


## Insults to religious feelings v. freedom of expression: Lessons from Aiiisa's case

Obraza uczuć religijnych a wolność ekspresji – wnioski ze sprawy Aiiisy

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**Abstract:** The present article aims to analyze selected aspects of the conflict between two basic values: freedom of expression and freedom of religion. Based on the co-called Aiiisa's case (see the judgement of the European Court of Human Rights of 22 July 2021, *Ana Gachechiladze v. Georgia*, App. No. 2591/19), the paper proposes general criteria for assessing insults to religious feelings. It is argued that national courts must not act as guardians of concrete religious groups or conventional morals, as this leads to negative results and destruction of the national law system. As a rule, it cannot be excluded that sacred images and figures are used in commercials or other ways of expression. When adjudicating on a case, every court should primarily consider the context, content and form, and prohibition of expression should be the last and final resort.

**Key words:** freedom of expression; freedom of religion; religious feelings; *Ana Gachechiladze v. Georgia*

**Streszczenie:** Celem niniejszego artykułu jest analiza wybranych aspektów konfliktu między dwoma podstawowymi wartościami: wolnością ekspresji i wolnością religii. W oparciu o tak zwaną sprawę Aiiisy (zob. wyrok Europejskiego Trybunału Praw Człowieka z dnia 22 lipca 2021 r., *Ana Gachechiladze v. Georgia*, skarga nr 2591/19) autor proponuje generalne kryteria oceny obrazy uczuć religijnych i akceptowanych społecznie zasad moralnych, ponieważ to wywoływałoby negatywne skutki i destrukcję krajowego systemu prawnego. Co do zasady, nie można wykluczyć, że obrazy i figury otaczane czcią religijną zostaną użyte w reklamie czy innych formach ekspresji. Oceniając tego typu sprawy, sądy powinny wziąć pod uwagę przede wszystkim kontekst, treść i formę, a zakazy dotyczące określonych form ekspresji powinny być traktowane jako środki o charakterze ostatecznym.

**Słowa kluczowe:** wolność ekspresji; wolność religii; uczucia religijne; *Ana Gachechiladze v. Georgia*

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In a liberal society, it is healthy and essential that religious practice and the doctrine and behavior of religious groups should be open to free discussion as well as public exposure and criticism.

REX AHDAR, *Religious freedom in the liberal state*

## Introduction

Freedom of expression is not just a symbol or emblem of the civilized world;<sup>1</sup> it protects ideas, thoughts, beliefs, and information<sup>2</sup> and also forms the basis of their demonstration and dissemination.<sup>3</sup> Freedom of expression is the basis upon which the entire legal and political system is formed, and it is directly connected to the full realization of other basic rights.<sup>4</sup> Although it is not an absolute right, it belongs to the category of the so-called qualified rights: it can be restricted and have rational limitations.<sup>5</sup> Freedom of expression has two main directions: expression of religion or belief and expression of ideas about religion and belief.<sup>6</sup> Both have their specifications, but expressing ideas or discussing religion always has its challenges when it comes to religious beliefs. The European Court of Human Rights (ECHR) even developed a “right not to be insulted in one’s religious feelings.”<sup>7</sup> Feelings are always hurt when religious beliefs are ridiculed.<sup>8</sup> Everyone has a legitimate expectation that their right to express their religious beliefs would be protected from ridicule by public authorities;<sup>9</sup> nevertheless, there are still instances where others infringe on this right.

Although there are laws that prohibit the ridicule of religion or blasphemy at the national level, it remains an actual problem. Many international institutions have adopted international instruments to implement guidelines to protect religious beliefs.<sup>10</sup> The UN Human Rights Council

<sup>1</sup> Dworkin 2006.

<sup>2</sup> Decision N2/482,483,487,502 of the Constitutional Court of Georgia, 18 April 2011, II, par. 3.

<sup>3</sup> Human Rights Committee, General Comment No. 34, Article 19 (Freedom of opinion and expression), 12 September 2011, par. 12.

<sup>4</sup> Decision N1/3/421,422 of the Constitutional Court of Georgia, 10 November 2009, II, par. 6.

