared by OSCE/ODHIR collected contributions from thirty-nine states, complemented by reports on hate incidents from 148 civil society groups, covering 45 participating States. The report gathered data of some 7,000 incidents motivated by bias against different groups, including 3,757 “descriptive incidents”. The overview of the total number of reported incidents indicated that 2,026 of them were motivated by anti-Semitism, 577 motivated by bias against Christians and 511 by bias against Muslims. In respect of Poland the report noted 972 hate crimes recorded by police. Other sources reported 187 incidents in Poland, including fifty-two incidents motivated by anti-Semitism, thirty-five motivated by bias against Christians, and six and against Muslims.

C. Council of Europe

29. The relevant parts of the Parliamentary Assembly of the Council of Europe (PACE) Recommendation 1805 (2007) on blasphemy, religious insults and hate speech against persons on grounds of their religion provide as follows:

“4. With regard to blasphemy, religious insults and hate speech against persons on the grounds of their religion, the state is responsible for determining what should count as criminal offences within the limits imposed by the case law of the European Court of Human Rights. In this connection, the Assembly considers that blasphemy, as an insult to a religion, should not be deemed a criminal offence. A distinction should be made between matters relating to moral conscience and those relating to what is lawful, matters which belong to the public domain, and those which belong to the private sphere. Even though today prosecutions in this respect are rare in member states, they are legion in other countries of the world.

...

14. The Assembly notes that member states have the obligation under Article 9 of the Convention to protect freedom of religion including the freedom to manifest one’s religion. This requires that member states protect such manifestations against disturbances by others. However, these rights may sometimes be subject to certain justified limitations. The challenge facing the authorities is how to strike a fair balance between the interests of individuals as members of a religious community in ensuring respect for their right to manifest their religion or their right to education, and the general public interest or the rights and interests of others.

15. The Assembly considers that, as far as it is necessary in a democratic society in accordance with Article 10, paragraph 2, of the Convention, national law should only penalise expressions about religious matters which intentionally and severely disturb public order and call for public violence.”

30. The relevant parts of the European Commission for Democracy through Law (Venice Commission) Report on the relationship between

Freedom of Expression and Freedom of Religion: the issue of regulation and prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred (CDL-AD(2008)026) provide as follows:

“89. As concerns the question of whether or not there is a need for specific supplementary legislation in the area of blasphemy, religious insult and incitement to religious hatred, the Commission finds:

a) That incitement to hatred, including religious hatred, should be the object of criminal sanctions as is the case in almost all European States ...

b) That it is neither necessary nor desirable to create an offence of religious insult (that is, insult to religious feelings) simpliciter, without the element of incitement to hatred as an essential component.

c) That the offence of blasphemy should be abolished (which is already the case in most European States) and should not be reintroduced.

90. As concerns the question of to what extent criminal legislation is adequate and/or effective for the purpose of bringing about the appropriate balance between the right to freedom of expression and the right to respect for one’s beliefs, the Commission reiterates that, in its view, criminal sanctions are only appropriate in respect of incitement to hatred (unless public order offences are appropriate).

91. Notwithstanding the difficulties with enforcement of criminal legislation in this area, there is a high symbolic value in the pan-European introduction of criminal sanctions against incitement to hatred. It gives strong signals to all parts of society and to all societies that an effective democracy cannot bear behaviours and acts which undermine its core values: pluralism, tolerance, respect for human rights and non-discrimination. It is essential however that the application of legislation against incitement to hatred be done in a non-discriminatory manner.

92. In the Commission’s view, instead, criminal sanctions are inappropriate in respect of insult to religious feelings and, even more so, in respect of blasphemy.”

D. European Union

31. The relevant part of the European Parliament resolution of 27 February 2014 on the situation of fundamental rights in the European Union (2012) (2013/2078(INI)) provides:

“The European Parliament,

...

35. Recalls that national laws that criminalise blasphemy restrict freedom of expression concerning religious or other beliefs, that they are often applied to persecute, mistreat, or intimidate persons belonging to religious or other minorities, and that they can have a serious inhibiting effect on freedom of expression and on freedom of religion or belief; recommends that the Member States decriminalise such offences;”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

32. The applicant complained that her criminal conviction for offending religious feelings had given rise to a violation of Article 10 of the Convention, which reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

A. Admissibility

33. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

34. The applicant submitted that her conviction and sentence had been an unjustified infringement of her right to freedom of expression. She pointed out that she had been prosecuted upon a bill of indictment lodged by the public prosecutor. This meant that the prosecutor had considered that the public interest had been involved and necessitated her prosecution. The applicant further considered that the sanction imposed on her – a criminal conviction and a fine fifty times the minimum provided by law – had been severe.

