



Reports

Arie de Pater and Ville Hoikkala

Free Speech under Threat
in Finland and Beyond?

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International Institute
for Religious Freedom



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for Religious Freedom

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In Finland, Lutheran Bishop Juhana Pohjola and politician Päivi Räsänen have been accused of a crime for publishing material that allegedly threatened, defamed or insulted homosexuals. Both have been threatened with fines and even possible imprisonment simply for holding to the conservative Christian view on marriage and sexuality. Why has this case (currently on appeal to the Supreme Court of Finland) received so much international attention, and what impact is it likely to have on freedom of expression in Europe and beyond?

Summary of the case

In 2004, Päivi Räsänen wrote a brochure entitled “As Man and Woman He Created Them.” This brochure was printed and distributed by Juhana Pohjola. In the brochure, Räsänen explains her view of marriage and sexuality, based on her interpretation of the Bible. This interpretation is shared by many evangelical Christians worldwide.

In 2019, the Evangelical Lutheran Church of Finland, of which Räsänen is a member, decided to support a Pride parade celebrating sexual diversity. Räsänen questioned this decision by the church leadership on social media, adding a picture of the text of Romans 1:24–27. In a subsequent interview for a Finnish radio channel, she repeated her vision regarding marriage and sexuality.

In April 2021, three separate charges of incitement against homosexuals were filed against Räsänen. Pohjola was charged with printing and distributing the brochure. In March 2022, a Finnish district court ruled them both not guilty. The prosecutor, not satisfied with this verdict, appealed the ruling and brought the case to the Helsinki Appeal Court. The hearings before this court ended in September 2023. On November 14, the appeal court acquitted both Räsänen and Pohjola of all charges. In January 2024, despite the two prior acquittals, the state prosecutor appealed the case again to the Supreme Court of Finland.

The applicable law

Päivi Räsänen and Juhana Pohjola were charged for agitation against a group of people, based on the Finnish Penal Code § 11:10. The paragraph says:

A person who makes available to the public or otherwise disseminates among the public or keeps available to the public information, an opinion or another message where a certain group is threatened, defamed or insulted on the basis of its race, colour, birth, national or ethnic origin, religion or belief, sexual orientation or disability or on another comparable basis shall be sentenced for agitation against a population group to a fine or to imprisonment for at most two years. (English translation by Finnish Ministry of Justice)

Agitation against a group of people was criminalized in 1970, as Finland joined the International Convention on the Elimination of All Forms of Racial Discrimination. In 2011, the wording was slightly modified to include more clearly online expressions that fall within the description. The impulse to make this change in 2011 came from the Council of Europe’s Additional Protocol to the Convention

on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems, which had taken effect in 2006.

The last available statistics on the frequency of cases of agitation against a group of people are from 2019, and there were 29 cases that year. The crime is so rare that it doesn't appear in the ordinary crime statistics. In some cases, agitation against a group of people was done in connection with other crimes, such as speaking ethnic or anti-gay slurs while committing physical violence against people who belong to those groups. Most of the agitations against a group of people took place online on different social media platforms.

Thus far, cases filed under this article have dealt with outright racism or with vandalism accompanied by a clear hate motivation. The case against Räsänen was the first one that involved more civilized and academic language.

The statute of limitations for agitation against a group of people is five years. The Räsänen case has led to a public conversation about how the statute of limitations should be interpreted in cases where potentially illegal material was initially published online at an earlier point. In January 2024, the Supreme Court, in its decision in a case of online defamation, indicated that the statute of limitations should be calculated from the date when the content was uploaded online. This means that what Räsänen wrote in her 2004 booklet could no longer be prosecuted in Finland, because the five-year statute of limitations has expired according to the new interpretation.

The main characters

Päivi Maria Räsänen (born 1959) is a well-known Finnish politician. (The proper pronunciation of the letter ä in Finnish is as in the English word *apple*.) She is a physician by education but entered politics in 1990. She became a member of the Riihimäki City Council in 1993 and of the Finnish Parliament in 1995. She was chairperson of the Finnish Christian Democrats from 2004 until 2015. From 2011 to 2015, she served the country as Minister of the Interior in the cabinet of Jyrki Katainen.