<sup>5</sup> Kelly 2020, 164.

<sup>6</sup> Jones 2011a, 1.

<sup>7</sup> Temperman 2011, 731–732.

<sup>8</sup> Jones 2011b, 87.

<sup>9</sup> See: Stanisz 2020, 113.

<sup>10</sup> Parmar 2015, 377.

(formerly known as the UN Commission on Human Rights) has adopted many resolutions on the subject of religion,<sup>11</sup> and there are different international mechanisms concerning religion and freedom of belief. The ECHR developed very interesting case law, yet it has no strict guidelines concerning the conflict of these rights, resulting in unclear policies and expectations for the national governments while implementing restrictions or mechanisms for the protection of religion in domestic law.<sup>12</sup>

Insult on principles, dogmas, or representatives of different religions does not automatically mean that the believers have been personally insulted.<sup>13</sup> However, sometimes, concrete forms of expression are more like targeted harassment, especially in small communities or polarized societies.<sup>14</sup> In Georgia, any religious expressions or expressions about the Georgian Orthodox Church result in future confrontation, the marginal representatives of the church support believers' honest and true reaction, and this makes every case more difficult. One of the most famous and popular cases in Georgia was about the advertisement of condoms using religious images and signs (hereinafter: Aiisa's case). The ordinary court, the Constitutional Court and ECHR discussed many aspects of unethical and improper advertising and grounds for the restriction of freedom of expression in favor of religious feelings.

This article analyzes selected aspects of the conflict between two basic rights: freedom of expression and freedom of religion (especially regarding the elements of religious feelings, because the protection of the freedom of religion should not be equated with a right not to have one's religious feelings hurt<sup>15</sup>). Based on Aiisa's case and a consideration of the legal principles that different courts used while deciding the case, the paper will propose general criteria for assessing insults to religious feelings.

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<sup>11</sup> Ibidem, 375–376.

<sup>12</sup> Temperman 2011, 732.

<sup>13</sup> *Klein v. Slovakia* [ECHR], App. No. 72208/01, 31 October 2006, par. 52.

<sup>14</sup> Kramer 2021, 250.

<sup>15</sup> Temperman 2011, 734.

## 1. Restriction of freedom of expression and protection of religious feelings

Freedom of expression has two alternative model dimensions: European and American. In the USA, freedom of expression is almost an absolute right and has only a few exceptions, guarded by very old case law. The European approach is different. It considers it as important but not the most important basic right,<sup>16</sup> particularly concerning the contradiction between the freedom of expression and the protection of religious feelings. Every state has an obligation to create legislation and legal responsibility to balance respect for freedom of expression with respect for human dignity and the protection of the reputation or the rights of others.<sup>17</sup>

The ECHR always admits that freedom of expression protects not only ideas shared by society but also information and thoughts, which are sometimes shocking or unacceptable for social groups.<sup>18</sup> The prohibition of the expression of information and thought must always be a last resort in extreme circumstances.<sup>19</sup>

According to the International Covenant on Civil and Political Rights (ICCPR), there are a few grounds for restricting the freedom of expression: respect of the rights or reputation of others and protection of national security, public order, or public health or morals.<sup>20</sup> The Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: European Convention) defines more concrete grounds for an exception to freedom of expression: national security, territorial integrity or public safety, prevention of disorder or crime, protection of health or morals, protection of the reputation or rights of others, prevention of the disclosure of information received in confidence, and maintenance of the authority and impartiality of the judiciary.<sup>21</sup> Restrictions must not be used to protect society from divergent religious views, even if they are extreme.<sup>22</sup> Rational legal

<sup>16</sup> See: Venice Commission, Study No. 406/2006 On the Relationship Between Freedom of Expression and Freedom of Religion: The Issue of Regulation and Prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred, Venice, 17–18 October 2008.

<sup>17</sup> Committee of Ministers of the Council of Europe, Recommendation No. R(97)20 on Hate Speech, 30 October 1997, principle 2.