35. She pointed out that the interference in her case had not been proportionate to the legitimate aims pursued and should not have taken place in a democratic society. In particular, the necessity to protect the religious feelings of others invoked by the Government should not be safeguarded at all costs. The applicant considered that the criminal law should not have been employed to protect subjective religious feelings. The provision which penalised such expression with a penalty of up to two years' imprisonment fell short of the Convention standards.

36. The applicant's statements had not been addressed against the Catholic religion or its worshipers. Her opinions had not been intended to violate public order, disturb the peace or insult or offend the religious feelings of others. They did not amount to hate speech. The applicant had expressed her private views on the matter and the form of expression had been adapted to her audience – fans of her music. Finally, there had been nothing in her statements that could qualify as hate speech or otherwise antagonistic to believers.

(b) The Government

37. The Government submitted that there had been no violation of Article 10 of the Convention, as the interference with the applicant's rights had been in accordance with standards as set in the case-law of the Court. In particular, the interference had been prescribed by Article 196 of the Criminal Code. The applicant could easily have known that her statement could lead to prosecution as 90% of the population in Poland was Catholic and religion played a crucial role in the concept of identity to the majority of Poles as part of their culture.

38. As for the aim pursued by the interference, the Government maintained that it had been the protection of the "rights of others" and their religious feelings. The Government observed that freedom of expression and the right to respect for religious beliefs, enshrined in Articles 10 and 9 of the Convention respectively, should enjoy equal protection.

39. The Government considered that the applicant's statements had been meant to shock and had been aimed at gaining broader popularity. They should not be considered as artistic expression and had not contributed to a broader social or cultural debate. Moreover, the proceedings against her had been initiated at the request of two individuals, and not by the authorities of their own motion. The Government reiterated that the overwhelming majority of Poles were Catholic and the Roman Catholic religion played a crucial role in the concept of national identity. Catholics and other religious people had a right not to be insulted on the grounds of their beliefs.

The interference had been justified by the concern to restore the balance between the competing interests at stake – the rights to impart ideas and the protection of the religious feelings and beliefs of others.

40. The Government submitted that the domestic courts had carried out a thorough and diligent analysis of the necessity of the impugned measure and had given relevant and sufficient reasons for it. The courts had heard three experts and other witnesses and had carefully balanced the conflicting interests before coming to the conclusion that the religious sensibilities of others had been insulted publicly by the applicant. The impugned interference had therefore been proportionate to the legitimate aim.

41. With respect to the sanction imposed, the Government considered that it had been the mildest possible under the domestic law and the amount of the fine had been adapted to the applicant's financial means.

(c) Submissions by third-party interveners

(i) Article 19

42. Article 19 maintained that protecting the feelings of believers through criminal law in cases where there was no incitement to discrimination or violence could not be considered as pursuing a legitimate aim and justified as necessary in a democratic society. The intervener drew attention to opinions of the United Nations Human Rights Committee stating that blasphemy laws are incompatible with the International Covenant on Civil and Political Rights except in specific situations. They cited the UN Working Group on Arbitrary Detention, stating: "while religious insult[s] may offend people and hurt their feelings, they do not directly result in a violation of rights to freedom of religion."

43. Article 19 argued that the prohibitions on religious insult were indistinct from more broadly framed prohibitions on blasphemy. The fact that the former seemed to protect the subjective feelings of persons, while the latter protected religions or beliefs in the abstract, had no distinction in practice: proving insult to the individual in these circumstances rested on an evidential finding of insult to the religion itself. In both instances the State found itself in the position of using the criminal law to determine the acceptable boundaries of religious discourse. The intervener also pointed to PACE Recommendation 1805 (2007) in which it was considered that the national law should only penalise expressions concerning religious matters which intentionally and severely disturbed public order and called for public violence.

