



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

Communicated on 8 September 2016

FOURTH SECTION

Application no. 69317/14  
SEKMADIENIS Ltd.  
against Lithuania  
lodged on 20 October 2014

STATEMENT OF FACTS

The applicant company, Sekmadienis Ltd., is a private company registered in Lithuania (hereinafter “the applicant company”). It is represented before the Court by Mr K. Liutkevičius, a lawyer practising in Vilnius.

**A. The circumstances of the case**

The facts of the case, as submitted by the applicant company, may be summarised as follows.

*1. Advertisements run by the applicant company*

In September and October 2012 the applicant company ran an advertising campaign introducing a clothing line by designer R.K. The campaign featured three visual advertisements which were displayed on twenty advertising hoardings in public areas in Vilnius and on R.K.’s website (hereinafter “the advertisements”).

The first of the three advertisements showed a young man with long hair, a headband and several tattoos wearing a pair of jeans. A caption at the bottom of the image read “Jesus, what trousers!” (*Jėzau, kokios tavo kelnės!*).

The second advertisement showed a young woman wearing a white dress, a headress with white and red flowers in it, and holding what looked like rosary beads, while the caption at the bottom of the image read “Dear Mary, what a dress!” (*Marija brangi, kokia suknelė!*).

The third advertisement showed the man and the woman together, with the man reclining and the woman standing next to him with one hand placed on his head and the other on his shoulder. The caption at the bottom of the image read “Jesus [and] Mary, what are you wearing!” (*Jėzau Marija, kuo čia apsirengė!*).

## 2. *Decision of the State Consumer Rights Protection Authority*

On 9 October 2012 the State Inspectorate of Non-Food Products (*Valstybinė ne maisto produktų inspekcija*) informed R.K. that the advertisements were possibly in violation of Article 4 § 2 (1) of the Law on Advertising (hereinafter “the Advertising Act”) as being contrary to public morals (see “Relevant domestic law” below). The Inspectorate considered that the advertisements used religious symbols in a disrespectful and inappropriate manner, and that using such symbols for “superficial” purposes was likely to offend religious people. After receiving written explanations from R.K. and the applicant company, on 27 November 2012 the Inspectorate drew up a report of a violation of the Advertising Act against the applicant company. That report was forwarded to the State Consumer Rights Protection Authority (*Valstybinė vartotojų teisių apsaugos tarnyba* – hereinafter “the SCRPA”).

On 21 March 2013 the SCRPA adopted a decision against the applicant company concerning a violation of the Advertising Act. It noted that the concept of “public morals” was not defined in law, but it necessarily implied respect for the rights and interests of others. It held that “advertising must be tasteful and correspond to the highest moral standards” and that “advertising which might humiliate or degrade people because of their faith, convictions or opinions must be considered immoral and unacceptable”.

The SCRPA took into account the position expressed by the Lithuanian Bishops’ Conference that the advertisements used religious symbols, such as rosary beads, the names of Jesus and Mary, and the specific positions in which the man and the woman were placed. Although the applicant company submitted that it had not intended to depict religious symbols and that any similarities could be interpreted in different ways, the SCRPA considered that the elements of the advertisements taken together would “create an impression for the average consumer” that the persons and objects depicted in them were related to religious symbols.

The SCRPA further observed that “the faithful react[ed] very sensitively to the use of any religious symbols or personalities in advertising, especially when the form of artistic expression [was] not acceptable to the society – for example, the bodies of Jesus and Mary [were] adorned with tattoos”. It agreed with the Lithuanian Bishops’ Conference that the use of religious symbols for commercial purposes by the applicant company “exceeded the limits of tolerance”. It further noted:

“The State Consumer Rights Protection Authority considers that using the name of God for commercial purposes is not in line with public morals. With that in mind, the [SCRPA] notes that the unsuitable depiction of Christ and Mary in the advertisements in question encourages a frivolous attitude towards the ethical values of the Christian faith, promotes a lifestyle which is incompatible with the principles of a religious person, and that way the persons of Christ and Mary are degraded as the sacred symbols of Christianity ...

It must be emphasised that respect for religion is undoubtedly a moral value. Accordingly, disrespecting religion breaches public morals.”

The SCRPA also noted that the advertisements were not only potentially offensive to the sentiments of the faithful but had actually caused such offence: the SCRPA had received several complaints to that effect, and the

Lithuanian Bishops' Conference had received a letter signed by a few hundred believers expressing their dissatisfaction with the advertisements.

Accordingly, the SCRPA concluded that the advertisements had breached Article 4 § 2 (1) of the Advertising Act. When determining the penalty, the SCRPA took into account several circumstances: the advertisements had been displayed in public places and must have reached a wide audience, and there had been complaints about them; at the same time, the advertisements had only been displayed for a few weeks and only in the city of Vilnius; the applicant company had stopped displaying them after it had been warned by the authorities, and it had cooperated with the SCRPA; it had been the first such violation committed by the applicant company. As a result, the applicant company was given a fine of 2,000 Lithuanian litai (LTL – approximately 580 euros (EUR)).

### *3. Proceedings before courts*

The applicant company brought a complaint concerning the SCRPA's decision before an administrative court. It firstly argued that the persons and objects shown in the advertisements were not related to religious symbols: neither the characters themselves nor their clothes, positions or facial expressions were similar to the depiction of Jesus Christ and the Virgin Mary in religious art; the only physical similarity was the long hair of the man but any man with long hair could not be presumed to be a depiction of Jesus. The applicant company also submitted that the expressions "Jesus!", "Dear Mary!" and "Jesus [and] Mary!" were widely used in spoken language as emotional interjections, and the advertisements had used them for the purpose of wordplay, not as a reference to religion.

