Thematic factsheet[1]
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FREEDOM OF EXPRESSION AND RESPECT FOR RELIGIOUS BELIEFS: STRIKING THE RIGHT BALANCE

According to the European Court of Human Rights it must be possible, in a democratic society, to criticise religious ideas, even if such criticism may be perceived by some as hurtful to their religious feelings. Freedom of expression as guaranteed by Article 10 of the European Convention on Human Rights covers not only information or ideas that are favorably received or regarded as inoffensive or as a matter of indifference, but also those that shock, offend or disturb. Religious groups must tolerate critical public statements and debate about their activities, teachings and beliefs, provided that such criticism does not amount to incitement to religious hatred and does not constitute incitement to disturb the public peace or to discriminate against adherents of a particular religion.

Whoever exercises his freedom of expression undertakes "duties and responsibilities". Amongst them - in the context of religious opinions and beliefs - may legitimately be included an obligation to avoid as far as possible expressions that are gratuitously offensive to others and which do not contribute to any form of public debate.

Member states could legitimately take measures aimed at repressing certain forms of conduct judged incompatible with the respect for the freedom of thought, conscience and religion of others guaranteed by Article 9 of the Convention. The European Court of Human Rights acknowledged, as a matter of principle, that it may be considered necessary to sanction improper attacks on objects of religious veneration. Any formality, condition, restriction or penalty imposed must nevertheless be proportionate to the legitimate aim pursued. Statements or works of art which do not qualify as incitement to religious hatred should not be the object of criminal sanctions. Awards of damages should be strictly justified, carefully motivated and proportionate to the legitimate aim pursued, to avoid any chilling effect on the freedom of expression.

Defending 'Sharia' while calling for violence to establish it could be regarded as hate speech and falls outside the scope of the protection afforded by the right to freedom of expression.

Seizure and forfeiture of a satirical film on the ground that it ridiculed the Christian faith

Otto Preminger Institut v. Austria - 13470/87
Judgment 20.9.1994

The applicant, Otto-Preminger-Institut für audiovisuelle Mediengestaltung, was a private association under Austrian law established in Innsbruck, its general aim being to promote creativity, communication

[1] This note presents a non-exhaustive selection of the European Court of Human Rights' relevant case-law and of other relevant Council of Europe instruments. Its aim is to improve the awareness of the acts or omissions of the national authorities likely to amount to a hindrance of Article 10 of the Convention. This information is not a legal assessment of the alerts and should not be treated or used as such.

and entertainment through the audiovisual media. Its activities included operating a cinema in Innsbruck. The applicant association announced a series of six showings accessible to the general public of the film “Das Liebeskonzil” ("Council in Heaven"). This film – subsequently seized by the domestic authorities - portrayed the God of the Jewish religion, the Christian religion and the Islamic religion as an apparently senile old man prostrating himself before the Devil with whom he exchanges a deep kiss and calling the Devil his friend. Other scenes showed the Virgin Mary permitting an obscene story to be read to her and the manifestation of a degree of erotic tension between the Virgin Mary and the Devil. Jesus Christ was portrayed as a low grade mental defective and in one scene was shown lasciviously attempting to fondle and kiss his mother’s breasts. God, the Virgin Mary and Christ were shown in the film applauding the Devil.

The European Court of Human Rights considered, as the domestic courts did before it, that its merit as a work of art or as a contribution to public debate in Austrian society did not outweigh those features which made it essentially offensive to the general public. It took into account the fact that the Roman Catholic religion was the religion of the overwhelming majority of Tyroleans. In seizing the film, the Austrian authorities acted to ensure religious peace in that region and to prevent that some people should feel the object of attacks on their religious beliefs in an unwarranted and offensive manner. The Court did not consider that the Austrian authorities could be regarded as having overstepped their margin of appreciation.