(ii) Ordo Iuris

44. Ordo Iuris noted that the persons enjoying rights under Article 10 of the Convention had duties and obligations, particularly an obligation to avoid expressions that were gratuitously offensive to others, infringing their rights and not contributing to a public debate. They noted that the States had positive obligations under Article 9 of the Convention to ensure the peaceful coexistence of all religions and those not belonging to a religious group by ensuring religious tolerance. The intervener further pointed out that it was not possible to discern throughout Europe a uniform conception of the significance of religion in society. They referred to the Court's case-law to demonstrate that in such cases the States enjoyed a wide margin of appreciation in assessing the necessity for the interference.

45. Ordo Iuris noted that statistics showed that Poland was one of the most religious countries in Europe. The vast majority of Poles believed in God, and

some 60% believed that the Bible was the “word of God”. The more religious the society was, the more pressing the need could be to establish some form of liability for gratuitously offensive statements that insulted other people’s feelings. They also argued that Article 196 of the Polish Criminal Code, drafted in a similar way to Article 188 of the Austrian Criminal Code, penalised statements aimed at insulting religious feelings regarding objects or places of religious worship. It did not prohibit critical and controversial statements but guaranteed to believers the right to exercise their freedom of religion.

2. *The Court’s assessment*

(a) **General principles**

46. The Court reiterates the fundamental principles underlying its judgments relating to Article 10 as set out in, for example, *Handyside v. the United Kingdom* (7 December 1976, Series A no. 24) and *Fressoz and Roire v. France* ([GC], no. 29183/95, § 45, ECHR 1999-I). Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. The Court further notes that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on questions of public interest (see *Baka v. Hungary* [GC], no. 20261/12, § 159, ECHR 2016, and *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 167, 27 June 2017 (extracts)).

47. As is recognised in paragraph 2 of Article 10, however, the exercise of the freedom of expression carries with it duties and responsibilities. Among them, in the context of religious beliefs, is the general requirement to ensure the peaceful enjoyment of the rights guaranteed under Article 9 to the holders of such beliefs, including a duty to avoid as far as possible an expression that is, in regard to objects of veneration, gratuitously offensive to others and profane (see *Sekmadienis Ltd. v. Lithuania*, no. 69317/14, § 74, 30 January 2018, with further references).

48. The Court reiterates furthermore that, as enshrined in Article 9 of the Convention, freedom of thought, conscience and religion is one of the foundations of a “democratic society” within the meaning of the Convention (see *Kokkinakis v. Greece*, 25 May 1993, § 31, Series A no. 260-A, and *Ivanova v. Bulgaria*, no. 52435/99, § 77, 12 April 2007). At the same time, the State’s duty of neutrality and impartiality excludes any discretion on its part to determine whether religious beliefs or the means used to express such beliefs are legitimate (see *Manoussakis and Others v. Greece*, 26 September 1996, § 47, *Reports of Judgments and Decisions* 1996-IV; *Hasan and Chaush*

v. Bulgaria [GC], no. 30985/96, § 78, ECHR 2000-XI; and *Fernández Martínez v. Spain* [GC], no. 56030/07, § 129, ECHR 2014 (extracts)).

49. The Court has repeatedly held that, although the essential object of many provisions of the Convention is to protect the individual against arbitrary interference by public authorities, there may in addition be positive obligations inherent in an effective respect of the rights concerned (see *Özgür Gündem v. Turkey*, no. 23144/93, § 42, ECHR 2000-III). States have the positive obligation under Article 9 of the Convention of ensuring the peaceful coexistence of all religions and those not belonging to a religious group by ensuring mutual tolerance (see *E.S. v. Austria*, no. 38450/12, § 44, 25 October 2018; see also *Leyla Şahin v. Turkey* [GC], no. 44774/98, §§ 107-08, ECHR 2005-XI, and *S.A.S. v. France* [GC], no. 43835/11, §§ 123-28, ECHR 2014 (extracts)). These obligations may require the adoption of measures to ensure respect for freedom of religion even in the relations between individuals (see *Siebenhaar v. Germany*, no. 18136/02, § 38, 3 February 2011).

50. While the dividing line between the positive and negative obligations of the State under Article 9 does not lend itself to a precise definition, the applicable principles are nevertheless comparable. In particular, in both cases, account must be taken of the right balance to be struck between the general interest and the interests of the individual, with the State enjoying a margin of appreciation in any event (*ibid.*, § 38; and, *mutatis mutandis*, *Evans v. the United Kingdom* [GC], no. 6339/05, §§ 75-76, ECHR 2007-I; *Rommelfanger v. Germany*, no. 12242/86, Commission decision of 6 September 1989, Decisions and Reports 62, pp. 151 and 161; and *Fuentes Bobo v. Spain*, no. 39293/98, § 38, 29 February 2000).