<sup>18</sup> *Handyside v. The United Kingdom* [ECHR], App. No. 5493/72, 7 December 1976, par. 49. Hammarberg 2007.

<sup>19</sup> International Covenant on Civil and Political Rights, 1966, Art. 19(3).

<sup>21</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, Art. 10(2).

<sup>22</sup> Venice Commission, Study No. 406/2006, par. 46.

limitations of freedom of expression are always based on the interpretation of constitutional norms.<sup>23</sup>

The legitimate aim of any restrictions should be the protection of individuals and their rights from general criticism and not the belief systems.<sup>24</sup> When freedom of religion and freedom of expression contradict each other, using the harm principle to evaluate proportionality or legitimacy of limitation is not always adequate and fruitful.<sup>25</sup> The form of religious insults is always important; when the actions that affect religious feelings are provocative and aggressive, sanctions and restrictions can be considered legitimate.<sup>26</sup> Sanctions and responsibility for religious insults should be proportional to the provocative and aggressive actions that affect religious feelings.<sup>27</sup>

The ECHR focuses on religious beliefs and differentiates them from other kinds of beliefs;<sup>28</sup> it always tries to avoid direct interference in domestic law and internal affairs of states when it comes to the “parameter of free expression concerning the protection of religious sensibilities.”<sup>29</sup> However, states have wide discretion when there is a “pressing social need,”<sup>30</sup> which is one of the grounds for limiting the freedom of expression and religion and serves as a central element for the necessity of proportionality.<sup>31</sup>

When the expression is against a whole group or religion and does not aim to open discussion, but intends to cause harassment, national authorities have a responsibility to restrict such activities.<sup>32</sup> Any forms of expression may be sanctioned or restricted if they are intolerant, include hate speech, or ignite conflict in society.<sup>33</sup> Violence is the main rationale for punishing specific forms of expression.<sup>34</sup> It is more difficult when the state seeks to protect religious feelings and tries to restrict expression in favor of

<sup>23</sup> See: Kramer 2021, 43.

<sup>24</sup> Venice Commission, Study No. 406/2006, par. 49.

<sup>25</sup> Plant 2011, 16.

<sup>26</sup> See: *Otto-Preminger-Institut v. Austria* [ECHR], App. No. 13470/87, 20 September 1994.

<sup>27</sup> See: *Wingrove v. the United Kingdom* [ECHR], App. No. 17419/90, 25 November 1996.

<sup>28</sup> Kelly 2020, 188.

<sup>29</sup> Cumper 2017, 146.

<sup>30</sup> *Ibidem*, 145.

<sup>31</sup> Kelly 2020, 165.

<sup>32</sup> Howard 2018, 85–86.

<sup>33</sup> See: *Garaudy v. France* [ECHR], App. No. 65831/01, 24 June 2003.

<sup>34</sup> Howard 2018, 97–98.

concrete religion or based on believers' understanding of morality. Restriction of any right on the ground of conventional morality must be based on principles that are not exclusively derived from one tradition.<sup>35</sup> No ideology or thought may be declared mandatory.<sup>36</sup>

States have the power to protect religious feelings and it is within their discretion to do so. They are not obligated to do so.<sup>37</sup> National legislation should provide possibilities for open discussions and debates on religion and beliefs; it must not empower any one religion with privileges over others.<sup>38</sup> However, regulations within this sphere can be problematic, because provisions concerning the protection of religious feelings and freedom of religion "typically give rise to the violation, not the protection of fundamental human rights."<sup>39</sup>

A central problem regarding the restriction of expression is the evaluation and assessment of the action, its concrete form, and the determination of how it insults the religious feelings of believers. International institutions developed several criteria for this purpose. These criteria share some similarities; however, the European and UN approaches differ in certain respects. For Art. 19 of the ICCPR, the UN Human Rights Committee developed a six-part "threshold test" for the assessment of the concrete forms of expression: context, speaker, intent, content and form, the extent of the speech act, and the likelihood, including imminence.<sup>40</sup> The ECHR examined several elements, which have direct effects on the assessment and qualification of the expression: the aim of the speaker/author, content, context, status, and role of the subject and nature and seriousness of the interference in the right.<sup>41</sup> The European Convention provides a possibility of using Art. 17 in cases where freedom of expression and freedom of religion contradict each other; however, the ECHR uses Art. 17 only in "exceptional

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<sup>35</sup> Human Rights Committee, General Comment No. 22, Article 18 (Freedom of Thought, Conscience and Religion), 30 July 1993, par. 8.