Conclusion: no violation of Article 10 (freedom of expression) of the Convention

Refusal by British Board of Film Classification to grant distribution certificate for video work containing erotic scenes involving St Theresa of Avila and Christ

Wingrove v. the United Kingdom - 17419/90
Judgment 25.11.1996

The applicant, Mr Nigel Wingrove, is a film director. He wrote the shooting script for, and directed the making of, a video work entitled Visions of Ecstasy. Its running time is approximately eighteen minutes, and it contains no dialogue, only music and moving images. According to the applicant, the idea for the film was derived from the life and writings of St Teresa of Avila, the sixteenth-century Carmelite nun and founder of many convents, who experienced powerful ecstatic visions of Jesus Christ. Visions of Ecstasy was submitted to the British Board of Film Classification ("the Board"), in order that it might lawfully be sold, hired out or otherwise supplied to the general public or a section thereof. The Board rejected the application for its blasphemous content, in accordance with the relevant provisions of domestic law.

The European Court of Human Rights noted that there was yet not sufficient common ground in the legal and social orders of the member states of the Council of Europe to conclude that a system whereby a State can impose restrictions on the propagation of material on the basis that it is blasphemous is, in itself, unnecessary in a democratic society and thus incompatible with the Convention. By reason of their direct and continuous contact with the vital forces of their countries, State authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirements with regard to the rights of others as well as on the "necessity" of a "restriction" intended to protect from such material those whose deepest feelings and convictions would be seriously offended.

Visions of Ecstasy portrayed*, inter alia*, a female character astride the recumbent body of the crucified Christ engaged in an act of an overtly sexual nature. The national authorities considered that the manner in which such imagery was treated placed the focus of the work "less on the erotic feelings of the character than on those of the audience, which is the primary function of pornography". They further held that since no attempt was made in the film to explore the meaning of the imagery beyond engaging the viewer in a "voyeuristic erotic experience", the public distribution of such a video could outrage and insult the feelings of believing Christians and constitute the criminal offence of blasphemy. This view was reached by both the Board of Film Classification and the Video Appeals Committee following a careful consideration of the arguments in defence of his work presented by the applicant in the course of two sets of proceedings. Bearing in mind the safeguard of the high threshold of profanation embodied in the definition of the offence of blasphemy under English law as well as the State's margin of appreciation in this area, the reasons given to justify the measures taken could be considered as both relevant and sufficient. Furthermore, having viewed the film for itself, the Court was satisfied that the decisions by the national authorities cannot be said to be arbitrary or excessive.

The Court noted that it was in the nature of video works that once they become available on the market they can, in practice, be copied, lent, rented, sold and viewed in different homes, thereby easily escaping any form of control by the authorities. In those circumstances, it was not unreasonable for the national authorities, bearing in mind the development of the video industry in the United Kingdom, to consider that the film could have reached a public to whom it would have caused offence. The use of a box including a warning as to the film's content would have had only limited efficiency given the varied forms of transmission of video works mentioned above.

Conclusion: no violation of Article 10 (freedom of expression) of the Convention

Conviction for defamation of Catholic Archbishop

Klein v. Slovakia - 72208/01
Judgment 31.10.2006

A weekly magazine published an article written by the applicant in which he criticised a Slovakian Archbishop for his proposal to have withdrawn the distribution of a film on the grounds of its profanatory and blasphemous nature. The article contained strong imagery of sexual connotation. He also alluded to the Archbishop's alleged cooperation with the secret police of the former communist regime. Finally, he invited the members of the Catholic Church to leave their church if they considered themselves to be decent and alleged that the representative of the church was an ogre. Upon the complaint of two associations, criminal proceedings were brought against the applicant and he was convicted of the offence of defamation of nation, race and belief and sentenced to a fine or to one month's imprisonment. The Archbishop, who first joined the proceedings as an aggrieved person, publicly pardoned the applicant and withdrew from the case. The courts concluded that the applicant had defamed the highest representative of the Roman Catholic Church in Slovakia and had disparaged a group of citizens for their Catholic faith.

Contrary to the domestic courts' findings, the European Court of Human Rights was not persuaded that the applicant had discredited and disparaged Catholics in his article, even if some of them might have been offended by the criticism of the Archbishop and by applicant's statement that he did not understand why decent Catholics did not leave that Church. The applicant's strongly-worded pejorative opinion had related exclusively to the Archbishop and had not unduly interfered with the right of

believers to express and exercise their religion, nor had it denigrated the content of their religious faith. Moreover, the article, published in a weekly with rather limited circulation, was expected to be appreciated by only a few intellectuals. For those reasons, despite the innuendoes with oblique vulgar and sexual overtones in the article, and given the Archbishop's pardon to the applicant, the latter's conviction was inappropriate in the particular circumstances of the case.

