

**Council of Europe, Parliamentary Assembly.
Recommendation 29 June 2007, n. 1805(2007):
"Blasphemy, religious insults and hate speech against
persons on grounds of their religion". (*)**

(Provisional edition)

1. The Parliamentary Assembly recalls its Resolution 1510 (2006) on freedom of expression and respect for religious beliefs and reiterates its commitment to the freedom of expression (Article 10 of the European Convention on Human Rights and the freedom of thought, conscience and religion (Article 9 of the Convention), which are fundamental cornerstones of democracy. Freedom of expression is not only applicable to expressions that are favourably received or regarded as inoffensive, but also to those that may shock, offend or disturb the state or any sector of population within the limits of Article 10 of the Convention. Any democratic society must permit open debate on matters relating to religion and beliefs.

2. The Assembly acknowledges the importance of respect for, and understanding of, cultural and religious diversity in Europe and throughout the world and recognises the need for ongoing dialogue. Respect and understanding can help avoid frictions within society and between individuals. Every human being should be respected, independently of religious beliefs.

3. In multicultural societies it is often necessary to reconcile freedom of expression and freedom of thought, conscience and religion. In some instances, it may also be necessary to place restrictions on these freedoms. Under the European Convention on Human Rights, any such restrictions must be prescribed by law, necessary in a democratic society and proportionate to the aims pursued. In so doing, States enjoy a margin of appreciation as national authorities may need to adopt different solutions taking account of the specific features of each society; the use of this margin is subject to the supervision of the European Court of Human Rights.

4. With regard to blasphemy, religious insults and hate speech against persons on the grounds of their religion, the state is responsible for determining what should count as criminal offences within the limits imposed by the case-law of the European Court of Human Rights. In this connection, 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.

5. The Assembly welcomes the preliminary report adopted on 16-17 March 2007 by the Venice Commission on this subject and agrees with the Venice Commission that in a democratic society, religious groups must tolerate, as must other groups, critical public statements and debate about their activities, teachings and beliefs, provided that such criticism does not amount to intentional and gratuitous insult or hate speech and does not constitute incitement to disturb the public peace or to violence and discrimination against adherents of a particular religion. Public debate, dialogue and improved communication skills of religious groups and the media should be used in order to lower sensitivity when it exceeds reasonable levels.

6. Recalling its Recommendation 1720 (2005) on education and religion, the Assembly emphasises the need for greater understanding and tolerance among individuals of different religions. Where people with different religions know more about the religion and religious sensitivities of each other, religious insults are less likely to occur out of ignorance.

7. In this context, the Assembly welcomes the initiative of the United Nations to set up a new body under the theme “Alliance of Civilisations” to study and support contacts between Muslim and so-called Western societies, but feels that such an initiative should be enlarged to other religions and non-religious groups.

8. The Assembly recalls the relevant case-law on freedom of expression under Article 10 of the European Convention on Human Rights developed by the European Court of Human Rights. Whereas there is little scope for restrictions on political speech or on the debate of questions of public interest, the Court accepts a wider margin of appreciation on the part of contracting states when regulating freedom of expression in relation to matters liable to offend intimate personal convictions within the sphere of morals or, especially, religion.

9. However, the Assembly stresses that this margin of appreciation is not unlimited and that any restrictions on the freedom of expression must comply with the case-law of the European Court of Human Rights. Freedom of expression – guaranteed under Article 10 of the European Convention on Human Rights – is of vital importance for any democratic society. In accordance with the Statute of the Council of Europe, common recognition of democratic values is the basis for membership of the Council of Europe.

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 member states and parliaments.

11. The Assembly notes that under the International Convention on the Elimination of All Forms of Racial Discrimination, signatory parties are obliged to condemn discrimination and take effective measures against it. All member states signatory to this convention must ensure that members of a particular religion are neither privileged nor disadvantaged under blasphemy laws and related offences.

12. The Assembly reaffirms that hate speech against persons, whether on religious grounds or otherwise, should be penalised by law in accordance with the General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination produced by the European Commission against Racism and Intolerance. For speech to qualify as hate speech in this sense, it is necessary that it is 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.

13. The Assembly emphasises that freedom of religion as protected by Article 9 of the European Convention on Human Rights also protects religions in their establishing values for their followers. 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 human 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 European Convention on Human Rights. No state has the right to impose itself such penalties for religious offences, either.

14. The Assembly notes that member states have the obligation under Article 9 of the European Convention on Human Rights to protect freedom of religion including the freedom to manifest one’s religion. This requires protection against disturbances by others of such manifestation. However, these rights may sometimes be subject to certain justified limitations. The challenge facing the authorities is how to strike a fair balance between the interests of individuals as members of a

religious community in ensuring respect for their right to manifest their religion or their right to education, and the general public interest or the rights and interests of others.

15. The Assembly considers that, as far as it is necessary in a democratic society in accordance with Article 10, paragraph 2 of the European Convention on Human Rights, national law should only penalise expressions about religious matters which intentionally and severely disturb public order and call for public violence.