<sup>36</sup> *Sekmadienis Ltd v. Lithuania* [ECHR], App. No. 69317/14, 30 April 2018, par. 80.

<sup>37</sup> Ahdar 2008, 639.

<sup>38</sup> Parliamentary Assembly of the Council of Europe, Recommendation No. 1805 (2007) on Blasphemy, Religious Insults and Hate Speech Against Persons on Grounds of Their Religion, 29 June 2007, par. 17(1).

<sup>39</sup> Freedom House, *The Impact of Blasphemy Laws on Human Rights*, October 2010, 1.

<sup>40</sup> See: Parmar 2015, 411–412.

<sup>41</sup> See: Weber 2009, 36–46.

and extreme cases where the fundamental democratic principles and values underlying the ECHR are threatened.<sup>42</sup>

## 2. Georgian system of freedom of expression

Freedom of expression and its regulation in Georgia is unique for the civil law system. Legislation is modeled according to American ideals and practically has no limitations in civil cases; freedom of expression is widely encouraged, except when someone lies about facts or wrongly interprets factual circumstances. In such situations, other rights prevail. Not general values or abstract ideas are the subject of protection. The Constitutional Court of Georgia stated that “[p]osition, values, and ideas [...] cannot serve as a ground for restriction of freedom of expression. The state is obliged to protect objectively identifiable interests but not subjective feelings.”<sup>43</sup>

The Constitution of Georgia had only one legitimate aim for restricting the freedom of expression and it was directly linked to the harm principle (“for the protection of others’ rights”). After the constitutional reform of 2017, three new grounds for restriction were added to the basic law: “national security,” “crime prevention,” and “administration of justice.”<sup>44</sup> The Venice Commission recommended extracting these new grounds from the constitution,<sup>45</sup> and many nongovernmental organizations and experts insisted on it<sup>46</sup> in a few months; in 2018, the parliament of Georgia adopted new amendments to the constitution, and the constitutional provision was modified. Its current wording reads:

The restriction of these rights may be allowed only in accordance with law, insofar as is necessary in a democratic society for ensuring national security, public safety or territorial integrity, for the protection of the rights of others,

<sup>42</sup> Howard 2018, 109.

<sup>43</sup> Decision N1/3/421,422 of the Constitutional Court of Georgia, 10 November 2009, II, par. 7.

<sup>44</sup> See: Freedom of Religion or Belief in Georgia, Report 2010–2019, Tolerance and Diversity Institute, 2020, 60.

<sup>45</sup> Venice Commission, Opinion 876/2017 on the Draft Revised Constitution as Adopted by the Parliament of Georgia at the Second Reading on 23 June 2017, Strasbourg, 22 September 2017, par. 36.

<sup>46</sup> Freedom of Religion or Belief in Georgia, Report 2010–2019, Tolerance and Diversity Institute, 2020, 60.

for the prevention of the disclosure of information recognized as confidential, or for ensuring the independence and impartiality of the judiciary.<sup>47</sup>

Periodically, some state institutions or nongovernmental activists initiate the creation of special regulations on the protection of religious feelings: (1) In 2013, the Ministry of Internal Affairs initiated amendments to the Administrative Offences Code of Georgia to take legal responsibility for “public expression of hatred and/or other insulting behavior against sacred religious objects, religious organizations, members of clergy, or believers with the purpose of humiliating religious feelings of believers.” (2) Between 2015 and 2016, there was an initiative by the member of the ruling party. (3) In 2018, the Alliance of Patriots Party submitted another initiative; however, it focused on criminalization. Civil actors and human rights defenders worked hard to prevent the implementation of these initiatives and the parliament of Georgia did not adopt any of them. However, many members of the legislative body are still in support of the initiatives.<sup>48</sup>