Conclusion: violation of Article 10 of the Convention (freedom of expression)

Conviction of a publisher for having published a novel considered an abusive attack on the Prophet of Islam

İ.A. v. Turkey - 42571/98
Judgment 13.9.2005

The applicant, the owner and managing director of a publishing company, published 2,000 copies of a book which addressed theological and philosophical issues in a novelistic style. The Istanbul public prosecutor charged the applicant with insulting "God, the Religion, the Prophet and the Holy Book" through the publication. The court of first instance sentenced the applicant to two years' imprisonment and payment of a fine, and immediately commuted the prison sentence to a small fine.

The European Court of Human Rights noted that the case concerned not only comments that offend or shock, or a "provocative" opinion, but also an abusive attack on the Prophet of Islam. It considered that, notwithstanding the fact that there was a certain tolerance of criticism of religious doctrine within Turkish society, which was deeply attached to the principle of secularity, believers might legitimately feel themselves to be the object of unwarranted and offensive attacks through the following passages: "Some of these words were, moreover, inspired in a surge of exultation, in Aisha's arms. ... God's messenger broke his fast through sexual intercourse, after dinner and before prayer. Muhammad did not forbid sexual intercourse with a dead person or a live animal." The Court therefore considered that the measure taken in respect of the statements in issue was intended to provide protection against offensive attacks on matters regarded as sacred by Muslims. In that respect it found that the measure might reasonably be held to have met a "pressing social need" and that the authorities could not be said to have overstepped their margin of appreciation. As to the proportionality of the impugned measure, the Court was mindful of the fact that the domestic courts did not decide to seize the book, and accordingly considered that the insignificant fine imposed was proportionate to the aims pursued.

Conclusion: no violation of Article 10 of the Convention (four votes to three)

Conviction of a journalist for publishing a book strongly criticising the religion

Aydın Tatlav v. Turkey 50692/99
Judgment 2.5.2006

The applicant is a journalist and the author of a book called İslamiyet Gerçeği (The reality of Islam). He mainly put forward the idea that religion had the effect of legitimising social injustices by portraying them as "God's will". Following a complaint, the applicant was questioned by the prosecutor and charged with "publishing a work designed to defile one of the religions". He was sentenced to one year's imprisonment, which was converted into a fine. The European Court of Human Rights noted that certain passages of the book contained strong criticism of religion in the socio-political sphere. However, the Court did not perceive an insulting tone to the comments aimed directly at believers or an abusive

attack against sacred symbols, in particular Muslims, who on reading the book could nonetheless feel offended by the caustic commentary on their religion. With regard to the punishment imposed on Mr Aydın Tatlav, the Court considered that a criminal conviction involving, moreover, the risk of a custodial sentence, could have the effect of discouraging authors and editors from publishing opinions about religion that were not conformist and could impede the protection of pluralism, which was indispensable for the healthy development of a democratic society. That being the case, the Court considered that the interference in question had not been "proportionate to the aim pursued".

Conclusion: violation of Article 10 of the Convention (freedom of expression)

Journalist's conviction for defamation of a Christian community in a daily newspaper

Giniewski v. France - 64016/00
Judgment 31.1.2006

The applicant, a journalist, sociologist and historian, wrote an article in a daily newspaper on Pope John Paul II's encyclical "The Splendour of Truth". An association called the "General Alliance against Racism and for Respect for French and Christian Identity" complained that the article defamed the Christian community. The courts allowed the civil claim lodged by the association, finding that some passages in the article undermined the honour and character of Christians and, more specifically, the Catholic community. The applicant was found guilty of publicly defaming a group of persons on the basis of their religion. He was ordered to pay the association one French franc in damages and 10,000 French francs in expenses, and to publish a statement concerning his conviction in a national newspaper.

