



Calling Muhammad a paedophile may lead to a conviction of disparaging religious doctrines and is not in breach of Article 10

In today's **Chamber** judgment¹ in the case of **E.S. v. Austria** (application no. 38450/12) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 10 of the European Convention on Human Rights.

The case concerned the applicant's conviction for disparaging religious doctrines by making statements that conveyed the message that Muhammad had had paedophilic tendencies.

The Court found in particular that the domestic courts comprehensively assessed the wider context of the applicant's statements and carefully balanced her right to freedom of expression with the right of others to have their religious feelings protected and to have religious peace preserved in Austria. It held that by considering the impugned statements as going beyond the permissible limits of an objective debate and classifying them as an abusive attack on the Prophet of Islam, which could stir up prejudice and put at risk religious peace, the domestic courts put forward relevant and sufficient reasons.

Principal facts

The applicant, E.S., is an Austrian national who was born in 1971 and lives in Vienna (Austria).

In October and November 2009, Mrs S. held two seminars entitled "Basic Information on Islam", in which she referred to the marriage between the Prophet Muhammad and the six-year old Aisha, which allegedly was consummated when she was nine. *Inter alia*, the applicant stated that Muhammad "liked to do it with children" and "...A 56-year-old and a six-year-old? ... What do we call it, if it is not paedophilia?".

On 15 February 2011 the Vienna Regional Criminal Court found that these statements implicated that Muhammad had had paedophilic tendencies, and convicted Mrs S. for disparaging religious doctrines. She was ordered to pay a fine of 480 euros and the costs of the proceedings. Mrs S. appealed but the Vienna Court of Appeal upheld the decision in December 2011, confirming in essence the lower court's findings.

A request for the renewal of the proceedings was dismissed by the Supreme Court on 11 December 2013.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Mrs S. complained that the domestic courts failed to address the substance of the impugned statements in the light of her right to freedom of expression. If they had done so, they would not have qualified them as mere value judgments but as value judgments based on facts. Furthermore, her criticism of Islam occurred in the framework of an objective and lively discussion which contributed to a public debate, and had not been aimed at

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

defaming the Prophet of Islam. Lastly, Mrs S. submitted that religious groups ought to be regarded as public institutions and therefore had to tolerate even severe criticism.

The application was lodged with the European Court of Human Rights on 6 June 2012.

Judgment was given by a Chamber of seven judges, composed as follows:

Angelika **Nußberger** (Germany), *President*,
André **Potocki** (France),
Síofra **O’Leary** (Ireland),
Mārtiņš **Mits** (Latvia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Lətif **Hüseynov** (Azerbaijan),
Lado **Chanturia** (Georgia),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 10

The Court noted that those who choose to exercise the freedom to manifest their religion under Article 9 of the Convention could not expect to be exempt from criticism. They must tolerate and accept the denial by others of their religious beliefs. Only where expressions under Article 10 went beyond the limits of a critical denial and were even likely to incite religious intolerance, a State might legitimately consider them to be incompatible with respect for the freedom of thought, conscience and religion and take proportionate restrictive measures.

The Court reiterated that it has distinguished in its case-law between statements of fact and value judgments. It emphasised that the truth of value judgments was not susceptible to proof. However, even a value judgment without any factual basis to support might be excessive.

The Court noted that the domestic courts extensively explained why they considered that the applicant’s statements had been capable of arousing justified indignation, namely that they had not been made in an objective manner contributing to a debate of public interest (such as child marriage), but could only be understood as having been aimed at demonstrating that Muhammad was not a worthy subject of worship. It agreed with the domestic courts that Mrs S. must have been aware that her statements were partly based on untrue facts and apt to arouse indignation in others. The national courts found that Mrs S. had subjectively labelled Muhammad with paedophilia as his general sexual preference, and that she failed to neutrally inform her audience of the historical background, which consequently did not allow for a serious debate on that issue. Hence, the Court saw no reason to depart from the qualification of the impugned statements as value judgments, based on a detailed analysis of the statements made.

The Court held further that even in a lively discussion it is not compatible with Article 10 of the Convention to pack incriminating statements into the wrapping of an otherwise acceptable expression of opinion and deduce that this would render the statements exceeding the permissible limits of freedom of expression passable.

Lastly, since Mrs S. was ordered to pay a moderate fine and that fine was on the lower end of the statutory range of punishment, the criminal sanction could not to be considered as disproportionate. Under these circumstances, and given the fact that Mrs S. repeatedly made the statements, the Court considered that the Austrian courts did not overstep their wide margin of appreciation in the

instant case when convicting Mrs S. of disparaging religious doctrines. Overall, there had been no violation of Article 10.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.