16. It calls on national parliaments to initiate legislative action and scrutiny regarding the national implementation of this Recommendation.

17. The Assembly recommends that the Committee of Ministers:

17.1. take note of Resolution 1510 (2006) on freedom of expression and respect for religious beliefs together with this Recommendation and forward both texts to the relevant national ministries and authorities;

17.2. ensure that national law and practice:

17.2.1. permit open debate on matters relating to religion and beliefs and do not privilege a particular religion in this respect, which would be incompatible with Articles 10 and 14 of the European Convention on Human Rights;

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;

17.2.3. prohibit acts which intentionally and severely disturb the public order and call for public violence by references to religious matters, as far as it is necessary in a democratic society in accordance with Article 10, paragraph 2 of the European Convention on Human Rights;

17.2.4. are reviewed in order to decriminalise blasphemy as an insult to a religion;

17.3. encourage member states to sign and ratify Protocol No. 12 to the European Convention on Human Rights (CETS No 177);

17.4. instruct its competent Steering Committee to draw up practical guidelines for national ministries of justice intended to facilitate the implementation of the recommendations contained in paragraph 16.2 above;

17.5. instruct its competent Steering Committee to draw up practical guidelines for national ministries of education intended to raise understanding and tolerance among students of different religions;

17.6. initiate through their national ministries of foreign affairs work at the level of the United Nations in order to ensure that:

17.6.1. national law and practice of signatory states of the International Convention on the Elimination of All Forms of Racial Discrimination do not privilege persons with a particular religion;

17.6.2. the work of the Alliance of Civilizations avoids the stereotype of a so-called "Western" culture, widens its scope to other world religions and promotes more open debates between different religious groups and with non-religious groups;

17.7. condemn on behalf of their governments any death threats and incitements to violence by religious leaders and groups issued against persons for having exercised their right to freedom of expression about religious matters;

17.8. invite member states to take more initiatives to promote tolerance, in co-operation with the European Commission against Racism and Intolerance (ECRI).

Assembly debate on 29 June 2007 (27th Sitting) (see Doc. 11296, report of the Committee on Culture, Science and Education, rapporteur: Mrs Hurskainen, Doc. 11319, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Bartumeu Cassany, and Doc. 11322, opinion of the Committee on Equal Opportunities for Women and Men, rapporteur: Mr Dupraz). Text adopted by the Assembly on 29 June 2007 (27th Sitting).

Doc. 11296 8 June 2007

Blasphemy, religious insults and hate speech against persons on grounds of their religion

Report

Committee on Culture, Science and Education

Rapporteur: Mrs Sinikka Hurskainen, Finland, Socialist Group

Summary

The Assembly emphasises the need for greater understanding and tolerance among individuals of different religions and affirms that freedom of expression is a fundamental cornerstone of democracy. A distinction should be drawn between condemning insults (religious or other) and related acts and criminalising them. In view of the democratic principle of the separation of church and state, blasphemy laws should be reviewed by member governments and parliaments.

The Assembly considers that national law should penalise expressions about religious matters only when such expressions intentionally and severely disturb public order and call for public violence or call for a person or a group of persons to be subjected to hatred, discrimination or violence.

A. Draft recommendation

1. The Parliamentary Assembly recalls its Resolution 1510 (2006) on freedom of expression and respect for religious beliefs and affirms that freedom of expression is a fundamental cornerstone of democracy. This freedom is not only applicable to expressions that are favourably received or regarded as inoffensive, but also to those that may shock, offend or disturb the state or any sector of population within the limits of Article 10 of the European Convention on Human Rights. Any democratic society must permit open debate on matters relating to religion and beliefs.

2. The Assembly acknowledges the importance of respect for, and understanding of, cultural and religious diversity in Europe and throughout the world and recognises the need for ongoing dialogue. Respect and understanding can help avoid frictions within society and between individuals. Every human being should be respected, independently of religious beliefs.

