European Court of Human Rights: Sekmadienis Ltd. v. Lithuania

IRIS 2018-3:1/4

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On 30 January 2018, the European Court of Human Rights (ECtHR) delivered its judgment in the case of Sekmadienis Ltd. v. Lithuania, concerning freedom of expression and the regulation of commercial advertising deemed offensive. Notably, the Court unanimously found that an advertising company's freedom of expression had been violated by the imposition of a fine under Lithuania's advertising law.

The applicant in the case - a Vilnius-based applicant company ran an advertising campaign in October 2012 introducing a clothing line by the designer R.K., including advertisements on R.K.'s website. The first advertisement showed a young man with long hair, a headband, a halo around his head and several tattoos wearing a pair of jeans, with a caption reading "Jesus, what trousers!" The second advertisement showed a woman wearing a white dress and with a halo around her head, accompanied by the reading "Dear Mary, what a dress!". After receiving over 100 complaints about the advertisements, the Lithuanian State Consumer Rights Protection Authority adopted a decision against the applicant company concerning a violation of Article 4 § 2 (1) of the Law on Advertising, which prohibits advertising that "violates public morals". The Authority held that the use of religious symbols for commercial gain exceeds the limits of tolerance; using the name of God for commercial purpose was not in line with public morals; and the inappropriate depiction of Christ and Mary in the advertisements was likely to offend the feelings of religious people. The applicant company was fined EUR 580. The decision was upheld on appeal.

The applicant company made an application to the ECtHR, claiming that there had been a violation of its right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR). The main question for the Court was whether the interference with applicant company's freedom of expression had been "necessary in a democratic society".

The Court ultimately found that there had been a violation of Article 10 of the Convention, and held that he domestic authorities had given absolute primacy to protecting the feelings of religious people, without adequately taking into account the applicant company's right to freedom of expression. In reaching this conclusion, the Court firstly accepted that the advertisements had created an

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unmistakable resemblance between the persons depicted therein and religious figures, and that the advertisements had had a commercial purpose, had had made no contribution to public debate. However, the Court considered that the advertisements did not appear to have been gratuitously offensive or profane, and nor had they incited hatred on the grounds of religious belief or attacked a religion in an unwarranted or abusive manner.

Notably, the Court reiterated that freedom of expression also extends to ideas which offend shock or disturb. In a pluralist democratic society those who choose to exercise the freedom to manifest their religion cannot reasonably expect to be exempt from all 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. In the Court's view, even though the advertisements had a commercial purpose and cannot be said to constitute "criticism" of religious ideas, the applicable principles are nonetheless similar.

Finally, the Court held that even assuming that the majority of the Lithuanian population would indeed find the advertisements offensive, the Court reiterated that it would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority. Were this to be so, that minority group's right to, inter alia, freedom of expression would become merely theoretical rather than practical and effective, as required by the Convention. In the light of these considerations, the Court concluded that 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. There had therefore been a violation of Article 10 of the Convention.

Judgment by the European Court of Human Rights, Fourth Section, case of Sekmadienis Ltd. v. Lithuania, Application no. 69317/14 of 30 January 2018

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