According to the European Court of Human Rights, although the article had criticised a Papal encyclical and hence the Pope's position, the analysis it contained could not be extended to Christianity as a whole, which was made up of various strands, several of which rejected Papal authority. The applicant had sought primarily to develop an argument about the scope of a particular doctrine and its possible links with the origins of the Holocaust. In so doing he had made a contribution, which by definition was open to discussion, to a wide-ranging and ongoing debate, without sparking off any controversy that was gratuitous or detached from the reality of contemporary thought. By considering the detrimental effects of a particular doctrine, the article in question had contributed to discussion of the various possible reasons behind the extermination of Jews in Europe, a question of indisputable public interest in a democratic society. In such matters restrictions on freedom of expression were to be strictly construed. Although the issue raised concerned a doctrine upheld by the Catholic Church, and hence a religious matter, the article in question did not contain attacks on religious beliefs as such, but a view which the applicant had wished to express as a journalist and historian. In that connection, the Court considered it essential in a democratic society that a debate on the causes of acts of particular gravity amounting to crimes against humanity should be able to take place freely. The article in question had, moreover, not been "gratuitously offensive" or insulting, and had not incited disrespect or hatred. Nor had it cast doubt in any way on clearly established historical facts. With regard to the penalties imposed on the applicant, the fact that the statement which he had been required to publish had mentioned the criminal offence of defamation undoubtedly had a deterrent effect, and the sanction appeared disproportionate in view of the importance of the debate in which the applicant had legitimately sought to take part.

Conclusion: violation of Article 10 of the Convention (freedom of expression)

Criminal conviction of a leader of a sect for defending Sharia law during a television programme

Gündüz v. Turkey 35071/97
Judgment 4.12.2003

Criminal proceedings were instituted against the applicant following his appearance, in his capacity as a leader of 'Tarikat Aczmendi' (a community that describes itself as an Islamic sect), on a television programme broadcast by the HBB channel. On 1 April 1996 a state security court found him guilty of inciting the people to hatred and hostility on the basis of a distinction founded on religion and sentenced him to two years' imprisonment and a fine. It found in particular that he had described contemporary secular institutions as "impious", fiercely criticised secular and democratic principles and openly called for the introduction of the shariah. The applicant complained that his criminal conviction had entailed a violation of Article 10 (freedom of expression) of the Convention.

The European Court of Human Rights observed, firstly, that the programme had been about a sect whose followers had come into the public eye. Mr Gündüz, whose ideas the public was already familiar with, was invited onto the programme to present the sect and its nonconformist views, including the notion that democratic values were incompatible with its conception of Islam. The topic was the subject of widespread debate in the Turkish media and concerned a problem of general interest. In the Court's view, some of the comments for which the domestic courts had convicted the applicant did demonstrate an intransigent attitude towards and profound dissatisfaction with contemporary institutions in Turkey. However, they could not be regarded as a call to violence or as "hate speech" based on religious intolerance. Expressions that sought to propagate, incite or justify hatred based on intolerance, including religious intolerance, do not enjoy the protection of Article 10 the Convention. However, in the Court's view, merely defending the shariah, without calling for the use of violence to establish it, could not be regarded as "hate speech". Accordingly, notwithstanding the margin of appreciation accorded to the national authorities, the Court found that there were insufficient reasons to justify the interference with the applicant's right to freedom of expression.

Conclusion: violation of Article 10 (freedom of expression)

Conviction of leader of an Islamic sect for inciting people to religious crime and hatred through publication of his comments in the press

Gündüz v. Turkey (no. 2) 59745/00
Decision of inadmissibility 13.11.2003

A report about the applicant, the leader of Tarikat Aczmendi (a community describing itself as an Islamic sect), was published in Haftalık Taraf, a weekly newspaper with radical Islamic leanings. The public prosecutor charged the applicant with incitement to commit an offence and the domestic courts sentenced him to four years' imprisonment. The applicant complained that his criminal conviction had entailed a violation of Article 10 of the Convention.

The European Court of Human Rights considered that, having regard to the violent content and tone of the applicant's comments, they amounted to hate speech advocating violence and accordingly were incompatible with the basic values of justice and peace expressed in the Preamble to the Convention. Moreover, in the article in question the applicant had given the name of one of the persons he was alluding to. As that person was a writer enjoying a certain amount of fame, he was easily recognisable by

the general public and, following publication of the article, therefore indisputably exposed to a significant risk of physical violence. Accordingly, the Court considered that the severity of the penalty imposed (four years and two months' imprisonment and a fine) was justified in so far as it was a deterrent that might turn out to be necessary in the context of preventing public incitement to commit offences.