3. A distinction should be drawn between condemning religious insults and related acts and sanctioning them. The state is responsible for determining what should count as criminal offences.
4. The Assembly welcomes the Preliminary Report adopted on 16-17 March 2007 by the Venice Commission on this subject and agrees with the Venice Commission that in a democratic society, religious groups must tolerate, as must other groups, critical public statements and debate about their activities, teachings and beliefs, provided that such criticism does not amount to intentional and gratuitous insult and does not constitute incitement to disturb the public peace or to discriminate against adherents of a particular religion. Public debate, dialogue and improved communication skills of religious groups and the media should be used in order to lower sensitivity when it exceeds reasonable levels.
5. Recalling its Recommendation 1720 (2005) on education and religion, the Assembly emphasises the need for greater understanding and tolerance among individuals of different religions. Where people with different religions know more about the religion and religious sensitivities of each other, religious insults are less likely to occur out of ignorance.
6. In this context, the Assembly welcomes the initiative of the United Nations to set up a new body under the theme "Alliance of Civilisations" to study and support contacts between Muslim and so-called Western societies, but feels that such an initiative should be enlarged to other religions and non-religious groups.
7. The Assembly recalls the relevant case-law on freedom of expression under Article 10 of the European Convention on Human Rights developed by the European Court of Human Rights. Whereas there is little scope for restrictions on political speech or on the debate of questions of public interest, the Court accepts a wider margin of appreciation locally when regulating freedom of expression in relation to matters liable to offend intimate personal moral convictions or religion. What is likely to cause substantial offence to persons of a particular religious persuasion will vary significantly from time to time and from place to place.
8. The Assembly believes, however, that a common European approach is necessary with regard to restrictions of freedom of expression under Article 10 of the European Convention on Human Rights, because freedom of expression is of vital importance for any democratic society. In accordance with the Statute of the Council of Europe, common recognition of democratic values is the basis for membership with the Council of Europe.
9. 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 member states and parliaments.
10. The Assembly notes that under the International Convention on the Elimination of All Forms of Racial Discrimination, signatory parties are obliged to condemn discrimination and take effective measures against it. All member states signatory to this convention must ensure that members of a particular religion are neither privileged nor disadvantaged under blasphemy laws and related offences.
11. The Assembly reaffirms that hate speech against persons, whether on religious grounds or otherwise, should be penalised by law in accordance with the General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination produced by the European Commission against Racism and Intolerance. For speech to qualify as hate speech in this sense, it is necessary that it is 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.

12. The Assembly emphasises that freedom of religion as protected by Article 9 of the European Convention on Human Rights also protects religions in their establishing values for their followers. 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. 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 European Convention on Human Rights.

13. The Assembly notes that member states have the obligation under Article 9 of the European Convention on Human Rights to protect freedom of religion including the freedom to manifest one's religion. This requires protection against disturbances by others of such manifestation.

14. The Assembly considers that, as far as it is necessary in a democratic society in accordance with Article 10, paragraph 2 of the European Convention on Human Rights, national law should only penalise expressions about religious matters which intentionally and severely disturb public order and call for public violence.

15. It calls on national parliaments to initiate legislative action and scrutiny regarding the national implementation of this Recommendation.

16. The Assembly recommends that the Committee of Ministers:

16.1. take note of Resolution 1510 (2006) on freedom of expression and respect for religious beliefs together with this Recommendation and forward both texts to the relevant national ministries and authorities;

16.2. ensure that national law and practice:

16.2.1. permit open debate on matters relating to religion and beliefs and do not privilege a particular religion in this respect, which would be incompatible with Articles 10 and 14 of the European Convention on Human Rights;

16.2.2. 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;

16.2.3. prohibit acts which intentionally and severely disturb the public order and call for public violence by references to religious matters, as far as it is necessary in a democratic society in accordance with Article 10, paragraph 2 of the European Convention on Human Rights;

16.3. instruct its competent Steering Committee to draw up practical guidelines for national ministries of justice intended to facilitate the implementation of the recommendations contained in paragraph 16.2 above;

16.4. instruct its competent Steering Committee to draw up practical guidelines for national ministries of education intended to raise understanding and tolerance among students of different religions;

16.5. initiate through their national ministries of foreign affairs work at the level of the United Nations in order to ensure that:

16.5.1. national law and practice of signatory states of the International Convention on the Elimination of All Forms of Racial Discrimination do not privilege persons with a particular religion, which would be incompatible with this Convention;

16.5.2. the work of the Alliance of Civilizations avoids the stereotype of a so-called “Western” culture, widens its scope to other world religions and promotes more open debates between different religious groups and with non-religious groups;

16.6. condemn on behalf of their governments any death threats and incitements to violence by religious leaders and groups issued against persons for having exercised their right to freedom of expression about religious matters.

B. Explanatory memorandum by Mrs Sinikka Hurskainen, rapporteur

Introduction

1. The Committee on Culture, Science and Education appointed me rapporteur on blasphemy, religious insults and hate speech against persons on grounds of their religion at its meeting on 4 October 2005, subsequent to a Motion tabled earlier by myself and other colleagues (Doc. 10623).

2. Following the current affairs debate on freedom of expression and respect for religious beliefs held by the Standing Committee of the Assembly in Paris on 17 March 2006 against the background of the Danish cartoons controversy, I was also appointed rapporteur on that report. Due to the greater urgency of that mandate, I submitted a report on that subject leading to Resolution 1510 (2006) on freedom of expression and respect for religious beliefs, which was adopted by the Assembly on 28 June 2006.

3. In Resolution 1510 (2006), paragraph 18, the Assembly resolved “to revert to this issue on the basis of a report on legislation relating to blasphemy, religious insults and hate speech against persons on grounds of their religion, after taking stock of the different approaches in Europe, including the application of the European Convention on Human Rights, the reports and recommendations of the European Commission against Racism and Intolerance (ECRI) and of the European Commission for Democracy through Law (Venice Commission) and the reports of the Council of Europe Commissioner for Human Rights.”

4. While the earlier report advocated the protection of freedom of religion alongside that of freedom of expression, the current report focuses on the legal balancing of freedom of expression and respect for religious beliefs with regard to blasphemy, religious insults and hate speech against persons on grounds of their religion.