Räsänen lives in Riihimäki with her husband, Niilo. They have five grown children. Niilo holds a doctorate in theology and is a pastor and headmaster of People's Mission College (Kansanlähetysopisto) in Ryttylä, Finland.

Räsänen is a prominent figure and a household name in the Finnish political landscape. Most Finns recognize her and have an opinion about her. Räsänen has defended Christian conservative values on issues including abortion and same-sex marriage. Furthermore, she has engaged in political debates on health and social policies. Her rhetorical skills and media strategy are respected even by her political opponents. Räsänen has presented the lighter side of her personality and sense of humour as a guest on television shows such as *Masked Singer*, and she has invited journalists to her home, where she has talked openly about her family life. The high school graduations and weddings of her five children have been covered in Finnish tabloids as beautiful events of a celebrity family.

The Finnish Parliament is elected by an open-list proportional representation system. Räsänen represents the electoral district of Häme, which has 14 seats in the national parliament. A party needs about 5 percent of the votes in Häme for a seat in the national parliament. Despite Räsänen's prominence in the media, support for her party, the Christian Democrats, has declined, and in the last elections, she received barely enough votes to be re-elected.

Häme is the rust belt of Finland, with a strong industrial and agricultural base, no major universities and a tradition of Christian revival movements. Politicians with a conservative set of values get good electoral results there.

Juhana Markus Pohjola (born 1972) is bishop of the Evangelical Lutheran Mission Diocese of Finland (ELMDF) since his ordination in 2021. The ELMDF is a conservative break-off from the Evangelical Lutheran Church of Finland. Pohjola holds two master's degrees in theology, one from the University of Helsinki (1997) and one from Concordia Theological Seminary in Fort Wayne, Indiana, US (1998). He successfully defended his doctoral thesis in 2014.

In 1999, Pohjola was ordained as a priest in the diocese of Oulu, serving the Finnish Luther Foundation. He was also head pastor of the Lutheran parish of St. Mark in Helsinki from 2000 to 2010. In 2011 and 2012, he was visiting researcher at Concordia Lutheran Theological Seminary in St. Catherines, Canada. Pohjola was appointed dean of the Mission Diocese in 2013. Because of his function in the Mission Diocese, the state church defrocked him in 2014. He is married to Päivi Pohjola, a music teacher, and they have four children.

Raija Sinikka Toiviainen (born 1954) was Finland's Prosecutor General when the case began. Toiviainen graduated with a bachelor's degree in law from Helsinki University in 1980. She started at the Office of the Finnish Prosecutor General in 1997 and subsequently served as state prosecutor and head of the International Unit. Toiviainen was appointed Deputy Prosecutor General in 2016 and became Prosecutor General in 2018. She retired in 2022.

The Prosecutor General is responsible for leading, supervising and developing the National Prosecution Service. The Prosecutor General makes decisions about the actions of the prosecutors before the Supreme Court. In cases related to limits of freedom of speech in mass media, terrorism, and police misconduct, charges can be filed only by the Prosecutor General. Usually, the Prosecutor General assigns an ordinary prosecutor to present those cases in court. A new Prosecutor General is appointed by the Finnish government when the previous one leaves the job, but it is not a political office, and the Prosecutor General does not change when Finland gets a new government. In this way, the appointment is similar to the nomination of Supreme Court judges in the United States, who do not change when the president who appointed them leaves the office. The Prosecutor General can make decisions about criminal investigations against ministers, so the independence of the National Prosecution Service is important. During the Räsänen investigation and court proceedings from 2019 to 2023, Finland has had four governments with parties from left to right.

Toiviainen is deeply concerned about hate speech. She ordered a police investigation into Räsänen in 2019–2020, and even though the police did not report any misconduct, the state prosecutor still pursued a court case against both Räsänen and Pohjola. The prosecutors have an independent role, and sometimes the prosecutors and police have different views of a case.

Toiviainen assigned Anu Mantila to present the Päivi Räsänen case in court. Mantila has served in the National Prosecution Service in different tasks for several decades. She holds a Doctor of Laws degree, having written her dissertation on the influence of administrative and civil law decisions in penal proceedings. She is widely respected as an academic scholar in procedural law.