Conclusion: inadmissible

Conviction for defamation of the author of a book criticising action taken against sects

Paturel v. France 54968/00
Judgment 22.12.2005

The applicant brought out a book entitled 'Sects, Religions and Public Freedoms', which was published at the author's expense which attacked malpractice by private anti-sect movements which were in receipt of public funding. The book was particularly critical of 'UNADFI' (the National Union of Associations for the Protection of the Family and the Individual), an association which focused on the activities of sects, which lodged a complaint for defamation. Domestic courts found the applicant and the company's publishing director guilty of defamation and imposed fines and having the judgment published in two newspapers.

The European Court of Human Rights found that, contrary to the view of the French courts, the disputed statements had reflected a comment on matters of public interest and were to be regarded as value judgments rather than statements of fact. Having reiterated that value judgments were not susceptible of proof, the Court noted that the numerous documents submitted by the applicant constituted a sufficient factual basis. In spite of a certain hostility in some of the impugned extracts and the fact that certain statements could be described as harsh, the book's central issue concerned the methods used to combat organisations described as "sects". It had to be acknowledged that the question of "sects" or "sectarian movements" was widely debated in European societies. The issue was clearly a matter of public interest and any interference must therefore be narrowly interpreted. As to the sentence imposed on the applicant, the Court found that the fine, although relatively modest, when taken together with the cost of publishing a statement in two newspapers and the costs awarded to the UNADFI, did not seem justified in view of the circumstances.

Conclusion: violation of Article 10 of the Convention (freedom of expression)

Statutory prohibition to broadcast religious advertisements

Murphy c. Irlande 44179/98
Judgment 10.7.2003

In early 1995 the applicant, a pastor at the Irish Faith Centre, submitted to a local independent and commercial radio station an advertisement for the screening on its premises of a video dealing with "the historical facts about Christ" and "evidence of the resurrection". In March 1995 the Independent Radio and Television Commission ("IRTC") stopped the broadcast, applying section 10(3) of the Radio and Television Act 1988 under which "no advertisement shall be broadcast which is directed towards any religious or political end or which has any relation to an industrial dispute". This ruling did not affect the later transmission of the video by satellite.

The European Court of Human Rights noted that the domestic authorities had had regard to the extreme sensitivity of the question of broadcasting of religious advertising in Ireland and to the fact that religion was a divisive issue in Northern Ireland. Other than advertisements in the audio-visual media, the applicant's religious expression had not been restricted. He had retained the same right as any other citizen to participate in programmes on religious matters and to have the services of his church broadcast. Advertising tended to have a distinctly partial objective and the fact that advertising time was purchased would lean in favour of unbalanced use by religious groups with larger resources. In the Court's view, those considerations were highly relevant reasons for prohibiting the broadcast. The Court also found persuasive the Government's argument that a complete or partial relaxation of the prohibition would be hard to reconcile with the nature and level of the religious sensitivities at stake and the principle of neutrality in the broadcast media. Firstly, a provision allowing one religion and not another to advertise would be difficult to justify, while a provision allowing filtering by an authority on a case by case basis of unacceptable religious advertising would be difficult to apply fairly, objectively and coherently.

Conclusion: no violation of Article 10 of the Convention (freedom of expression)

Unjustified refusal to grant a broadcasting license for a radio station with Christian religious programming

Glas Nadezhda EOOD and Anatoliy Elenkov v. Bulgaria - 14134/02
Judgment 11.10.2007

The applicant company was refused a broadcasting licence for a radio station with Christian religious programming on the basis of a decision by the National Radio and Television Committee (the NRTC),which found that the proposed radio station failed to meet fully its requirements. The applicants unsuccessfully sought judicial review of this decision before the Supreme Administrative Court which held that the NRTC's discretion was not open to judicial scrutiny.