Definitions

5. Blasphemy can be defined as the offence of insulting or showing contempt or lack of reverence for god and, by extension, toward anything considered sacred. Several member states have legal provisions which protect religion and religious communities. The study commissioned by the Venice Commission (CDL-FR(2007)003) and its Preliminary Report (CDL-AD(2007)006) show the wide variety of current laws in Europe which may, for example, be referred to nationally as blasphemy, insult, libel, slander, defamation or denigration.

6. Religious insults can be understood as insults to a religion which are subject to religious rather than legal penalties. A religious community may consider statements as insulting and thus a violation of its religious norms. This is part of freedom of religion as guaranteed by Article 9 of the European Convention on Human Rights. The religious penalty typically consists of a religious stigma: for instance, a person may be called a sinner, be excluded from a religious community, or be threatened with spiritual consequences such as being excluded from heaven. Physical punishment or death threats by religious leaders, which have been made for example against Salman Rushdie, can obviously not be tolerated in a democratic society built on the rule of law.

7. The Council of Europe has worked on hate speech. The Committee of Ministers adopted Recommendation (97) 20 on hate speech, which defines it as “covering all forms of expression

which spread, incite, promote or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin”.

8. In its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, the European Commission against Racism and Intolerance (ECRI) produced the recommendation to penalise inter alia the following acts when committed intentionally: (a) public incitement to violence, hatred or discrimination, (b) public insults and defamation or (c) threats against a person or a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin; and (d) the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin.

9. The decisive element for ECRI is the racist intention of such acts, i.e. the intention to express inferiority of another person or a group of persons or to exclude or distance them from society due to their differences. Hate speech is always directed against persons or a group of persons, but not against a religion or ideas, philosophies, a political party, state organs, a state or nation, or mankind as such.

Preparatory and other related work

10. On 13 April 2006, the Committee held an exchange of views with the Juris Consult of the European Court of Human Rights, Mr Vincent Berger, on the case-law of the Court under Articles 9 (freedom of religion) and 10 (freedom of expression) of the European Convention on Human Rights. The presented summary of the case-law is available as document AS/Cult (2006) 26.

11. The Committee on Culture, Science and Education held a hearing on freedom of expression and respect for religious beliefs in Paris on 18 May 2006. The record of this hearing is available as document AS/Cult (2006) 28 rev.

12. On 27 February 2007, the Committee organised a colloquy on questions related to state and religion, which also briefly addressed blasphemy legislation. The summary of the colloquy is reproduced in document AS/Cult (2007) 09.

13. At the request of the Assembly Secretariat, the Venice Commission of the Council of Europe dealt with blasphemy and related offences under national legislation. In its Preliminary Report adopted on 16-17 March 2007 (CDL-AD(2007)006), the Venice Commission concluded that in a democratic society, religious groups must tolerate, as other groups must, critical public statements and debate about their activities, teachings and beliefs, provided that such criticism does not amount to intentional and gratuitous insult and does not constitute incitement to disturb the public peace or to discriminate against adherents of a particular religion. It furthermore concluded that public debates, dialogue and improved communication skills of both religious groups and the media should be used in order to lower the threshold of sensitivity when it exceeds reasonable levels. The Venice Commission is to continue working on this subject. The Committee on Culture, Science and Education will naturally follow this work.

National legal approaches to blasphemy legislation in some Council of Europe member states (this section is based on material from Caslon Analytics and the Asia-Europe Foundation)

United Kingdom and the Republic of Ireland

14. English common law features an offence of blasphemy, although there are recurrent suggestions that it should be superseded by protection under anti-vilification statutes.

15. Protection relates to the established Church of England rather than all religious beliefs and organisations. It is characterised as encompassing any publication that contains any contemptuous, reviling, scurrilous or ludicrous matter relating to God, Jesus Christ or the Bible, or the formularies of the Church of England as by law established. It is not blasphemous to speak or publish opinions hostile to the Christian religion, or to deny the existence of God, if the publication is couched in decent and temperate language. The test to be applied is as to the manner in which the doctrines are advocated and not to the substance of the doctrines themselves.

16. Ridicule has long been an acceptable means of focusing attention upon a particular aspect of religious practice or dogma which its opponents regard as offending against the wider interests of society. In that context use or abuse of insults may well be a legitimate means of expressing a point of view upon the matter. A similar stance was taken in the 2003 report of the House of Lords Select Committee on Religious Offences. Rowan Atkinson commented in 2005 that "For telling a good and incisive religious joke, you should be praised. For telling a bad one, you should be ridiculed and reviled. The idea that you could be prosecuted for the telling of either is quite fantastic".

17. In Scotland the "uttering of profanities against God or the Holy Scriptures in a scoffing manner out of a reproachful disposition" is a common law offence. There have been no recent convictions (the last reported prosecution for blasphemy was in 1843) and as in England some religious leaders have suggested that special protection is not required. Uncertainty about the scope for prosecution and conviction has arguably deterred some publication.

18. Article 40.6(1)i of the 1922 Constitution of the Republic of Ireland provides that "publication or utterance" of "blasphemous matter" is an offence punishable in accordance with law, with Article 44 stating that "The State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honour religion".