### 3. Aiisa’s case

#### 3.1. Tbilisi City Court

An administrative procedure was initiated against Ana Gachechiladze following a complaint by the civil-political movement, which identified itself as conservative and the protector of national values.<sup>49</sup> Ana Gachechiladze produced condoms with signs and images of Georgian history and Christianity. The brand name of the production was Aiisa (“that thing”), “aiming at shattering stereotypes, to aid a proper understanding of sex and sexuality.”<sup>50</sup>

Between 2017 and 2018, Ms. Gachechiladze used famous Georgian politicians, historical figures, and events in the design. Four of those designs became the object of administrative litigation. The first design included a cartoon depiction of a grinning panda face with the text: I would strum down (a colloquial reference to male masturbation) but it is Epiphany

<sup>47</sup> Constitution of Georgia, 1995, Art. 17(5).

<sup>48</sup> See: Freedom of Religion or Belief in Georgia, Report 2010–2019, Tolerance and Diversity Institute, 2020, 80–83.

<sup>49</sup> Voorhoof 2021.

<sup>50</sup> *Ana Gachechiladze v. Georgia* [ECHR], App. No. 2591/19, 22 July 2021, par. 5.



(the words were taken from the name of a music video, made by an anonymous group called “Panda”). There was a cartoon depiction of an inflated crown, seemingly made from a condom, with the text “Miraculous Victory.” “Miraculous Victory” is linked to the Battle of Didgori of 1221 and the triumphal winning of St. King David, the Builder of the Great Seljuk Empire. Another design was a cartoon depiction of St. King Tamar’s face, with her looking up biting her lips, and the text “samepo kari tamarshi” (literary: “The Royal Court inside Tamar”, which sounds as an allusion to Georgian translation of the “Game of Thrones” – “samepo karis tamashi”). The fourth design was a cartoon depiction of a vertically positioned female left hand with red nail polish (an allusion to the “blessing rite,” a famous symbol on medieval Christian icons and frescoes).<sup>51</sup>

Tbilisi City Court qualified the advertisements as unethical<sup>52</sup> and improper;<sup>53</sup> words and images on products insulted religion and breached humanistic and ethical norms, religious symbols, and national and historical heritage and treasure.<sup>54</sup> The court prohibited the advertisement of the products and ordered the extraction of all kinds of ads from social media and billboards.<sup>55</sup>

### 3.2. Tbilisi Court of Appeals

Ana Gachechiladze appealed to the Tbilisi Court of Appeals. The appellant argued that the designs of the product must not be interpreted as an advertisement. She asserted that she did not use any external form of promotion but the visuals and images of the product itself; the court rejected

<sup>51</sup> Ibidem, paras. 7–10.

<sup>52</sup> Advertising that violates universally accepted human and ethical norms by using insulting words and comparisons in relation to nationality, race, profession, social origin, age, gender, language, religion, political and philosophical beliefs of natural persons; encroaches on objects of art [included in the list of] national and world cultural heritage [or] historical and architectural monuments; or insults state symbols (flag, coat of arms, anthem), the national currency of Georgia or of any other state, religious symbols, natural and legal persons, their activities, profession or products. See: Georgian Law on Advertisement, 1998, Art. 3(5).

<sup>53</sup> Dishonest, untrustworthy, unethical, misleading or any other [type of] advertising which violates the requirements for content, timing, placement and dissemination, as provided for in Georgian law. See: *ibidem*, Art. 3(2).

<sup>54</sup> Judgement N4/3020-18 of Tbilisi City Court, 4 May 2018, par. 16.