51. Those who choose to exercise the freedom to manifest their religion under Article 9 of the Convention, irrespective of whether they do so as members of a religious majority or a minority, cannot therefore expect to be exempt from criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith (see *Otto-Preminger-Institut v. Austria*, 20 September 1994, § 47, Series A no. 295-A; *İ.A. v. Turkey*, no. 42571/98, § 28, ECHR 2005-VIII; and *Aydın Tatlav v. Turkey*, no. 50692/99, § 27, 2 May 2006). However, where such expressions go beyond the limits of a critical denial of other people's religious beliefs and are likely to incite religious intolerance, for example in the event of an improper or even abusive attack on an object of religious veneration, a State may legitimately consider them to be incompatible with respect for the freedom of thought, conscience and religion and take proportionate restrictive measures (see *Tagiyev and Huseynov v. Azerbaijan*, no. 13274/08, § 37, 5 December 2019; *Otto-Preminger-Institut*, cited above, § 47; and *İ.A. v. Turkey*, cited above, § 29). Presenting objects of religious worship in a provocative way capable of hurting the feelings of the followers of that religion could be conceived as

a malicious violation of the spirit of tolerance, which is one of the bases of a democratic society (see *E.S. v. Austria*, cited above, § 53). Expressions that seek to spread, incite or justify hatred based on intolerance, including religious intolerance, do not enjoy the protection afforded by Article 10 of the Convention (see, *mutatis mutandis*, *Gündüz v. Turkey*, no. 35071/97, § 51, ECHR 2003-XI). A State may therefore legitimately consider it necessary to take measures aimed at repressing certain forms of conduct, including the imparting of information and ideas judged incompatible with respect for the freedom of thought, conscience and religion of others (see *E.S. v. Austria*, cited above, § 45).

52. The fact that there is no uniform European conception of the requirements of the protection of the rights of others in relation to attacks on their religious convictions means that the Contracting States have a wider margin of appreciation when regulating freedom of expression in connection with matters liable to offend intimate personal convictions within the sphere of morals or religion (see *I.A. v. Turkey*, cited above, § 25, with further references; see also *Wingrove v. the United Kingdom*, 25 November 1996, § 58, *Reports* 1996-V, and *Murphy v. Ireland*, no. 44179/98, § 67, ECHR 2003-IX (extracts)). Moreover, in cases involving weighing up the conflicting interests of the exercise of two fundamental freedoms, namely the right of the applicant to impart to the public his or her views on religious doctrine on the one hand, and the right of others to respect for their freedom of thought, conscience and religion on the other, the assessment of the (potential) effects of the impugned statements depends, to a certain degree, on the situation in the country where the statements were made at the time and the context in which they were made. In such cases, the domestic authorities have a wide margin of appreciation, as they are in a better position to evaluate which statements were likely to disturb the religious peace in their country (see *E.S. v. Austria*, cited above, § 50).

53. The Court has also emphasised that in democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on the freedom to manifest one's religion or beliefs in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected (see *Kokkinakis*, cited above, § 33). The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion (see, *mutatis mutandis*, *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 92, ECHR 2004-I).

(b) Application of the above principles to the instant case

54. The Court considers, and this was common ground between the parties, that the criminal conviction giving rise to the instant case amounted to an interference with the applicant's right to freedom of expression. Such interference constitutes a breach of Article 10 unless it is "prescribed by law", pursues one or more of the legitimate aims referred to in paragraph 2 and is

“necessary in a democratic society” in order to achieve the aim or aims in question.

55. The Court notes that it was undisputed that the interference was “prescribed by law”, the applicant’s conviction being based on Article 196 of the Criminal Code. The Court accepts the Government’s assessment that the impugned interference pursued the aim of protecting religious feelings, which corresponds to protecting the rights of others within the meaning of Article 10 § 2 of the Convention (see *E.S.*, cited above, § 41).

56. The Court considers that the issue before it involves weighing up the conflicting interests. In so doing, regard must be had to the margin of appreciation left to the national authorities, whose duty it is in a democratic society to consider, within the limits of their jurisdiction, the interests of society as a whole. Accordingly, the Court accepts that the domestic authorities had a wide margin of appreciation in the instant case.