19. The Constitution does not define blasphemy, although standard reference works characterise it as the crime which consists of indecent and offensive attacks on Christianity, or the Scriptures, or sacred persons or objects calculated to outrage the feelings of the community. The Constitution declares that the publication or utterance of blasphemous matter is an offence which shall be punishable in accordance with law. The mere denial of Christian teaching is not sufficient to constitute the offence.

20. Section 13.1 of the Defamation Act 1961, provides that "Every person who composes, prints or publishes any blasphemous ... libel shall, on conviction thereof on indictment, be liable to a fine not exceeding five hundred pounds or to imprisonment for a term not exceeding two years or to both such fine and imprisonment or to penal servitude for a term not exceeding seven years".

21. Under section 13.1(a) the court may make an order for seizure and detention of all copies of the libel in the possession of the person or another person named in evidence on oath. In pursuance of such an order, a member of the Police (Garda Siochana) may enter if necessary by force and search buildings for copies of the libel.

22. The Republic of Ireland's Prohibition of Incitement to Hatred Act 1989 prohibits publication of material designed to stir up "hatred", including hatred against a group on account of religious affiliation.

23. The 1991 Law Reform Commission of Ireland consultation paper On The Crime of Libel suggested that "there is no place for the offence of blasphemous libel in a society which respects freedom of speech". Because blasphemy as an offence could not be abolished without a constitutional referendum the Commission recommended creation of a new statutory offence of blasphemous libel, which would cover matter "the sole effect of which is likely to cause outrage to a substantial number of adherents concerning a matter or matters held sacred" by a religion.

France

24. French legislation on blasphemy was expunged during the Revolution, reinstated under the Restoration and again removed during the late 1830s. There is no current law explicitly forbidding blasphemy.

25. Article 283 of the former Penal Law for example prohibited exhibition of a film contraire aux bonnes moeurs (ie contrary to good morals). In 1988 several groups accordingly sought a ban on Martin Scorsese's *The Last Temptation of Christ*. In rejecting that application the court noted that the right to respect for beliefs should not interfere in an unjustified manner with artistic creativity. The decision was upheld by the Court of Appeal, which however ordered that all advertisements for Scorsese's film should indicate that it was based on a novel rather than the Gospel.

26. In 2005 the General Alliance against Racism & for the Respect of French & Christian Identity was unsuccessful in legal action against *Liberation* over a cartoon of a naked Jesus wearing nothing but a condom. The Alliance argued that newspaper had offended all Christians and "injured their right to practice their religion". The court characterised the portrayal as "crude" but said it did not contravene any laws.

27. In March 2007 a Paris court dismissed prosecution brought against the newspaper "Charlie Hebdo" by Muslim organisations for re-printing the Danish cartoons.

Germany and Austria

28. Germany featured prosecutions of 'disturbers of the peace' such as artist Georg Grosz under the 1871 national criminal code, which identified blasphemy as a crime with a three year prison sentence. Artist Franz Herzfeld, was sentenced in 1895 to 12 months in prison. The same moral panic during that year saw playwright Oscar Panizza imprisoned in Bavaria for a year over his play *Das Liebeskonzil*. The European Court of Human Rights in 1994 upheld an Austrian court decision of 1986 banning a film based on the play.

29. The current German criminal law emphasises protection of public order, with some latitude in interpretation by lower courts, and protection for artistic expression.

30. Updating of the federal penal code in 1969 saw deletion of references to protection of God and his institutions, with the offence of blasphemy being replaced by a broader offence of disturbing the peace through ridicule of faiths (*Bekenntnisse*) and ideological groups (*Weltanschauungsvereinigungen*).

31. Paragraph 166 of the code concerns the ridicule of faiths, religious societies and ideological groups. Whoever publicly or by means of spreading written material insults religious or world view in a manner that could reasonably be deemed able to disturb the public peace, is to be punished by up to three years in prison or a fine. Whoever publicly or by means of spreading written material ridicules a domestic church, religious society or ideological group, its facilities or customs in a manner deemed able to disturb the public peace, is to be punished similarly.

32. The "manner and content" of that insult must be such that an objective onlooker could reasonably assume that the ridicule would disturb the peace of those who share the insulted belief, with the offender intending (or being aware) that the ridicule constituted an offence.

33. In practice prosecution has tended to involve stress and expense for defendants but has not resulted in significant convictions. In 1981 the Cologne Penal Court of Appeal in a case initiated by Cardinal Meissner held that an abortion-rights caricature "did not in all circumstances show hostility against Christians" although parodying Mary and Joseph. Four years later the Karlsruhe Court of Appeal ruled that a sarcastic article which regarding the Last Supper was not an insult.

34. The Berliner Tageszeitung was acquitted in 1987 after prosecution by the Roman Catholic bishop of Berlin for a satirical article. A 1988 case in Bochum featured the broader ruling that a leaflet, although insulting about the Vatican, was unlikely to disturb the peace. More recent cases have involved unsuccessful prosecution of parodies of Pope John Paul II. In 2006 former prisoner 'Manfred van H' received a suspended sentence of a year in prison and 300 hours of community service after printing 'Koran, der Heilige Qur'än' on toilet paper and distributing it to the media and mosques.