The applicant company further argued that the Advertising Act did not explicitly prohibit all use of religious symbols in advertising but only when such use may offend the sentiments of others or incite hatred. It submitted that the advertisements were not offensive or disrespectful in any way, and that the SCRPA had not justified why they "exceeded the limits of tolerance" or why "using the name of God for commercial purposes [was] not in line with public morals". The applicant company also submitted that complaints by a few hundred individuals were not sufficient to find that the majority of religious people in Lithuania had been offended by the advertisements.

Lastly, the applicant company submitted that the advertisements were a product of artistic activity and were therefore protected freedom of expression, guaranteed by the Constitution.

On 12 November 2013 the Vilnius Regional Administrative Court dismissed the applicant company's complaint. The court considered that the SCRPA had correctly assessed all the relevant circumstances and concluded that "the form of advertising used by [the applicant company] was prohibited because it distort[ed] the main purpose of a religious symbol (an object of religion) respected by a religious community – that purpose being to refer to a deity or to holiness".

The applicant company appealed against that judgment relying on essentially the same arguments as in its initial complaint, but on 25 April 2014 the Supreme Administrative Court dismissed its appeal. The court held:

“The entirety of the evidence in the present case gives grounds to conclude that the advertisements displayed by [the applicant company] are clearly contrary to public morals, because religion, as a certain type of world view, unavoidably contributes to the moral development of the society; symbols of religious nature occupy a significant place in the system of spiritual values of individuals and the society, and their unsuitable use demeans them [and] is contrary to universally accepted moral and ethical norms. The form of advertising [chosen by the applicant company] does not conform to good morals and to the principles of respecting the values of the Christian faith and its sacred symbols, and [the advertisements] therefore breach Article 4 § 2 (1) of the Law on Advertising.”

## **B. Relevant domestic law**

### *1. Constitution of the Republic of Lithuania*

The relevant provisions of the Constitution of the Republic of Lithuania read:

#### **Article 25**

“Everyone shall have the right to have his or her own convictions and freely express them.

No one shall be hindered from seeking, receiving, or imparting information and ideas.

The freedom to express convictions, as well as to receive and impart information, may not be limited otherwise than by law when this is necessary to protect human health, honour or dignity, private life, or morals, or to defend the constitutional order.

The freedom to express convictions and to impart information shall be incompatible with criminal actions – incitement to national, racial, religious, or social hatred, incitement to violence or to discrimination, as well as defamation and disinformation ...”

#### **Article 26**

“Freedom of thought, conscience, and religion shall not be restricted.

Everyone shall have the right to freely choose any religion or belief and, either alone or with others, in private or in public, to profess his or her religion, to perform religious ceremonies, as well as to practise and teach his or her belief.

No one may compel another person or be compelled to choose or profess any religion or belief.

The freedom to profess and spread religion or belief may not be limited otherwise than by law and only when this is necessary to guarantee the security of society, public order, the health or morals of people, or other basic rights or freedoms of the person ...”

#### **Article 43**

“... ”

There shall be no state religion in Lithuania.”

### *2. Law on Advertising*

The Law on Advertising (“the Advertising Act”), in force from 1 January 2001 until 1 August 2013, provided in its Article 4 § 2:

“2. Advertising shall be banned if:

- 1) it violates public morals;

- 2) it degrades human honour and dignity;
- 3) it incites national, racial, religious, gender-based or social hatred or discrimination, or if it defames or spreads disinformation;
- 4) it promotes force or aggression, or attempts to cause panic;
- 5) it promotes behaviour which presents a threat to health, security, and environment;
- 6) it abuses superstitions, people's trust, their lack of experience or knowledge;
- 7) without a person's consent it mentions his or her first and last name, opinion, information about his or her private or social life, or property, or uses his or her picture;
- 8) it uses special means and technologies affecting the subconscious;
- 9) it violates intellectual property rights to creations of literature, art, science, or related rights."

A new version of the Advertising Act was passed on 16 May 2013 and entered into force on 1 August 2013. Article 4 § 2 remained essentially the same as before but a sub-paragraph 10 was added:

"10) it expresses contempt for religious symbols of religious communities registered in Lithuania."

## COMPLAINT

The applicant company complains under Article 10 of the Convention that the fine imposed on it for the advertisements breached its right to freedom of expression. It submits that the advertisements were designed to convey information of a commercial nature and that they were also a form of artistic expression, and thus fell under the scope of Article 10.

The applicant company argues that the interference was not "prescribed by law" within the meaning of Article 10 § 2 because at the time when the advertisements were published the Advertising Act did not prohibit the use of religious symbols or motifs in advertising, as proven by the subsequent amendment of that Act.

The applicant company further argues that the interference was not necessary in a democratic society because the advertisements were not "gratuitously offensive" – they merely attempted to create a comic effect by using common emotional interjections. It submits that, in the absence of a State religion in Lithuania, no single faith can claim to be the source of public morals, and that the domestic authorities failed to justify why the mere reference to a religious symbol, without any incitement to hatred or discrimination, would be contrary to those morals. It also submits that even if a small group of believers was offended, as seen from the few hundred complaints, freedom of expression also extends to ideas which shock, offend or disturb. Accordingly, the applicant company contends that the Government overstepped their margin of appreciation.

### QUESTION TO THE PARTIES

Has there been an interference with the applicant company's freedom of expression within the meaning of Article 10 § 1 of the Convention? If so, was that interference justified in terms of Article 10 § 2 (see *Murphy v. Ireland*, no. 44179/98, §§ 65-69, ECHR 2003-IX (extracts), and *Balsytė-Lideikienė v. Lithuania*, no. 72596/01, §§ 74-77, 4 November 2008)?