The arguments

Räsänen

In her brochure, Räsänen argues that sexual education should be grounded in values. She contends that if same-sex relationships are presented as of equal worth and value to heterosexual relationships in the context of sex education, youth will be encouraged towards homosexual experimentation. ‘The most important question is if homosexuality is a neutral state of existence or a negative developmental disorder.’ If the latter is the case, Räsänen states, we are not doing anyone a favour by normalizing homosexuality. As the brochure states, ‘Campaigning for the rights of homosexuals leads to a change in the values of the society, which does not support growth into a healthy marriage.’

According to Räsänen, deviant sexual urges are often linked to disorders in early childhood and adolescent development. ‘There is undeniable scientific support that homosexuality is a disorder of psychosocial development.’ Räsänen further observes that casual sexual relations and frequently changing partners are common among homosexuals. According to her, that’s a clear indication that these are ‘very broken individuals’.

In an interview with a Finnish radio station, Räsänen was explicitly asked for her opinion on homosexuality. She did not exclude a genetic factor in the preference for a same-sex relationship. But she squarely defended marriage as between a man and a woman: ‘I think it is clear that God didn’t create the human being as a homosexual. God created us as heterosexuals. God created a man and a woman, and the intention of God is a marriage between them. It is clearly against the will of God and a sin to be in any other kind of sexual relationship.’

The prosecutor

According to the prosecutor, Räsänen’s communications on homosexuality and marriage are not within the limits of freedom of religion or belief (FoRB) or freedom of expression but discriminate against homosexuals.

The prosecutor stated, ‘Päivi Räsänen claims that homosexuality is an unnatural and unhealthy state of being, a psychosocial developmental disorder that one should get rid of.’

The prosecutor further defended her accusation with the following summary of Räsänen's position: 'Homosexuals are labelled as people prone to sexual abuse of children, immoral, casual sexual affairs. The defence of their rights is labelled as questionable. Räsänen claims that those attributes, especially lack of morality and the urge to sexual abuse of children, are associated with homosexuality.' She added, 'Räsänen claims that homosexuality is a negative and reprehensive personal attribute and identity, and that all homosexuals are inferior as human beings.'

This led to the conclusion that 'The statements of Räsänen insult the equality and human dignity of homosexuals. and they are likely to lead to intolerance, disrespect and hatred against homosexuals.'

The same line of reasoning was applied to Räsänen's tweet accompanied by several verses from Romans 1: 'Räsänen defends her opinion with verses from the Bible. Her statement means that homosexuality itself is a negative personal identity and attribute, due to which homosexuals are and should be considered immoral and inferior compared to other people. The statement violates the equality and human dignity of homosexuals, and is likely to provoke disrespect, intolerance and hatred against homosexuals.'

Commenting on the radio interview, the prosecutor declared, 'The statements are disrespectful against homosexuals. According to Räsänen, if homosexuality is a genetic condition, it is seen as a genetic degeneration and a sickness. The statement is untrue and degrading against homosexuals. Räsänen doesn't give any facts to support her statements. The religious view of Päivi Räsänen, that homosexuals are not created by God as heterosexuals are, is derogatory against homosexuals.'

Helsinki District Court

In the verdict, the Helsinki District Court criticized the prosecutor: 'The expression of Räsänen's writing cannot be interpreted more broadly than her written text.' It added, 'Räsänen's writing doesn't give a reason for the conclusion that homosexuals are prone to sexual abuse of children. Räsänen also doesn't say that homosexuality is a reprehensive personal attribute or identity as such, or that homosexual persons should be considered inferior.' Nevertheless, the District Court did acknowledge that Räsänen's comments were offensive to homosexuals.

The court took into account that Räsänen's writing was distributed among scholars and members of congregations linked to the conservative Christian Luther Foundation. Although she was also a politician when she wrote the brochure, she did not write in that capacity.