57. The Court reiterates in this context that while the interview with the applicant contained statements which may have shocked or disturbed some people, the Court has held on several occasions that such views do not in themselves preclude the enjoyment of freedom of expression (see, in particular, *De Haes and Gijssels v. Belgium*, 24 February 1997, § 46, *Reports* 1997-I). The Court reiterates that a religious group must tolerate the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith, as long as the statements at issue do not incite to hatred or religious intolerance (see paragraph 51 above).

58. The domestic courts considered that the applicant’s statements had not been part of a debate on a question of public interest and she has not argued otherwise, either before the domestic courts or before the Court. Indeed, the applicant maintained before the domestic authorities that she had directed her statements at a young audience of her music fans, and they had been “sincere, subjective, and frivolous”. There is no indication that she intended to participate in any serious debate on religious matters; rather, she was interested in nurturing the interest of her audience. The questions put by the interviewing journalist to her concerning religion were prompted by the openly anti-religious public stance of her boyfriend at the time. The applicant herself had not engaged in any public discussion about religion prior to that interview and has not since.

59. Looking at her statements as a whole, the Court observes that the applicant did not develop her arguments and did not base them on any serious sources or a specific doctrine. She said that she based her views on “scientific discoveries,” however, apparently originating from popular television programs. The applicant did not claim to be an expert on the matter, a journalist, or a historian. She had been answering the journalist’s question about her private life, addressing her audience in a language consistent with her style of communication, deliberately frivolous and colourful, with the intention of sparking interest.

60. The Court notes that the domestic courts failed to assess properly – on the basis of a detailed analysis of the wording of the statements made – whether the impugned statements constituted factual statements or value judgments. The Court further notes that the domestic courts failed to identify and carefully weigh the competing interests at stake. Nor, did they discuss the permissible limits of criticism of religious doctrines under the Convention versus their disparagement. In particular, the domestic courts did not assess whether applicant’s statements had been capable of arousing justified indignation or whether they were of a nature to incite to hatred or otherwise disturb religious peace and tolerance in Poland (see paragraph 49 above).

61. The Court notes that it was not argued before the domestic courts, or before the Court, that the applicant’s statements amounted to hate speech. In particular, Article 256 of the Criminal Code which expressly prohibits hate speech was not invoked in the case against the applicant. The Court finds that the domestic courts have not established that the applicant’s actions contained elements of violence, or elements susceptible of stirring up or justifying violence, hatred or intolerance of believers (see *Mariya Alekhina and Others v. Russia*, no. 38004/12, § 227, 17 July 2018).

62. The domestic courts in the instant case did not examine whether the actions in question could have led to any harmful consequences (*ibid.*, § 226). As raised by the applicant in her constitutional complaint, Article 196 of the Criminal Code does not contain an additional criterion that the insult should threaten public order. The Court has previously considered a situation where the domestic law, in addition to insulting the object of religious veneration, required that the circumstances of such behaviour be capable of arousing justified indignation, and thus aimed to protect religious peace and tolerance (compare and contrast *E.S.*, cited above, § 52). In the case at hand, the Constitutional Court clarified on 6 October 2015 that Article 196 of the Criminal Code does not protect an object of religious worship as such, but the religious feelings of persons who have been hurt by the offensive behaviour of the perpetrator. The condition for a criminal offence under Article 196 is that the persons concerned feel offended by the offender’s behaviour. It penalises “the expression of contempt to another person with the intention to humiliate” (see paragraph 19 above). There is thus nothing to suggest that Article 196 of the Criminal Code contains a similar criterion that the insult should threaten public order as in the *E.S.* case (cited above); rather, it appears that it incriminates all behaviour that is likely to hurt religious feelings.

63. Lastly, the Court notes that the nature and severity of the penalty imposed are also factors to be taken into account when assessing the proportionality of the interference with the freedom of expression guaranteed by Article 10 (see *Skalka v. Poland*, no. 43425/98, §§ 41-42, 27 May 2003, and *Kwiecień v. Poland*, no. 51744/99, § 56, 9 January 2007). In this connection, the Court observes that the applicant was convicted in criminal proceedings originating from a bill of indictment lodged by a public

prosecutor upon a complaint by two individuals. The criminal proceedings were thus continued even after the applicant had reached a friendly settlement with one of the complainants. The applicant was sentenced to a fine equivalent to 1,160 euros, fifty times the minimum. The Court cannot, therefore, conclude that the criminal sanction imposed on the applicant was insignificant.