The European Court of Human Rights noted that the NRTC had not held any form of public hearing and its deliberations had been kept secret, despite a court order obliging it to provide the applicants with a copy of its minutes. Nor had it given reasons explaining why it considered that the applicant company had failed to meet its requirements. This lack of reasons had not been redressed in the ensuing judicial review proceedings, because the Supreme Administrative Court had held that the NTRC's discretion was not reviewable. This, coupled with the vagueness of some of the NRTC's criteria, had denied the applicants legal protection against arbitrary interference with their freedom of expression. In this connection, the Court recalled that the guidelines adopted by the Committee of Ministers of the Council of Europe in the broadcasting regulation domain called for open and transparent application of the regulations governing the licensing procedure and specifically recommended that all decisions taken by the regulatory authorities be duly reasoned and open to review by the competent jurisdictions. Consequently, the interference with the applicants' freedom of expression had not been lawful.

Conclusion: violation of Articles 10 (freedom of expression) and 13 (lack of effective domestic remedies)

180-day prohibition to broadcast certain type of comments: disproportionate interference

Nur Radyo Ve Televizyon Yayıncılığı A.Ş. v. Turkey 6587/03
Judgment 27.11.2007

The applicant, Nur Radyo Ve Televizyon Yayıncılığı A.Ş., is a limited company in the radio broadcasting sector based in Istanbul. In October 1999 the Radio and Television Supreme Council (Radio ve Televizyon Üst Kurulu – RTÜK) censured the applicant company for broadcasting certain comments by a representative of the Mihr religious community, who had, among other things, described an earthquake in which thousands of people had died in the Izmit region of Turkey in August 1999 as a "warning from Allah" against the "enemies of Allah", who had decided on their "death". The representative had also compared the "fate" of "non-believers", who were presented as victims of their impiety, with that of the members of the Mihr community. The RTÜK found that such comments breached the rule laid down in section 4 (c) of Law no. 3984 prohibiting broadcasting that was contrary to "the principles forming part of the general principles laid down in the Constitution, to democratic rules and to human rights". Noting that the applicant company had already received a warning for breaching the same rule, the RTÜK decided to suspend its radio broadcasting licence for 180 days with effect from 8 November 1999. The applicant company challenged this measure in the Turkish courts, but to no avail. It argued, in particular, that it had put forward a religious explanation for the earthquake which all listeners were free to support or oppose.

The European Court of Human Rights acknowledged the seriousness of the offending comments and the particularly tragic context in which they had been made. It also noted that they had been of a proselytising nature in that they had accorded religious significance to a natural disaster. However, although the comments might have been shocking and offensive, they did not in any way incite to violence and were not liable to stir up hatred against people who were not members of the Mihr religious community. The Court further reiterated that the nature and severity of the penalty imposed were also factors to be taken into account when assessing the proportionality of an interference. It therefore considered that the broadcasting ban imposed on the applicant company had been disproportionate to the aims pursued, in violation of Article 10.

Conclusion: violation of Article 10 of the Convention

Proselytism

Larissis and Others v. Greece - 23372/94
Judgment 24.2.1998

Air force officers and followers of the Pentecostal Church, the three applicants were convicted by Greek courts, in judgments which became final in 1992, of proselytism after trying to convert a number of people to their faith, including three airmen who were their subordinates. The European Court of Human Rights held that there had been no violation of Article 9 of the Convention with regard to the measures taken against the applicants for the proselytising of air force service personnel, as it was necessary for the State to protect junior airmen from being put under undue pressure by senior personnel. However, the Court did find a violation of Article 9 of the Convention with regard to the measures taken against two of the applicants for the proselytising of civilians, as they were not subject to pressure and constraints as the airmen.

Conclusion: one violation and one no-violation of Article 9 (freedom of thought, conscience and religion)

Proselytism

Kokkinakis v. Greece - 14307/88
Judgment 25.5.1993

A Jehovah's Witness, the applicant complained of his criminal conviction of proselytism by the Greek courts in 1988 after engaging in a conversation about religion with a neighbor, the wife of a cantor at a local Orthodox church. The European Court of Human Rights held that there had been a violation of the Convention, finding that the conviction had not been shown to have been justified in the circumstances of the case by a pressing social need. It noted in particular that he Greek courts had merely reproduced the wording of the law that made proselytism illegal without sufficiently specifying in what way the applicant had attempted to convince his neighbor by improper means.

