



Fining a clothing company for its “Jesus” and “Mary” advertising campaign breached its freedom of expression

In today’s Chamber judgment^[1] in the case of [Sekmadienis Ltd. v. Lithuania](#) (application no. 69317/14) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (right to freedom of expression) of the European Convention on Human Rights.

The case concerned the imposition of a fine on Sekmadienis Ltd., a clothing company, for displaying in Vilnius and on its website a series of advertisements deemed by the Lithuanian courts and other bodies to offend against public morals. The advertisements had used models and captions referring to “Jesus” and “Mary”.

The Court found that, despite having triggered a number of complaints (including via the territorial authority of the Roman Catholic Church in Lithuania), the advertisements were not gratuitously offensive, and did not incite hatred. Nor had the domestic authorities provided sufficient justifications for why such use of religious symbols had been contrary to public morals. Accordingly, the domestic authorities had failed to strike a fair balance between, on the one hand, the protection of public morals and the rights of religious people, and, on the other hand, the applicant company’s right to freedom of expression.

Principal facts

The applicant company, Sekmadienis Ltd., is based in Vilnius. In September and October 2012 it ran an advertisement campaign with photos of a male and female model with halos, the man in jeans and with tattoos, and the female with a white dress and a string of beads. The advertisements contained the captions “Jesus, what trousers!”, “Dear Mary, what a dress!”, and “Jesus [and] Mary, what are you wearing!”

Several individuals complained about the advertisements to the State Consumer Rights Protection Authority (SCRPA). The latter first sought the opinion of the Lithuanian Advertising Agency (LAA), a self-regulatory body composed of advertising specialists. The LAA stated that “religious people always react very sensitively to any use of religious symbols or religious personalities in advertising” and that the advertisements breached the Code of Advertising Ethics. The SCRPA forwarded that opinion and the complaints to the State Inspectorate of Non-Food Products. The Inspectorate held that “the advertisements use religious symbols in a disrespectful and inappropriate manner” and might be in violation of the national Law on Advertising.

Subsequently the SCRPA asked the Lithuanian Bishops Conference, the territorial authority of the Roman Catholic Church in Lithuania, for its view. The Bishops Conference stated that “the degrading and distortion of religious symbols by purposely changing their meaning is contrary to public morals, especially when it is done in pursuit of commercial gain”. It later informed the SCRPA that it had received complaints about the advertisements from about a hundred individuals.

[1]. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

The applicant company submitted to the SCRPA that the references to “Jesus” and “Mary” in the advertisements were intended as emotional interjections common in spoken Lithuanian. It also argued that, in the absence of a State religion in Lithuania, the interests of one group – practising Catholics – could not be equated to those of the entire society. However, in March 2013 the SCRPA found that the advertisements were contrary to public morals and thus in violation of the Law on Advertising. The applicant company was given a fine of 2,000 Lithuanian litai (approximately 580 euros). The SCRPA held that “the inappropriate depiction of Christ and Mary in the advertisements in question encourages a frivolous attitude towards the ethical values of the Christian faith, [and] promotes a lifestyle which is incompatible with the principles of a religious person”. It concluded that “respect for religion is undoubtedly a moral value. Accordingly, disrespecting religion breaches public morals”.

The applicant company’s subsequent complaint to the regional administrative court was dismissed, as was its 2014 appeal to the Supreme Administrative Court, which held that “symbols of a religious nature occupy a significant place in the system of spiritual values of individuals and society, and their inappropriate use demeans them [and] is contrary to universally accepted moral and ethical norms”. In the aftermath of this final judgment, the President of the Supreme Administrative Court applied to re-examine the case on the basis that there may have been an unlawful or disproportionate restriction on the applicant company’s freedom of expression. However, the court refused to reopen proceedings.

Complaints, procedure and composition of the Court

Relying on Article 10 § 1 (right to freedom of expression), the applicant company complained that the fine for breach of public morals could not be considered necessary in a democratic society.

The application was lodged with the European Court of Human Rights on 20 October 2014.

Judgment was given by a Chamber of seven judges, composed as follows:

Ganna Yudkivska (Ukraine), *President*,
Vincent A. De Gaetano (Malta),
Faris Vehabović (Bosnia and Herzegovina),
Egidijus Kūris (Lithuania),
Carlo Ranzoni (Liechtenstein),
Georges Ravarani (Luxembourg),
Péter Paczolay (Hungary),

and also Marialena Tsirli, *Section Registrar*.

Decision of the Court

There was no dispute between the parties that the fine imposed had interfered with the applicant company’s freedom of expression. The Court expressed some doubt as to whether the applicant company could have foreseen that the provision of the Law on Advertising, prohibiting advertising which “violates public morals”, would be applied to the advertisements in question, especially since later that Law had been amended to explicitly prohibit advertising which “expresses contempt for religious symbols”. The Court accepted that the interference sought legitimate aims, namely the protection of morals arising from the Christian faith, and the protection of the right of religious people not to be insulted on the grounds of their beliefs.

The Court acknowledged that the national authorities’ room for manoeuvre (“margin of appreciation”) to decide on such matters was broader in the present case, given the commercial nature of the advertisements. Having found that the advertisements did not appear to be

gratuitously offensive or profane, nor incited hatred on religious grounds, the Court underlined the duty of the domestic courts and other authorities to provide relevant and sufficient reasons why such expression was nonetheless contrary to public morals.

However, it ultimately found that the justifications provided by them were “declaratory and vague, and did not sufficiently explain why the reference to religious symbols in the advertisements was offensive.” The authorities had not addressed the company’s argument that the language of the advertisements had been used as comic emotional interjections common in spoken Lithuanian rather than as direct religious references. Even more significantly, the SCRPA had held that the advertisements “promoted a lifestyle which was incompatible with the principles of a religious person” without explaining what that lifestyle was and how the advertisements were promoting it, nor why a lifestyle which is “incompatible with the principles of a religious person” would necessarily be incompatible with public morals. The Court was also critical of the fact that the only religious group which had been consulted in the domestic proceedings had been the Roman Catholic Church, and that did not seem to reflect the principles established by the domestic Constitutional Court and the United Nations Human Rights Committee.

Finally, the Court reiterated that freedom of expression extended to ideas which offend, shock or disturb. The fact that approximately 100 individuals had complained to the domestic authorities about the advertisements could not therefore in itself justify the fine given to the applicant company. It stated that, even if most people in Lithuania had been offended, as argued by the Lithuanian Government, a minority’s rights under the Convention could not be dependent on those rights being accepted by the majority.

There had, therefore, been a violation of Article 10, since the domestic authorities had failed to strike a fair balance between, on the one hand, the protection of public morals and the rights of religious people, and, on the other hand, the applicant company’s right to freedom of expression.

Just satisfaction (Article 41)

The Court held that Lithuania was to pay the applicant 580 euros (EUR) in respect of pecuniary damage. No claim was submitted in respect of costs and expenses.

Separate opinion

Judge De Gaetano expressed a concurring opinion which is annexed to the judgment.

The judgment is available only in English.

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Press contacts

echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Patrick Lannin (tel: + 33 3 90 21 44 18)

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