64. In conclusion, the Court finds that in the instant case the domestic courts failed to comprehensively assess the wider context of the applicant's statements and carefully balance her right to freedom of expression with the rights of others to have their religious feelings protected and religious peace preserved in the society (compare and contrast, *ES.*, cited above, § 57). It has not been demonstrated that the interference in the instant case was required, in accordance with the State's positive obligations under Article 9 of the Convention, to ensure the peaceful coexistence of religious and non-religious groups and individuals under their jurisdiction by ensuring an atmosphere of mutual tolerance. Moreover, the Court considers that the expressions under examination did not amount to an improper or abusive attack on an object of religious veneration, likely to incite religious intolerance or violating the spirit of tolerance, which is one of the bases of a democratic society (compare and contrast *E.S.*, cited above, § 53).

The Court thus considers that – despite the wide margin of appreciation – the domestic authorities failed to put forward sufficient reasons capable of justifying the interference with the applicant's freedom of speech.

65. Accordingly, there has been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

67. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

68. The Government contested the claim.

69. The Court accepts that the applicant suffered non-pecuniary damage – such as distress and frustration resulting from the conviction – which is not sufficiently compensated by the finding of a violation of the Convention and awards the amount claimed in full.

B. Costs and expenses

70. The applicant, who was represented by a lawyer of her choice, made no claim in respect of the costs and expenses incurred before the domestic courts or before the Court.

C. Default interest

71. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT,¹

1. *Declares*, unanimously², the application admissible;
2. *Holds*, by 6 votes to 1 that there has been a violation of Article 10 of the Convention;
3. *Holds*, by 6 votes to 1,
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 15 September 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Registrar

Péter Paczolay
President

¹ Unanimously was deleted

² Unanimously was added

RABCZEWSKA v. POLAND JUDGMENT

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) Joint concurring opinion of Judges Felici and Ktistakis.
- (b) Dissenting opinion of Judge Wojtyczek.

P.P.C.
R.D.

JOINT CONCURRING OPINION OF JUDGES FELICI AND KTISTAKIS

1. We voted in favour of finding a violation of Article 10 of the Convention in this case, but on the basis of reasoning which differs from that of the majority of the Court.

2. In particular, we disagree with the technique of subordinating one fundamental freedom to another (see paragraphs 52, 55 and 64 of the present judgment). Religious freedom (Article 9) is downgraded to a restriction on or exception to freedom of expression (Article 10) and competes with it. However, no argument can be derived from the European Convention on Human Rights which would support such subordination of one fundamental freedom to another. By contrasting the approach in the present case to that of the *Otto-Preminger-Institut v. Austria* (20 September 1994, Series A no. 295-A) case-law, one notes that a similar reversal of the internal balance of Article 10 was avoided therein: in the crucially important judgment in *Open Door and Dublin Well Woman v. Ireland* (29 October 1992, Series A no. 246-A), the Court refused to include the right to life (Article 2) within the meaning of “protection of the rights of others”. The Court’s case-law does, admittedly, seem consistent with the approach taken by the majority in the present judgment. Nevertheless, the judgments in *Otto-Preminger-Institut* and *Wingrove v. the United Kingdom* (25 November 1996, Reports of Judgments and Decisions 1996-V) (quoted in paragraphs 51 and 52 of the present judgment, and in paragraphs 44 and 46 of the pertinent *E.S. v. Austria* judgment (no. 38450/12, § 44, 25 October 2018) are old, dating from 1994 and 1996 respectively, and contain strong dissenting opinions. Both *Otto-Preminger-Institute* and *Wingrove* were the subject of much controversy at the relevant time (and the European Commission of Human Rights, for its part, expressed the opinion, by a large majority, that there had been a violation of Article 10 in both cases).

3. The time has come to reassess this case-law. Which new direction should be taken? One new approach could be to examine all blasphemy-related restrictions on freedom of expression under Article 10 exclusively in terms of the legitimate aim of protecting public order (religious peace). We consider that the following paragraph (no. 15) of PACE Recommendation 1805 (2007) is potentially very important for any such new direction: “national law should only penalise expressions concerning religious matters which intentionally and severely disturb public order and call for public violence” (see paragraph 29 of the judgment).