Conclusion: violation of Article 9 (freedom of thought, conscience and religion)

OTHER RELEVANT COUNCIL OF EUROPE TOOLS

Recommendation 1805 (2007) Parliamentary Assembly on blasphemy, religious insults and hate speech against persons on grounds of their religion:

" (…) the Assembly considers that blasphemy, as an insult to a religion, should not be deemed a criminal offence. A distinction should be made between matters relating to moral conscience and those relating to what is lawful, matters which belong to the public domain, and those which belong to the private sphere. Even though today prosecutions in this respect are rare in member states, they are legion in other countries of the world.

10. The Assembly is aware that, in the past, national law and practice concerning blasphemy and other religious offences often reflected the dominant position of particular religions in individual states. In view of the greater diversity of religious beliefs in Europe and the democratic principle of the separation of state and religion, blasphemy laws should be reviewed by the governments and parliaments of the member states. (…)

12. The Assembly reaffirms that hate speech against persons, whether on religious grounds or otherwise, should be penalised by law (…) For speech to qualify as hate speech in this sense, it is necessary that it be directed against a person or a specific group of persons. National law should penalise statements that call for a person or a group of persons to be subjected to hatred, discrimination or violence on grounds of their religion.

(…) While religions are free to penalise in a religious sense any religious offences, such penalties must not threaten the life, physical integrity, liberty or property of an individual, or women's civil and fundamental rights. In this context, the Assembly recalls its Resolution 1535 (2007) on threats to the lives and freedom of expression of journalists and strongly condemns the death threats issued by Muslim leaders against journalists and writers. Member states have the obligation to protect individuals against religious penalties which threaten the right to life and the right to liberty and security of a person under Articles 2 and 5 of the Convention. Moreover, no state has the right to impose such penalties for religious offences itself.

17. The Assembly recommends that the Committee of Ministers:

17.2. ensure that national law and practice:

17.2.2. penalise statements that call for a person or a group of persons to be subjected to hatred, discrimination or violence on grounds of their religion as on any other grounds; (…)

17.2.4. are reviewed in order to decriminalise blasphemy as an insult to a religion; (…)"

Venice Commission, Report 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, Adopted by the Venice commission at its 76th plenary session (Venice, 17-18 October 2008)

"(…) 64. The Commission does not consider it necessary or desirable to create an offence of religious insult (that is, insult to religious feelings) *simpliciter,* without the element of incitement to hatred as an essential component. Neither does the Commission consider it essential to impose *criminal sanctions* for an insult based on belonging to a particular religion. If a statement or work of art does not qualify as incitement to hatred, then it should not be the object of criminal sanctions.

65. It is true that penalising insult to religious feelings could give a powerful signal to everyone, both potential victims and potential perpetrators, that gratuitously offensive statements and publications are not tolerated in an effective democracy.

66. On the other hand, the Commission reiterates that recourse to criminal law, which should of itself be reserved in principle to cases when no other remedy appears effective, should only take place with extreme caution in the area of freedom of expression.

68. It is true that the boundaries between insult to religious feelings (and even blasphemy) and hate speech are easily blurred, so that the dividing line, in an insulting speech, between the expression of ideas and the incitement to hatred is often difficult to identify. This problem however should be solved through an appropriate interpretation of the notion of incitement to hatred rather than through the sanctioning of insult to religious feelings.
69. When it comes to statements, certain elements should be taken into consideration in deciding if a given statement constitutes an insult or amounts to hate speech: the context in which it is made; the public to which it is addressed; whether the statement was made by a person in his or her official capacity, in particular if this person carries out particular functions. For example, with respect to a politician, the Strasbourg Court has underlined that "it is of crucial importance that politicians in their public speeches refrain from making any statement which can provoke intolerance." This call on responsible behaviour does not, of itself, unduly limit the freedom of political speech, which enjoys a reinforced protection under Article 10 ECHR.

70. As concerns the context, a factor which is relevant is whether the statement (or work of art) was circulated in a restricted environment or widely accessible to the general public, whether it was made in a closed place accessible with tickets or exposed in a public area. The circumstance that it was, for example, disseminated through the media bears particular importance, in the light of the potential impact of the medium concerned. It is worth noting in this respect that "it is commonly acknowledged that the audiovisual media have often a much more immediate and powerful effect than the print media; the audiovisual media have means of conveying through images meanings which the print media are not able to impart."

