

# Atheist Ireland



Letter to Minister  
re Criminal Justice (Incitement to Violence  
or Hatred and Hate Offences) Bill

## Sokolovskiy v. Russia – June 2024 European Court of Human Rights

Dear Minister

We would like to draw your attention to the above recent case regarding Article 10, freedom of expression at the European Court of human rights. (We attach an English translation of the judgment, which was published in French). In light of this case we ask you to look again at the Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2023 and its failure to define 'hatred'. In addition we do not believe that the protection of freedom of expression in the Bill is sufficient to protect the right.

Before we address this recent case, can we remind you of arguments we have made previously about this issue.

Laws should be accurate, understandable, and enforceable. Their words and definitions should be coherent, universal and inclusive, with clear and justified boundaries, and free from ideological assumptions. A person should be able to know whether or not they are breaking it.

Laws based on ambiguous or emotive words cannot do this. "Hate" crime laws are not about hate. They are fundamentally about prejudice and bias against members of a group with common characteristics.

We should:

- Tackle prejudice against groups through education,
- and tackle prejudice-motivated crime through the law,
- while protecting the right to freedom of expression,
- based on human rights principles and standards.

Here are several examples of these concerns being raised by independent experts:

<https://atheist.ie/2019/12/prejudice-motivated-crime/>

We now return to the recent Sokolovskiy v. Russia case at the European Court, which we have attached with this letter.

Sokolovskiy was found guilty in Russia for nine offences for committing deliberate and public acts aimed at inciting hatred or hostility or degrading a person's dignity. According to the case the acts constituted extremist offences motivated by ethnic or religious hatred or hostility towards social groups and individuals, which disrupted public order. He was also prosecuted for committing seven offenses for violating freedom of conscience, for committing deliberate and public acts demonstrating blatant disrespect towards society, perpetuated with the intention of offending the religious feelings of believers.

The European Court found that Russia had breached Sokolovskiy's right to freedom of expression under the European Convention. The European Court stated that:

"In this respect, the Court notes that in the present case, the domestic judges only focused, like the experts commissioned by the investigator, on the nature of the terms used by the applicant, limiting their conclusions to the form and content of the speech. At no time did they try to place the contentious statements in the context of the relevant discussion or discover the ideas they aimed to promote, rejecting outright all the explanations provided by the applicant on this subject (*ibid.*, § 64). The Court concludes that the reasons adopted by the domestic courts are not sufficient to allow it to consider that, in this case, they adequately balanced the competing interests in accordance with the criteria established by its case law."

The Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2023 states that:

"Protection of freedom of expression

11. For the purposes of this Part, any material or behaviour is not taken to incite violence or hatred against a person or a group of persons on account of their protected characteristics or any of those characteristics solely on the basis that that material or behaviour includes or involves discussion or criticism of matters relating to a protected characteristic."

It is difficult to understand what constitutes 'hatred' if it is not defined and especially since Section 11 of the Bill only uses the terms 'discussion' or 'criticism' of matters relating to a protected characteristic in relation to the protection of freedom of expression.

The European court said in the Sokolovskiy case that Article 10 of the Convention applies not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock, or disturb.

The European Court stated that:

"99.i - Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and the development of every individual. Subject to paragraph 2 of Article 10, it applies not only to "information" or "ideas" that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock, or disturb: such are the demands of pluralism, tolerance, and broadmindedness without which there is no "democratic society." As enshrined in Article 10, it is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly."

101. The Court also recalls that the mere fact that a remark may be perceived as offensive or insulting by certain individuals or groups of individuals does not mean that it constitutes "hate speech." While such feelings are understandable, they alone cannot set the limits of freedom of expression (*Ibragim Ibragimov and Others*, cited above, § 115). It is only by examining carefully the context in which the offensive, insulting, or aggressive words appear that one can draw a meaningful distinction between shocking and offensive language, which is protected by Article 10 of the Convention, and that which loses its right to tolerance in a democratic society (see, for a similar approach, *Vajnai v. Hungary*, no. 33629/06, §§ 23-57, ECHR 2008). Offensive language may escape the protection of freedom of expression if it amounts to gratuitous denigration, but the use of vulgar expressions in itself is not decisive in the assessment of offensive expression, as it can serve purely stylistic purposes. Style forms part of communication as a form of expression and is protected as such along with the substance of the ideas and information expressed (*Güland Others v. Turkey*, no. 4870/02, § 41, June 8, 2010, and *Grebneva and Alisimchik v. Russia*, no.8918/05, § 52, November 22, 2016, with other references).

The Bill is not sufficient to protect the right to freedom of expression and we believe that it has the potential to become a blasphemy law by another name.

We ask that you look again and the definition of hatred and the words used in relation to the protection of the right to freedom of expression. Under Section 2 the definition in relation to 'interpretation and application' is simply not sufficient to protect the right to freedom of expression.

Section 2 states that:

“as “reasonable and genuine contribution”, in relation to literary, artistic, political, scientific, religious or academic discourse, means a contribution that is considered by a reasonable person as being reasonably necessary or incidental to such discourse.”

(2) In any proceedings for an offence under this section, it shall be a defence to prove that the material concerned consisted solely of—(a) a reasonable and genuine contribution to literary, artistic, political, scientific, religious or academic discourse.”

What is reasonable to one person is unreasonable to another person and we can't see how this defence is sufficient to protect freedom of expression especially when freedom of expression under Article 10 of the European Convention:

“applies not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock, or disturb: such are the demands of pluralism, tolerance, and broadmindedness without which there is no "democratic society.” (European Court)

Yours sincerely

Michael Nugent  
Chairperson  
Atheist Ireland

Jane Donnelly  
Human Rights Officer  
Atheist Ireland