<sup>55</sup> *Ibidem*, par. 18.

this argument. She also petitioned to send the case to the Constitutional Court to assess the constitutionality of the law; however, the judge stated that the norms were clear, with predictable results, and did not have compliance issues regarding the principle of legal certainty.<sup>56</sup>

The Tbilisi Court of Appeals admitted that during the advertisement, the ethical standard of society should be considered. However, this standard is not static and can be modified; nevertheless, the court should follow the current, existing model of values and ethics. It underlined that only the court had the liberty to evaluate how the restriction could apply proportionally in a democratic society. The court used purposive interpretation for understanding the real intent and aim of the norm. It qualified advertisements not only as an insult to religious feelings but also as a direct instrument against religion, especially Orthodox Christianity, its saints, and holidays; practically, the court declared itself as the main protector of believers' feelings and religion in general.<sup>57</sup>

### 3.3. Position of the Public Defender of Georgia: Report and *amicus curiae*

The Public Defender of Georgia included Aisa's case in the official report, because it was very important and directly linked to the discretion of the state to restrict freedom of expression in favor of conventional morals or the protection of religious rights.<sup>58</sup> According to the report, restrictions should not be based only on the argument that someone uses religious or historical symbols and phrases in improper contexts.<sup>59</sup> Advertising inscriptions and images *prima facie* are protected by freedom of expression.<sup>60</sup> During the case hearing at the Court of Appeals, the Public Defender submitted an *amicus curiae* to the court and argued that the legal definition of unethical advertising is too broad and does not enumerate concrete actions that create an opportunity for the government to restrict freedom of expression more than what is necessary for the achievement of a legitimate aim.<sup>61</sup> The Court's

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<sup>56</sup> Judgement N4s/291-18 of the Tbilisi Court of Appeals, 15 June 2018.

<sup>57</sup> *Ibidem*.

<sup>58</sup> Report of the Public Defender of Georgia, 2018, 204.

<sup>59</sup> *Ibidem*, 205.

<sup>60</sup> Public Defender of Georgia, *Amicus Curiae*, N04-2/7245, 23 May 2018, par. 3.1.

<sup>61</sup> Report of the Public Defender of Georgia, 2018, 205.

judicial discretion to interpret unethical advertising is too broad.<sup>62</sup> This is a crucial moment, because according to the case law of the Constitutional Court of Georgia, any norm, which is used to restrict the freedom of expression, must be “clear, foreseeable, and narrowly tailored.”<sup>63</sup>

### 3.4. Constitutional claim and judgement of the Constitutional Court of Georgia

Ana Gachechiladze initiated a suit at the Constitutional Court of Georgia. She had several demands: she demanded the annulment of Art. 3(1) and Art. 3(5) of the Georgian Law on Advertisement on the ground that it contradicted the freedom of expression, information, and artistic freedom. She also claimed that the object of the claim was the constitutionality of the norms of the Criminal Code of Georgia (desecration of the State Coat of Arms or the national flag) and the Administrative Offences Code of Georgia (normative content of the provision that states administrative responsibility for disseminating unethical advertisement).<sup>64</sup> The Constitutional Court of Georgia rejected her claim regarding the constitutionality of the legal definitions of “unethical advertisement,” because the norms of the Law on Advertisement do not provide separate and autonomic rules of production or usage of such commercials.<sup>65</sup> The Constitutional Court will only discuss the constitutionality of normative meaning regarding the desecration of the State Coat of Arms or of the national flag and the administrative responsibility for disseminating unethical advertisements (only regarding the normative meaning and not the norm itself).<sup>66</sup>

## 4. Judgement of the European Court of Human Rights

The ECHR interpreted Aisa's case more broadly than the national courts. They considered that the case was beyond the issue of advertisements and commercials, but it was also the beginning of public discussions and debates

<sup>62</sup> Public Defender of Georgia, *Amicus Curiae*, N04-2/7245, 23 May 2018, par. 3.2.

<sup>63</sup> Decision N1/3/421,422 of the Constitutional Court of Georgia, 10 November 2009, II, par. 7.

<sup>64</sup> See: Constitutional Claim N1423 of the Citizen of Georgia Ana Gachechiladze, 10 May 2019.

<sup>65</sup> Judgement N2/15/1423 of the Constitutional Court of Georgia, 24 October 2019, II, par. 4.

<sup>66</sup> *Ibidem*, III, par. 1.

on different real topics<sup>67</sup> (this argument holds for other Georgian cases too, especially concerning questions about the LGBT community and society<sup>68</sup>).