4. Turning to the application of this proposed new case-law approach to the present case, it must be noted that there is no real link between the statements made by the applicant and the large number of persons in Poland who could be described as Bible followers. In fact, the interview with the

applicant did not *severely disturb public order* and, of course, did not contain a *call for public violence*.

5. In respect of the first aspect, it is to be noted that the interview “had been viewed a record number of times” (see paragraph 10), and that her comments “had reached a wide audience” (see paragraph 13); further, according to the Government, 90% of the population in Poland is Catholic (see paragraph 37). Nevertheless, only two individuals, namely, R.N. and S.K., complained to the public prosecutor (see paragraph 7). Again with reference to the first aspect, had the applicant been the leader of an opposing religious group or an anti-Catholic movement, she could have undermined religious peace through statements of this kind, and the effects of these statements would even be visible long afterwards. But the applicant is a popular pop singer; in addition, she criticised the Bible, perhaps harshly, in 2009 because she wanted to support the scientific approach to the creation of the world (“convinced by scientific discoveries”, see paragraph 6 of the judgment) rather than the religious one.

6. In respect of the second aspect, the statements made during the interview certainly do not constitute a *call for public violence*.

7. In conclusion, we believe that the interference in the instant case was not required, because the expressions under examination did not severely disturb public order, far less constitute a call for public violence (compare and contrast paragraph 64 of the judgment).

DISSENTING OPINION OF JUDGE WOJTYCZEK

1. I respectfully disagree with the view that there has been a violation of Article 10 in the instant case.

2. The instant case bears similarities to the cases of *Otto-Preminger-Institut v. Austria* (20 September 1994, Series A no. 295-A) and *Wingrove v. the United Kingdom* (25 November 1996, *Reports of Judgments and Decisions* 1996-V), as well as to *İ.A. v. Turkey* (no. 42571/98, ECHR 2005-VIII), and *E.S. v. Austria* (no. 38450/12, 25 October 2018), in which the Court found no violations of Article 10. At the same time, it differs considerably from cases such as *Tagiyev and Huseynov v. Azerbaijan*, (no. 13274/08, 5 December 2019), where the sanction was clearly disproportionate.

As in the above-mentioned cases, the issue before the Court involves weighing up the conflicting interests of the exercise of two fundamental freedoms guaranteed under the Convention, namely, on the one hand, the freedom to impart to the public one's own views and, on the other hand, the right of other persons to respect for their freedom of thought, conscience and religion, as well as their identity (see, for instance, *İ.A. v. Turkey*, cited above, § 27, and *E.S. v. Austria*, cited above, § 46). It should be noted here that freedom from insults affecting the religious feelings of the believers is an important element of freedom of conscience and religion (compare *İ.A. v. Turkey*, §§ 29-30).

3. The instant case must be placed in a wider social context, characterised by a rapidly growing number of religiophobic acts, of various guises, in Europe. These concern mainly Judaism and Christianity. Religiophobic acts include, in particular, acts of physical aggression against priests, which have led to the death of certain of the persons attacked, frequent verbal aggression (in public places and in the media) against believers, malicious disruption of religious worship, as well as innumerable acts of vandalism directed against places of religious worship, religious symbols and denominational cemeteries throughout Europe. The number of Christianophobic acts, including physical assaults on priests, is increasing particularly speedily in Poland.

The Organization for Security and Cooperation in Europe has started to collect data about acts motivated by anti-religious hate or prejudice (see paragraph 28). However, as the data collected by the OSCE are far from exhaustive and, in particular, do not cover all European States, they reflect only a small proportion of the religiophobic acts committed throughout Europe.

Against this backdrop, religiophobic speech constitutes an indirect incitement to more serious offenses against religious groups or their members, whereas the lack of an adequate reaction from the authorities to hate-motivated or prejudice-motivated acts against religious groups and their

members may create an atmosphere of official acquiescence and develop a general feeling of impunity. In any event, the problem of the growing number of hate-motivated or prejudice-motivated acts against religious groups calls for effective steps to be taken at both international and national levels to protect the persons affected.

4. The impugned comments pertain to the Bible, which is considered by Jews, Karaites and Christians to have been divinely inspired. The Hebrew Bible (Tanakh) lies at the heart of the Jewish faith and is recognised as defining Jewish identity. The Christian Bible plays a central role in Protestantism and defines the identity of various Protestant denominations. It also has special importance for all other Christian groups, including Orthodox Christians and Catholics, who see in it an object of particular veneration as the Holy Scripture.

