European Court of Human Rights: *Sokolovskiy v. Russia*

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In its judgment in the case of *Sokolovskiy v. Russia* the European Court of Human Rights (ECtHR) applied and clarified its case law on freedom of expression and religious hate speech in the online environment (see also *Lenis v. Greece*, IRIS 2023-9:1/21 and *Tagiyev et Huseynov v. Azerbaijan*, IRIS 2020-2:1/16). It found a violation of Article 10 of the European Convention on Human Rights (ECHR) because the applicant blogger, Ruslan Gennadyevich Sokolovskiy, had been convicted in breach of his right to freedom of expression. The ECtHR found that the sanctions imposed on Sokolovskiy for offending the feelings of religious believers and inciting hatred toward a social group in a series of video messages were not pertinently justified by the domestic judicial authorities. The ECtHR ruled unanimously that the criminal prosecution and conviction of Sokolovskiy constituted a disproportionate interference that was not necessary in a democratic society.

The case concerns the prosecution of Sokolovskiy, a content creator and blogger. At the relevant time, his YouTube channel had 470 000 subscribers. He was convicted for a series of videos posted on a YouTube channel, covering a variety of subjects in 2015 and 2016. The videos contained Sokolovskiy's comments on a ban of an atheist group from a social network in the Chechen Republic, comments on hate mail he had received from religious believers and his criticism of the Russian Orthodox church. He also made statements questioning the existence of Jesus and the Prophet Muhammad. One of the videos showed Sokolovskiy playing Pokémon in a church. He was prosecuted and convicted under the provisions of the Russian Criminal Code for the offences of 'public actions insulting religious beliefs' and 'incitement of hatred or enmity'. The Russian courts took the view that the videos in question constituted extremist acts aimed at inciting hatred or hostility towards individuals targeted for belonging to ethnic, religious or social groups. Sokolovskiy was sentenced to three and a half years' imprisonment, suspended, on two-year probation. The videos were also ordered to be removed from the internet.

In his application to the ECtHR Sokolovskiy argued that, while inflammatory, his videos neither intended to incite nor resulted in incitement of violence or hatred. In particular, he complained of the unforeseeability of Articles 148 and 282 of the Russian Criminal Code, under which he was convicted, arguing that the national courts interpreted his statements – which he claims were critical remarks on

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numerous topical issues – as being extremist and insulting towards people of faith. He submitted that the statements in question, while having in part been expressed in a highly controversial form, were of public interest. ARTICLE 19, with the Human Rights Centre of Ghent University, submitted a third-party intervention ((TPI) to the European Court in 2020, insisting on the difference between prohibitions on blasphemy and insult of a religion (which are not allowed under international human rights law) and incitement to hatred, hostility and violence (which States are obliged to prohibit under international human rights law). The TPI invited the ECtHR to declare that the criminalisation of religious insult to protect the feelings of believers, without incitement to discrimination, hostility or violence, was in breach with Article 10 ECHR.

In its judgment of 4 June 2024, the ECtHR first confirmed that the abuse clause of Article 17 ECHR, eventually annihilating Sokolovskiy's protection under Article 10 ECHR, can only be applied on an exceptional basis and in extreme cases, where it is immediately clear that the disputed statements sought to deflect the right to freedom of expression from its real purpose and were obviously contrary to the values of the ECHR. The ECtHR found that Sokolovskiy's comments, although they could be considered by part of the public as crude, did not reach a degree of virulence to justify the application of Article 17 ECHR.

While the ECtHR accepted that the interference with Sokolovskiy's right to freedom of expression was prescribed by law and aimed at protecting public order, morals and the rights of others, it found ultimately that his conviction by the Russian courts was not necessary in a democratic society. The ECtHR recalled that the simple fact that a remark may be perceived as offensive or insulting by specific individuals or groups of individuals does not mean that it constitutes "hate speech". While such feelings are understandable, they alone cannot set the limits of freedom of expression. Offensive language may not be considered as protected speech if it amounts to gratuitous denigration, but the use of vulgar expressions in itself is not decisive in assessing an offensive expression, because it can be used for purely stylistic purposes. Style is part of communication and is protected in the same way as the substance of the ideas and information expressed.

The ECtHR in particular referred to the fact that the national courts relied essentially, on the statements of the two prosecution witnesses, one of whom was absent at the hearing while the identity of the other was kept secret, as well as on the conclusions of a pluridisciplinary expertise team, commissioned by the investigator. The ECtHR found that the domestic judges did not analyse Sokolovskiy's statements in the light of the content of the videos as a whole and they neither examined the context in which the videos were created.

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They limited themselves to reproducing in their decisions, based on the aforementioned expert conclusions, short sentences or expressions taken out of their immediate context. Nor was any attempt made to establish whether Sokolovskiy's statements, even those formulated in harsh and vulgar terms, were part of a debate of general interest or could be justified by a style inherent to his activity as a blogger oriented towards a young audience. The ECtHR observed that Sokolovksiy's defence had not been considered by the domestic courts, hence depriving him of the procedural protection which he should have enjoyed.

Finally, there were no indications that the videos contained any calls for illegal or violent acts, and the ECtHR recalled that the containment of a mere speculative danger, as a preventive measure to protect democracy, cannot be considered as responding to a "pressing social need". It also noted that the domestic courts did not examine whether Sokolovskiy's statements were gratuitously offensive for religious beliefs, or if they incited disrespect or hatred towards the Orthodox Church. The ECtHR concluded that the domestic courts did not apply standards consistent with the principles set out in Article 10 ECHR and therefore did not provide "relevant and sufficient" reasons to justify the interference in question. There has, therefore, been a violation of Article 10 ECHR.

Judgment by the European Court of Human Rights, Third Section, in the case Sokolovskiy v. Russia, Application no. 618/18, 4 June 2024

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