The ECHR divided commercials into two groups: images concerning King Tamar and other images. The court did not agree with the applicant's argument about King Tamar's image, because Tamar is also a saint of the Georgian Orthodox Church and a public figure, and there are no other reasonable expectations for opening any public debate concerning her.<sup>69</sup> The European Court found no "pressing social need" to limit the dissemination of other images. One other commercial that included text from popular music was prohibited by national courts, while the music video had more than a million views on social media and was still freely distributed.<sup>70</sup>

The ECHR found that there was a violation of Article 10 of the European Convention concerning at least three images from four commercials. The ECHR also underlined the role of domestic courts in the evaluation of the character of advertisements:

The Court takes issue with the apparent implication in the domestic courts' decisions that the views on ethics of the members of the Georgian Orthodox Church took precedence in the balancing of various values protected under the Convention and the Constitution of Georgia. Such an implication went against the views of the Constitutional Court [...], according to which it was "impermissible to impose ethical norms or the world view [held by] a specific person or group of persons on other groups of society through State institutions, including the courts." [...] The Court reiterates that in a pluralist democratic society those who choose to exercise the freedom to manifest their religion must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith.<sup>71</sup>

The ECHR followed its case law and used the argument from the *Sakmadienis* case that images of sacred figures of concrete religions used for commercial purposes are acceptable and not against the convention.<sup>72</sup>

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<sup>67</sup> *Ana Gachechiladze v. Georgia* [ECHR], App. No. 2591/19, 22 July 2021, par. 55.

<sup>68</sup> See: *Identoba and Others v. Georgia* [ECHR], App. No. 73235/12, 12 May 2015, par. 68.

<sup>69</sup> *Ana Gachechiladze v. Georgia* [ECHR], App. No. 2591/19, 22 July 2021, paras. 56–57.

<sup>70</sup> See: *ibidem*, paras. 59–61.

<sup>71</sup> *Ibidem*, par. 62.

<sup>72</sup> *Sakmadienis Ltd v. Lithuania* [ECHR], App. No. 69317/14, 30 April 2018, par. 80.

At the same time, the ECHR defended the position that such commercials should have a purpose: ideas not serving any form of public debate to develop the progress of society and those that are harmful may attract legal responsibility.<sup>73</sup> Privileging one religion or group of believers is very dangerous for the state and the ECHR admitted such signs in its judgement. The Court and other governmental institutions must not be used as instruments for individuals or some groups to obtrude their opinions upon others.<sup>74</sup>

## Conclusion

The conflict between the freedom of expression and the freedom of religion is quite apparent; however, there are a few instances where the state can prevent such conflict. Emotional factors and the individual character or personality of the believer can make such a believer take offense when faced with all kinds of insults targeted at their religion. Religious beliefs have no strict legal definition. National and international institutions avoid defining them or stating their characteristics.

Aiisa's case provides an example of the contradictory rights in Georgia. It exposes many problematic areas of Georgian litigation, politics, and general law. National courts must not act as guardians of concrete religious groups or conventional morals as this leads to negative results and destruction of the national system. Religious groups must be autonomous, without any interference from the public authorities. However, sacred images and figures can be used in commercials or other ways of expression. It is not about a person's preferences or satisfaction. Democracy works only in a space where different people can live together peacefully, which may sometimes mean living with or listening to things that one may not be comfortable with. Every court should consider the context, content, subjects, and forms of expression and assess them. The prohibition of expression should be the last and final resort. Georgia has many lessons to learn from democracy and human rights; however, it can share its own experience and

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<sup>73</sup> *Jersild v. Denmark* [ECHR], App. No. 15890/89, 23 September 1994, par. 31.

<sup>74</sup> Decision N1/3/421,422 of the Constitutional Court of Georgia, 10 November 2009, II, par. 7.

knowledge with European countries as well. European law regards the character of expression with skepticism, but in practice, every kind of expression is associated with liberty and freedom. Developments in this regard are in progress, and there will be many challenges in the hypothetical regulation of the restriction of expression in favor of religious feelings.

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