35. Prosecution has been more active in Austria. Articles 188 and 189 of the criminal code prohibit insult giving rise to justifiable annoyance. The legislation does not appear to have been applied to what one jurist characterised as "minority faiths". Recent litigation includes the 1986 decision by a court to ban production of a film based on Panizza's *Das Liebeskonzil*.

The Netherlands and Belgium

36. Article 147 of the Netherlands Penal Code - reportedly introduced in 1932 to curb a communist newspaper that advocated banning Christmas - identifies "scornful" blasphemy as a criminal offence. The offence is restricted to expression regarding the Christian deity and does not extend to Christian saints and other revered religious figures or non-Christian deities.

37. There is an expectation that the person making the expression must have had a "scornful" (smalend) intention: although it might be objectively foreseeable that people would be aggrieved there is no offence if the expression was without malicious intent.

38. That intent requirement was confirmed in the last major blasphemy case in the Netherlands, regarding *Nader tot U* [Nearer to Thee], a novel in which Gerard van het Reve depicted God as a donkey and then further outraged the faithful by discussing intercourse with the beast. Reve was acquitted in 1968 after the prosecution failed to prove that his intent was to be scornful.

39. The Foundation for Dutch Roman Catholics reportedly initiated but did not proceed with legal action against the Dutch Animal Rights Organisation in 2002 over a "Merry Christmas - don't be wild about it!" poster that featured the Virgin Mary holding a bleeding rabbit, reflecting the appearance of baked rabbit on Dutch menus as a Christmas Dinner treat.

40. Belgium does not criminalise blasphemy as such. Article 144 of the Penal Code identifies a restricted offence of religious insult, involving those who offend the objects of religion in places of religious worship or at public religious celebrations. That protection is inapplicable to offences outside the context of a religious celebration or a place of worship.

41. However, other parts of the Code have been applied to works defaming religion or that offend public morals (eg articles 383-386). The Court of Appeal of Ghent ruled in 1988 that artists had violated Article 383 by displaying 14 large Stations of the Cross - including a tumescent Christ - in the heart of Ghent.

42. The Court noted that public display in the historic centre meant that a large public would inevitably encounter the paintings without consent. If viewing was consensual the offense to morals would be less serious and courts of appeal in Mons and Brussels during the 1990s accordingly refused to ban particular works. The Mons Court of Appeal noted that although a majority of individuals may find certain images offensive other adults should be permitted to view them if they have expressed their willingness to do so.

Denmark, Norway, Sweden and Finland

43. Prohibition of blasphemy under Section 140 of the Danish Penal Code has not been used since 1938.

44. The code also features an offence of expressions that threaten, deride or degrade on the grounds of race, colour, national or ethnic origin, belief or sexual orientation. However, that provision does not appear to have been used against statements offensive to religion, with works by artist Jens Jørgen Thorsen (including the inevitable tumescent Jesus) recently gaining attention but without criminal proceedings.

45. The Danish government commented in 2006 that satirical depictions of the Prophet Muhammad in the Jyllands-Posten newspaper were protected as free speech; civil action by critics of the depictions was unsuccessful.

46. Section 142 of the Norwegian Penal Code provides for punishment for any person who publicly insults or in an offensive manner shows contempt for any religious creed ...or for the doctrines or worship of any religious community lawfully existing here.

47. That provision has not been applied by the courts since the acquittal of poet Arnulf Øverland (1889-1968) in 1936 after a lecture titled 'Christianity - the tenth plague'. Islamic community leaders initiated a suit against the publisher of The Satanic Verses but did not proceed, supposedly in recognition that success was unlikely.

48. In Sweden a general crime of blasphemy was abolished in 1949, with abolition of a narrower offence of religious insult in 1970. It had been used in prosecution of a range of offenders, for example fin-de-siecle socialist Hjalmar Branting, imprisoned in 1888. Branting was instrumental in establishment of the Social Democratic Party during the following year, was its first Member of Parliament from 1896, Prime Minister from 1920 and recipient of the Nobel Peace Prize in 1921.

49. Finland retains a general offence of blasphemy under chapter 17 of its penal code. The last major prosecutions were in 1966 - with conviction of Hannu Salama for his 1964 novel Juhannustanssit - and 1969 over the 'Pig Messiah' painting by artist Harro Koskinen.

50. The novel, which went through several printings during the course of litigation in the Helsinki Municipal Court and the Court of Appeals, was suppressed - a copy was supposedly publicly burnt - before being re-released in a censored version in 1966. Salama was briefly imprisoned but pardoned by President Kekkonen in 1968; the director of the publishing company was fined and both were ordered to "surrender all economic benefit derived from the crime". The novel was republished in its original form in 1990, having been translated into Swedish, Norwegian, German, Danish and Polish.

