Rabczewska v Poland
[2022] ECHR 680
15 September 2022
Potentially blasphemous statements – Articles 9 and 10 ECHR

Ms Dorota Rabczewska, described by the Court as 'a popular pop singer known as Doda' had told a tabloid journalist that although the biblical message did have some value it was unhistorical. Although she believed in a higher power and had had a religious upbringing, 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 whom she meant by that, she replied 'all those guys who wrote those incredible [biblical] stories'. Article 196 of Poland's Criminal Code is, in effect, a blasphemy law while Article 256 §1 prohibits hate speech and as a result of the interview she was convicted of offending religious feelings and fined 5,000 złotys (about 1,160 euros).

Before the ECtHR, she argued that her conviction had violated Article 10: her interview should not have been taken seriously because she had been trying to be humorous and had been using the language of young people. The Government countered that she should have known that her statement could lead to prosecution because 90 per cent of Poles were Roman Catholic. 'Religion played a crucial role in the concept of identity to the majority of Poles as part of their culture' and she had been prosecuted to protect the rights of others and their religious feelings. Freedom of expression and the right to respect for religious beliefs in Articles 10 and 9 should enjoy equal protection; her statements had been meant to shock and should not be considered as artistic expression or a contribution to a broader social or cultural debate.

The Court recalled that freedom of expression was an essential foundation of a democratic society and, subject Article 10(2) it was applicable not only to 'information' or 'ideas' that were favourably received or regarded as inoffensive 'but also to those that offend, shock or disturb' and there was little scope under Article 10(2) for restricting political speech or on debate on questions of public interest. While there was a general requirement to ensure the peaceful enjoyment of the rights guaranteed to believers under Article 9, 'including a duty to avoid as far as possible an expression that is, in regard to objects of veneration, gratuitously offensive to others and profane', believers could not expect Article 9 to exempt them from criticism and 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'.

Where public statements were likely to incite religious intolerance, states parties might legitimately consider them to be incompatible with Article 9 and take proportionate restrictive measures and had a wide margin of appreciation

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in so doing. However, in the present case, the domestic courts had failed comprehensively to assess the wider context of Ms Rabczewska's statements and to strike a proper balance between her right to freedom of expression and the rights of others to have their religious feelings protected. She had not launched an improper or abusive attack on an object of religious veneration that was likely to incite religious intolerance or violate the spirit of tolerance – so despite their wide margin of appreciation, the domestic authorities had failed to justify their interference with her freedom of speech. It was held by six votes to one that there had been a violation of Article 10. [Frank Cranmer]

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Re Holy Trinity, Clapham

Southwark Consistory Court: Petchey Ch, 27 September 2022

[2022] ECC Swk 4

Re-ordering – Duffield questions – assessment of harm – exceptionality test – relevance of planning permission

The petitioners sought permission for various re-ordering and extension works in this Grade II* listed Georgian church, including the removal of pews and the expansion of areas of the church which were previously extended in the Edwardian era. The justification for the re-ordering was the church community's rapid growth, especially among young adults.

The court gave a comprehensive overview of the evolution of the *Duffield* framework, and of the inter-relationship between that framework and the secular National Planning Policy Framework, with particular reference to the concepts of 'serious harm' in the former and 'substantial harm' in the latter. Applying the fifth *Duffield* question, proposals resulting in serious harm would only exceptionally be allowed. The court considered that 'exceptional' in this context meant something more than 'a case in which an exception falls to be made'; it was an indication that serious harm would rarely be permitted. A case for change could be very strong without being exceptional; that was the case here. The only basis for finding exceptionality would be the church's designation as a resourcing church, but the court was unpersuaded; the sorts of things that the church wished to do were the sorts of things that all churches would wish to do, even though this church was better placed to do them.

The assessment of the degree of harm was, therefore, crucial to the question before the court. This was straightforwardly a matter for the court, albeit assisted by the views of experts. As far as the removal of the pews was concerned, the harm was aesthetic rather than historical, and so would in principle be