'Considering the background and context of the writing, and the textual context of the quotations in the charge, the District Court considers that the opinions and statements, even though they are insulting, are not hate speech that would be outside the scope of the freedom of speech. The quotations don't demean the humanity and equality of homosexuals, and they don't create disrespect,

intolerance or hatred against homosexuals. Räsänen has not agitated against a group of people as defined in Penal Code §11:10. The charge shall be dismissed.'

The appeal

After the prosecutor appealed the District Court ruling, the Finnish Court of Appeal in Helsinki thoroughly interrogated both Räsänen and Pohjola. Mantila, representing the prosecutor general, urged Räsänen to review her position on homosexuality and marriage, which she declined to do. According to Mantila, the trial was not about the Bible per se but about the way in which Räsänen and Pohjola interpreted the text. The prosecutor reportedly argued, 'The point isn't whether it is true or not but that it is insulting.'

The new judgement clarified that for a hate speech claim to stand under the Finnish statute, there needs to be evidence of intent to insult in the utterances themselves. Here, the Court of Appeal agreed with the trial court that, although some might feel insulted by Räsänen's opinions, intent cannot be proved. The Court of Appeal unanimously threw out all the charges, stating that the law required the post to be intended to offend, and that 'there must be an overriding social reason for interfering with and restricting freedom of expression.'

On 13 January 2024, the prosecution announced that it was appealing the decision to the Supreme Court of Finland. There is no obligation for the Finnish Supreme Court to accept the case. The Supreme Court is a precedent-setting court that focuses on cases where the law does not provide a clear answer. The new Prosecutor General, Ari-Pekka Koivisto, can decide whether the prosecutors take the case to the Supreme Court or not.

A human rights perspective

Both freedom of expression and FoRB are well anchored in international and European law. Article 18 of the International Covenant on Civil and Political Rights (ICCPR) ensures the right 'to manifest [one's] religion or belief in worship, observance, practice and teaching'. Furthermore, the article states, 'No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.' Limitations of the freedom to manifest one's religion or belief are admissible only when they are 'prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others'.

The brochure that Räsänen wrote and that Bishop Pohjola printed and distributed was first and foremost intended for a Christian audience, explaining the church's understanding of marriage. There was no call to hatred or violence or other provocative language in the brochure. Therefore, based on Article 18 of the ICCPR, there is no basis on which to prohibit the writing, printing or distribution of the booklet. Of course, people may disagree with the church's teaching. If so, under FoRB, they should be free to leave that community for another church or none.

The tweet and the radio interview by Räsänen are more about freedom of expression than about FoRB. Article 19 of the ICCPR states that freedom of expression includes the freedom to ‘impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice’. This right can only be restricted ‘for respect of the rights or reputations of others’ and ‘for the protection of national security or of public order, or of public health or morals’.

In the well-known case of *Handyside v. UK*, the European Court of Human Rights ruled that ‘Freedom of expression ... is applicable 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 State or any sector of the population.’

In both the tweet and the radio interview, Räsänen imparted ideas on sexuality and marriage based on her reading of the Bible. From the responses received, it is obvious that some consider these ideas offensive or shocking. But according to the European Court of Human Rights, that’s no reason to restrict her freedom of expression.

The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, published under the auspices of the United Nations, provides a six-part threshold to clarify the bandwidth of freedom of expression. The six criteria used to identify hate speech are ‘(1) the social and political *context*, (2) status of the *speaker*, (3) *intent* to incite the audience against a target group, (4) *content* and form of the speech, (5) *extent* of its dissemination and (6) *likelihood* of harm, including imminence’.

The content of the message on social media gives no reason to believe that it was the speaker’s intent to incite. From the content of the message, it was clear that Räsänen was speaking primarily to her church leadership. The dissemination of the message was greatly boosted by people who disagreed with Räsänen. Regarding the likelihood of harm, ‘the courts will have to determine that there was a reasonable probability that the speech would succeed in inciting actual action against the target group, recognizing that such causation should be rather direct.’

In light of the international human rights instruments listed above, we must conclude that there is no reason to prosecute either Räsänen or Bishop Pohjola.

