

# ECHR evaluates the fair balance between the protection of public morals and the freedom of expression

In the case of *Sekmadienis Ltd. v. Lithuania* (application no. 69317/14), the European Court of Human Rights has decided that Lithuanian courts have 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 company's right to freedom of expression.

## **Brief background**

The case was about an advertisement campaign, which was run by the Lithuanian company *Sekmadienis Ltd.* in the autumn of 2012. The ad consisted of photos of a male model wearing jeans and a female model wearing a white dress, both models with tattoos and halos. The photos included captions like: "Mother of god, what a dress!", "Jesus Mary! What a style!", and the advertisements contained captions like "*Jesus, what trousers!*" and "*Dear Mary, what a dress!*"

After complaints from several individuals and a pre-court evaluation by the Consumer Rights Protection Authority and religious organizations and establishments, the Consumer Rights Protection Authority held the ad to be in violation of the Lithuanian Law on Advertising and issued a fine to the ad owner.

*Sekmadienis Ltd.* appealed the Consumer Rights Protection Authority's decision to the regional Lithuanian administrative court, but the appeal was dismissed, as was the subsequent appeal to the Supreme Administrative Court.

## **ECHR decision**

ECHR held that Lithuanian courts have breached *Sekmadienis Ltd.*'s rights of freedom of expression by issuing a fine for the described ad.

The decision was based on the overall finding that the wording of the Lithuanian domestic authorities' statements – such as: 'in this case the game has gone too far', 'the basic respect for spirituality is disappearing', 'inappropriate use [of religious symbols] demeans them [and] is contrary to universally accepted moral and ethical norms' and 'religious people react very sensitively to any use of religious symbols or religious persons in advertising' – demonstrated that the authorities gave absolute primacy to the protection of the feelings of religious people, without adequately taking into account the applicant company's right to freedom of expression.

Accordingly, ECHR's above considerations led to the decision that Lithuania has breached Article 10 of the European Convention of Human Rights ('everyone has the right to freedom of expression <...>').

## **Takeaway**

Under ECHR's views, the fact that certain individuals or their groups have sensitivities and preserved morals that are claimed to be offended by an expression does not by itself allow sanctioning or restriction of the freedom of expression (without findings of gross offense, profanities or hatred – as evaluated in each instance). As usual, striking a balance between protection and restriction of interests is the universal key.



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