51. Provisions against blasphemy were updated in 1999 and have been periodically used since that time to supplement other law. The revised provisions in the Penal Code clearly protect what is sacred to all religious communities covered by the law on freedom of religion. In 2005, for example, the Tampere District Court fined a man under telecommunications and blasphemy law for recurrently 'bombing' a religious chat room with messages, including some of a blasphemous character (eg associating religious practices in a pejorative manner with sexual activities). The offender was additionally ordered to compensate the chat room operator and had his computer confiscated.

Spain, Portugal, Italy and Greece

52. In Spain the crime of blasphemy (reinstated in the 1930s after overthrow of the Republic) was abolished as part of post-Franco reforms in 1988. Portugal's legislation was changed in the 1990s.

53. Spain's Constitutional Court has however ruled that freedom of expression under Article 20 of the Constitution is circumscribed by restrictions for the protection of the "rights of others" - interpreted as an identified individual directly affected by an offensive expression - or other constitutionally protected interests. Commentators have suggested that obscenity or another broad offence to morals, particularly expression sighted by minors on a non-restricted basis (eg on public view rather than to consumers choosing to visit a gallery or a cinema) would provide a mechanism for restricting blasphemous content.

54. As with Portugal there appears to be no major case law regarding offences against the Roman Catholic Church, other Christian communities or other religious faiths.

55. Articles 402 through 406 of the Italian criminal code, reflecting the 1920s concordat with the Vatican, prohibit "offence to religion", including offence to religion during a satirical or other performance, even where the offending performance was objectively aimed at arousing laughter or amusement. A recent prosecution involved the 2000 film *Totò che visse due volte*.

56. There is uncertainty whether Italian laws against insult to religion - and the application of the legislation - relate only to Roman Catholicism. Prosecutions over the past thirty years - and administrative action such as hacking by Italian police of an anti-Vatican site in 2005 - appear to have been bundled with restrictions on obscenity as offences against public morals. Article 724 of the criminal code covers the minor offence of "words insulting to religion" (*bestemmia*).

57. Greece's blasphemy regime allows prosecution for creation, display or trade in work that "insults public sentiment" or "offends people's religious sentiments", with offence being restricted to Christian faiths.

58. Recent instances have included the prosecution of leading curator Christos Ioakimidis and conviction in absentia of Austrian author Gerhard Haderer for depicting Christ as a hippy in his comic book *The Life of Jesus*. Haderer was given a six months suspended sentence in 2005.

Former communist countries

59. Member states from central and eastern Europe inherited no laws of blasphemy from the period of communism which did not recognise religion. There is however some more recent legislation that is relevant. In Latvia, Article 4, paragraph 1 of the Law on Religious Organisations prohibits insult of feelings or instigation of dissension on religious basis. Section 196 of the Polish Criminal Code prohibits speech which "offends" religious faith, which is punishable by fines or imprisonment for up to three years.

Venice Commission

60. The Venice Commission has begun an analysis on national legislation in Europe.

61. Two paragraphs of the preliminary report adopted in March 2007 give a useful indication of the position that is likely to emerge:

« The Commission recalls at the outset that in a democratic society religious groups must tolerate, as other groups must, critical public statements and debate about their activities, teachings and beliefs, provided that such criticism does not amount to intentional and gratuitous insult and does not constitute incitement to disturb the public peace or to discriminate against adherents of a particular religion. " (para. 40 CDL-AD (2007) 006)

« The sensitivities of the religious groups must be taken into due account by the national authorities when they are to decide whether or not a restriction to the freedom of expression is to be imposed and implemented. Modern societies, however, must not become hostage to these sensitivities, not even when they manifest across the world and in places other than those where

the incident giving rise to them happened. Open discussion of controversial issues is a vital element of democracy. Public debates, dialogue and improved communication skills of both religious groups and the media should be used in order to lower the threshold of sensitivity when it exceeds reasonable levels. Education leading to better understanding of the convictions of others and to tolerance should also be seen as an essential tool in this respect. The ultimate goal is of course that everyone fully enjoys the right to freedom of expression and, on equal footing, the right to respect for one's religious beliefs, but always in full respect of the same rights of others."(para 46)

62. The position taken in the present report is to go slightly further and questions whether any sort of insult (gratuitous or not) and any religious sensitivity should be legally sanctioned.

Assembly Resolution 1510 (2006)

63. Assembly Resolution 1510 (2006) on freedom of expression and respect for religious beliefs has already laid down a few guiding principles that are relevant:

- Freedom of thought and freedom of expression in a democratic society must permit open debate on matters relating to religion and beliefs.
- Critical dispute, satire, humour and artistic expression should enjoy a wider degree of freedom, and recourse to exaggeration should not be seen as provocation.
- Laws punishing blasphemy and criticism of religious practices and dogmas have often had a negative impact on scientific and social progress.
- In a democratic society, religious communities may defend themselves against criticism or ridicule in accordance with human rights norms.
- Freedom of expression as protected under Article 10 of the European Convention on Human Rights should not be further restricted to meet increasing sensitivities of religious groups.
- Attacks on individuals on grounds of their religion or race cannot be permitted, but blasphemy laws should not be used to curtail freedom of expression and thought.
- Hate speech against any religious group is not compatible with the fundamental rights and freedoms guaranteed by the European Convention on Human Rights.