Impact

Christians across Europe and beyond have followed the court case against Räsänen and Pohjola with interest. They feared that a conviction in this case would have serious implications for freedom of expression and FoRB in other European countries as well. Of course, a ruling by a Finnish court as such carries no authority in other nations, but many people regarded the verdict as an important indicator of where we stand regarding freedom of expression and FoRB in Europe.

The vindication of Räsänen and Pohjola came as a relief to all who feared a serious limitation of Christian voices in the public domain. The acquittal has been hailed as a victory for free speech, and many have said they felt emboldened to share their Christian views in public. At a press conference following the verdict, Räsänen told the audience that she had just received a message from a 16-year-old who wrote that the acquittal encouraged her to be more open about her Christian views. So, for now, the impact of the court case is greater support for Christians who share the views of Räsänen and Pohjola on sexuality and marriage. That could change if the Supreme Court of Finland accepts another appeal by the prosecutor general or if the European Court of Human Rights should rule against the two Finnish Christians or against freedom of expression in a similar case.

Reflection

The rulings of both the district court and the Helsinki Court of Appeals clearly vindicated Räsänen and Pohjola and reaffirmed their freedom of expression under Finnish law. This verdict is supported by international human rights law. Therefore, Christians can still defend and promote their views on sexuality and marriage. The court case also made it clear that some regard these views as shocking and insulting. In the context of growing secularization, we can expect the number of objectors to grow. Strengthened by this court case, we could just shrug our shoulders and move on. We could even cover ourselves in a martyr's cloak. But would these attitudes really advance the good news that we find in the Scriptures?

In his first letter to the Corinthians, the apostle Paul discussed how to deal with food offered to idols. Some argued that they could eat it, since neither the offering to idols nor the idols themselves are anything. These people, one might say, wanted to have their cake and eat it. Paul strongly criticized this attitude. "I have the right to do anything," you say—but not everything is beneficial. "I have the right to do anything"—but not everything is constructive' (1 Cor 10:23).

In concluding his teaching, Paul wrote, 'So whether you eat or drink or whatever you do, do it all for the glory of God. Do not cause anyone to stumble, whether Jews, Greeks or the church of God—even as I try to please everyone in every way. For I am not seeking my own good but the good of many, so that they may be saved' (1 Cor 10:31–33).

When we use our right to freedom of expression, it is good for us to keep that aim in sight. We want others to be saved. So, when we communicate biblical truth, we should try to do that in a winsome way. Even then, some people will feel offended. That's no different from Paul's time when the Christian sect was a tiny minority. But when shaping our message, we should try to anticipate the response by our audience.

We hasten to say that this is not about changing religious doctrine. All religions or belief systems are, generally speaking, free to instruct their members and the next generation on what they believe and how that should impact their behaviour. But when we represent our faith in the public domain, we should take

into account the audience and how our message would affect their understanding of our faith. Being a Christian in the public square is much more than our position on abortion or homosexuality. It is about justice, protecting the weak and the vulnerable, fighting poverty, creation care, international relations, fair trade, refugee and migrant issues, and much more. And all our public engagement should be concerned with opening hearts to our spiritual message.

The case against Räsänen and Pohjola once again illustrated the gap between biblical teaching on sexuality and marriage and the spirit of our times. That calls for a prudent use of Scripture in our communication with the wider society.

When speaking publicly about sexuality and marriage, we need wisdom to apply unchanging biblical truth to our contemporary situation. When we listen to the testimonies of some homosexuals, both those still in the church and those no longer in the church, we cannot help but conclude that as Christians, we haven't always been successful in sharing God's truth in love with those in need. In fact, sadly enough, at least some of the allergic responses to our public messages on sexuality and marriage are of our own making. This problem goes back decades. Perhaps the offender wasn't you or me, and maybe it was not our church either. But to those who have been hurt and left in the cold, that does not really matter. For many of them, the people inflicting pain on them were Christians, brothers and sisters, people who are called to live by high standards. That's the context that influences how people receive our biblical message.

Communicating the gospel in a culture that is increasingly foreign to it is not an easy task. It requires great wisdom. We can thank God that doing so is still permissible since, thus far, the fundamental right to freedom of expression is on our side. Let's use it prudently to advance the kingdom of God, so that many may be saved.

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