5. I note that the impugned formulations touched directly upon religious beliefs (compare and contrast *Giniewski v. France*, no. 64016/00, § 51, ECHR 2006-I) and sacred symbols (compare and contrast *Aydın Tatlav v. Turkey*, no. 50692/99, § 28, 2 May 2006). They do not consist in the denial of religious beliefs but are offensive and constitute gratuitous attacks upon an object of veneration of numerous religious denominations. As in *İ.A. v. Turkey*, cited above, “the present case concerns not only comments that offend or shock, or a ‘provocative’ opinion, but also an abusive attack” and “believers may legitimately feel themselves to be the object of unwarranted and offensive attacks” (see *İ.A. v. Turkey*, cited above, § 29). As in *E.S. v. Austria*, the applicant’s comments could have aroused justified indignation among them (see *E.S. v. Austria*, cited above, §§ 52 and 57). Furthermore, in contrast to the situation in *E.S.* (see § 8 of that judgment), the comments were not proffered at a meeting attended by a small number of persons, but instead reached a very wide audience.

Moreover, the impugned utterances touched upon an essential element of the identity of numerous religious groups and were aimed at ridiculing these groups. They were motivated by prejudice and conveyed a negatively stereotyped image of believers from several denominations, stigmatising specific religious groups as poorly educated persons who believe in superstitions. They could legitimately be perceived by these religious groups as severely impacting the dignity, sense of identity and feelings of self-worth and self-confidence of the members of those groups (compare *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, § 58 ECHR 2012; *Király and Dömötör v. Hungary*, no. 10851/13, § 41, 17 January 2017; and *Behar and Gutman v. Bulgaria*, no. 29335/13, § 65, 16 February 2021).

6. The domestic courts assessed the content and form of the impugned remarks within the general context of the interview, having regard, in particular, the conflicting values at stake as well as the author’s intention and the public interest of the subject matter under discussion (compare and contrast *Tagiyev and Huseynov*, cited above, § 48). The issue of the

permissible limits of criticism of religion was carefully discussed, in particular in the Constitutional Court’s judgment of 6 October 2015 (see paragraph 19 of the judgment).

In those circumstances, it cannot be claimed that the conclusions reached by the Polish courts were groundless and unjustified. In punishing the applicant for her statements, the authorities acted to preserve religious peace and to prevent individuals (from several religious groups) from feeling that an element of their identity could, with impunity, be the object of gratuitous and offensive verbal attacks, motivated by prejudice and rejection of the groups concerned. I therefore disagree with the view expressed in paragraph 64 that “the expressions under examination did not amount to an improper or abusive attack on an object of religious veneration, likely to incite religious intolerance or violating the spirit of tolerance, which is one of the bases of a democratic society”.

7. The majority refer to the Council of Europe and European Union soft-law documents defining hate speech or advocating the abolition of the offence of blasphemy (see paragraphs 29-31 of the judgment). The problem with the approach reflected therein is that it does not take sufficient account of the specificity of religion as a social phenomenon and does not offer sufficient protection to religious groups. Aggression directed against the *sacrum* affects individuals and groups of individuals. The legal issue at stake concerns individuals, not religions or ideologies. Gratuitous insults directed against the sphere of *sacrum* are a form of verbal aggression against believers, which is usually felt by them as much more offensive and painful than insults targeting the members of a religious group directly. Insulting or mocking the sphere of *sacrum* is also a tool for promoting exclusion and developing social prejudices against specific religious groups and affects the dignity, sense of identity and feelings of self-worth and self-confidence of the members of these groups. As a result, religious peace and the harmonious co-existence of various beliefs and philosophical convictions may be undermined (compare *Gorzelik and Others v. Poland* [GC], no. 44158/98, §§ 92-93, ECHR 2004-I, and “*Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy)*” v. the former Yugoslav Republic of Macedonia, no. 3532/07, § 95, 16 November 2017).

8. As stated above, the instant case bears similarities to *İ.A. v. Turkey* and *E.S. v. Austria*, in which the Court found no violations of Article 10. In this context, the most recent case-law may create an impression that in cases concerning Islam the Court follows its established approach and seeks to protect religious feelings effectively against anti-religious speech, whereas in cases involving other religions, the approach has evolved and the protection offered to believers against abusive anti-religious speech has weakened.