64. The Explanatory Memorandum to Resolution 1510 (2006) on freedom of expression and respect for religious beliefs contains many issues of relevance to this report (See Doc. 10970).

Other multilateral work

65. At the level of the United Nations, the concept of "defamation of religions" was recently used in a report of the UN High Commissioner for Human Rights (A/HRC/4/50 of 1 March 2007) and a Resolution by the UN Human Rights Council (Resolution 4/9 of 30 March 2007 on combating defamations of religions). This resolution was appropriately criticised by many human rights and media organisations. Such a concept clearly violates freedom of expression and cannot therefore be accepted.

66. Under Article 4 of the UN Convention on the Elimination of All Forms of Racial Discrimination, state parties "shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin". Religious insults or "defamation of religions" are not to be penalised under UN standards.

67. However, it should be noted that some member states of the Council of Europe have criminal legislation punishing blasphemy. In some countries the principle of separation between religion and state is applied and religions are interest groups as any other groups. States should therefore refrain from extending legal protection to religions and withdraw instead special protection for religion altogether.

68. Arguing in favour of freedom of expression, this report should not be understood in any sense as condoning insulting expressions in a religious context. We wish to defend the principle of freedom of expression. We should also wish to uphold such notions as decency and respect for the holding of religious beliefs, and underline the importance of the religious dimension in intercultural dialogue.

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Reporting Committee: Committee on Culture, Science and Education

Reference to Committee: Doc. 10623, Reference No. 3122 of 1 September 2005

Draft Recommendation adopted by the Committee on 31 May 2007 with one abstention

Members of the Committee: Mr Jacques Legendre (Chairman), Baroness Hooper, Mr Wolfgang Wodarg, Mrs Anne Brasseur, (Vice-Chairpersons), Mr Hans Ager, Mr Toomas Alatalu, Mr. Kornél Almássy, Mr Lars Barfoed, Mr Rony Bargetze, Mr Lars Bartos, Mrs Marie-Louise Bemelmans-Videc (Alternate: Mr Dees), Mr Radu Mircea Berceanu, Mr Levan Berdzenishvili, Mrs Oksana Bilozir, Mrs Maria Luisia Boccia (Alternate: Mr Stefano Morselli), Mrs Margherita Boniver, Mr Ioannis Bougas, Mr Osman Coşkunoglu, Mr Vlad Cubreacov, Mr Ivica Dačić, Mrs Maria Damanaki, Mr Joseph Debono Grech, Mr Stepan Demirchyan, Mr Ferdinand Devinski, Mrs Åse Gunhild Woie Duesund, Mr Detlef Dzembritzki, Mrs Anke Eymmer, Mr Relu Fenechiu, Mrs Blanca Fernández-Capel, Mrs Maria Emelina Fernández-Soriano, Mr Axel Fischer, Mr José Freire Antunes, Mr Eamon Gilmore, Mr Stefan Glăvan, Mr Luc Goutry, Mr Vladimir Grachev, Mr Andreas Gross, Mr Jean-Pol Henry, Mr Rafael Huseynov, Mr Fazail Ibrahimli, Mrs Halide İncekara, Mrs Evguenia Jivkova, Mr Morgan Johansson, Mrs Dagny Jónsdóttir, Mr Ali Rashid Khalil, Mr József Kozma, Mr Jean-Pierre Kucheida, Mr Markku Laukkanen, Mr Guy Lengagne, Mrs Jagoda Majaska-Martinčević, Mr Tomasz Markowski, Mr Andrew McIntosh, Mr Ivan Melnikov (Alternate: Mr Alexander Fomenko), Mrs Maria Manuela Melo, Mrs Assunta Meloni, Mr Paskal Milo, Mrs Christine Muttonen, Mrs Miroslava Němcová, Mr Edward O'Hara (Alternate: Mr Robert Walter), Mr Kent Olsson, Mr Andrey Pantev, Mrs Antigoni Pericleous Papadopoulos, Mr Azis Pollozhani, Mrs Majda Potrata, Mr Dušan Proroković, Mr Lluís Maria de Puig (Alternate: Mrs María Josefa Porteiro), Mr Zbigniew Rau (Alternate: Mr Zbigniew Girzynski), Mrs Anta Rugāte, Mr André Schneider, Mr Urs Schweitzer, Mr Vitaliy Shybko, Mrs Geraldine Smith, Mrs Albertina Soliani, Mr Yury Solonin, Mr Christophe Spiliotis-Saquet (Alternate: Mr Bernard Marquet), Mr Valeriy Sudarenkov, Mr Petro Symonenko, Mr Mehmet Tekelioğlu, Mr Ed van Thijn, Mr Piotr Wach, Mr Emanuelis Zingeris

N.B : The names of the members who took part in the meeting are printed in bold

Head of the Secretariat: Mr Grayson

Secretaries to the Committee: Mr Ary, Mr Dossow