72. As concerns the content, the Venice Commission wishes to underline that in a democratic society, religious groups must tolerate critical public statements and debate about their activities, teachings and beliefs, provided that such criticism does not amount to incitement to hatred and does not constitute incitement to disturb the public peace or to discriminate against adherents of a particular religion.

73. Having said so, the Venice Commission does not support absolute liberalism. While there is no doubt that in a democracy all ideas, even though shocking or disturbing, should in principle be protected (with the exception, as explained above, of those inciting hatred), it is equally true that not all ideas deserve to be circulated. Since the exercise of freedom of expression carries duties and responsibilities, it is legitimate to expect from every member of a democratic society to avoid as far as possible expressions that express scorn or are gratuitously offensive to others and infringe their rights.

74. It should also be accepted that when ideas which, to use the formula used by the Strasbourg Court, "do not contribute to any form of public debate capable of furthering progress in human affairs" cause damage, it must be possible to hold whoever expressed them responsible. Instead of criminal sanctions, which in the Venice Commission's view are only appropriate to prevent incitement to hatred, the existing causes of action should be used, including the possibility of claiming damages from the authors of these statements. This conclusion does not prevent the recourse, as appropriate, to other criminal law offences, notably public order offences.

76. The Venice Commission underlines however that it must be possible to criticise religious ideas, even if such criticism may be perceived by some as hurting their religious feelings. Awards of damages should be carefully and strictly justified and motivated and should be proportional, lest they should have a chilling effect on freedom of expression.

77. It is also worth recalling that an insult to a principle or a dogma, or to a representative of a religion, does not necessarily amount to an insult to an individual who believes in that religion. The European Court of Human Rights has made clear that an attack on a representative of a church does not automatically discredit and disparage a sector of the population on account of their faith in the relevant religion and that criticism of a doctrine does not necessarily contain attacks on religious beliefs as such. The difference between group libel and individual libel should be carefully taken into consideration.

79. In different societies it can indeed be observed that there are different sensitivities which affect the interpretation of, in the past, the offences of blasphemy and religious insult and, nowadays, the offence of incitement to hatred.

80. Certain individuals have undoubtedly shown increasing sensitivities in this regard, and have reacted violently to criticism of their religion. The Commission accepts that, in the short term, these sensitivities may be taken into due account by the national authorities when, in order to protect the right of others and to preserve social peace and public order, they are to decide whether or not a restriction to the freedom of expression is to be imposed and implemented.

81. It must be stressed, however, that democratic societies must not become hostage to these sensitivities and freedom of expression must not indiscriminately retreat when facing violent reactions. The threshold of sensitivity of certain individuals may be too low in certain specific circumstances, and incidents may even happen in places other than, and far away from, those where the original issue arose, and this should not become of itself a reason to prevent any form of discussion on religious

matters involving that particular religion: the right to freedom of expression in a democratic society would otherwise be jeopardised.

82. The Commission considers that any difference in the application of restrictions to freedom of expression with a view to protecting specific religious beliefs or convictions (including as regards the position of a religious group as victim as opposed to perpetrator) should either be avoided or duly justified.

83. A responsible exercise of the right to freedom of expression should endeavor to respect the right to respect for religious beliefs or convictions of others. In this and other areas, sensible self-censorship could help to strike a balance between freedom of expression and ethical behaviour. Refraining from uttering certain statements can be perfectly acceptable when it is done in order not to hurt gratuitously the feelings of other persons, whereas it is obviously unacceptable when it is done out of fear of violent reactions.

V. Conclusions

a) incitement to hatred, including religious hatred, should be the object of criminal sanctions as is the case in almost all European States (…)
b) it is neither necessary nor desirable to create an offence of religious insult (that is, insult to religious feelings) simpliciter, without the element of incitement to hatred as an essential component.
c) the offence of blasphemy should be abolished (which is already the case in most European States) and should not be reintroduced."

See also,

- **Venice Commission, Blasphemy, insult and hatred: finding answers in a democratic society, 2010**
- **Resolution 1510 (2006) of the Parliamentary Assembly on freedom of expression and respect for religious beliefs**
- Recommendation No. 7 of **the Council of Europe's European Commission against Racism and Intolerance (ECRI)**