

European Court of Human Rights: Rabczewska v. Poland

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The European Court of Human Rights (ECtHR) has confirmed the application of the right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR) in relation to a conviction for offending the religious feelings of others through publicly insulting the Bible. As the statements expressed in an interview for a news website had not amounted to hate speech and were neither an abusive attack, nor threatening public order, the ECtHR found a violation of Article 10 ECHR.

The applicant in this case was Dorota Rabczewska, a popular pop singer known as Doda. In 2009 she gave an interview for a news website called *Dziennik*. Part of the interview was reprinted as an article in the tabloid *Super Express*, under the title: "Doda: I don't believe in the Bible." In the interview the pop singer expressed her view on the lack of scientific evidence of some parts of the Bible, for instance the description of the creation of the world. 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". When asked who she meant, Ms. Rabczewska replied "all those guys who wrote those incredible [biblical] stories". A short time later two individuals complained to a public prosecutor that Ms. Rabczewska had offended the religious feelings of others by publicly insulting an object of religious worship, an offence proscribed by Article 196 of the Criminal Code. The Warsaw Regional Prosecutor issued a bill of indictment against the pop singer for offending the religious feelings of the two individuals by insulting the object of their religious worship - the Holy Bible. In 2012, Rabczewska was convicted by the Warsaw District Court as charged, and fined PLN 5,000 (approximately EUR 1160). The Court stated that the average person's sensibility in Poland had to be taken into consideration when determining whether religious feelings were offended. 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 found that the statements went beyond analysis and criticism and that they had debased the Bible by suggesting that its authors had written it under the influence of alcohol and narcotics as a tool for hurting other people. As Ms. Rabczewska had expressed her views in a way that intentionally offended Christians and Jews and displayed contempt for believers, the Warsaw District Court concluded that the pop singer's statements had been objectively insulting and could not be considered to have been made for artistic or scientific purposes.

Two appeals were dismissed and the Constitutional Court finally confirmed the constitutionality and necessity in a democratic state of restricting freedom of expression that insulted or offended the religious feelings of others. It considered that insulting an object of religious worship deliberately offended the religious feelings of other people, and thus also, like other forms of insult, harmed their personal dignity.

In its judgment of 15 September 2022, the ECtHR disagreed with the findings and the reasoning of the Polish courts, and came to the conclusion that the conviction of Ms. Rabczewska had amounted to a violation of her right to freedom of expression under Article 10 ECHR. Only the Polish judge dissented. The ECtHR first referred extensively to its case law on the balancing of freedom of expression under Article 10 ECHR and freedom of religion as protected under Article 9 ECHR (see also IRIS 2020-2/16). It reiterated that those who choose to exercise the freedom to manifest their religion under Article 9 ECHR, irrespective of whether they did so as members of a religious majority or a minority, could not expect to be exempt from criticism. They had to tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith. However, where such expressions went beyond the limits of a critical denial of other people's religious beliefs and were 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 might legitimately consider them to be incompatible with respect for the freedom of thought, conscience and religion and take proportionate restrictive measures. 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 was one of the bases of a democratic society, while expressions that sought to spread, incite or justify hatred based on intolerance, including religious intolerance, did not enjoy the protection afforded by Article 10 ECHR.

Applying those principles, the ECtHR focussed on the question of whether the prosecution and conviction of Ms. Rabczewska had been necessary in a democratic society under Article 10 § 2 ECHR. The ECtHR found that the domestic courts had failed to identify and carefully weigh the competing interests at stake and had not assessed whether the impugned 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. The ECtHR also noted that it had never been argued that the pop singer's statements had amounted to hate speech. In particular, Article 256 of the Criminal Code which expressly prohibited hate speech had not been invoked. The ECtHR found that the domestic courts had not established that Ms. Rabczewska's actions had contained elements of violence, or elements susceptible of stirring up or justifying violence, hatred or intolerance of believers (see also IRIS 2018-8/2). Neither had the domestic courts examined whether the actions in question could have led to any

harmful consequences or whether they threatened public order. In conclusion, the ECtHR found that the Polish courts had failed to comprehensively assess the wider context of Ms. Rabczewska'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 society (see IRIS 2019-1/1). It had not been demonstrated that the interference had been required, in accordance with the State's positive obligations under Article 9 ECHR, 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 ECtHR considered that the expressions under examination had not amounted to an improper or abusive attack on an object of religious veneration, likely to incite religious intolerance or violating the spirit of tolerance, which was one of the bases of a democratic society. Therefore, the ECtHR considered that – despite the wide margin of appreciation – the domestic authorities had failed to put forward sufficient reasons capable of justifying the interference with the pop singer's freedom of speech. Accordingly, there had been a violation of Article 10 ECHR.

In a joint concurring opinion two judges emphasised that the expressions under examination had not severely disturbed public order, and far less constituted a call for public violence and that therefore the interference with the right to freedom of expression could not be justified. The two judges referred to the PACE Recommendation 1805 (2007) which states that "national law should only penalise expressions concerning religious matters which intentionally and severely disturb public order and call for public violence". The dissenting opinion by the Polish judge disagreed with the finding of a violation of Article 10 ECHR. He observed that the case law of the ECtHR might create an impression that in cases concerning Islam the ECtHR followed its established approach and sought to protect religious feelings effectively against anti-religious speech, whereas in cases involving other religions, the approach had evolved and the protection offered to believers against abusive anti-religious speech had weakened.

Judgment by the European Court of Human Rights, First Section, in the case of Rabczewska v. Poland, Application no. 8257/13, 15 September 2022

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