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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT REPORT

**ON THE RELATIONSHIP BETWEEN FREEDOM OF EXPRESSION
AND FREEDOM OF RELIGION:
THE ISSUE OF REGULATION AND PROSECUTION
OF BLASPHEMY, RELIGIOUS INSULTS
AND INCITEMENT TO RELIGIOUS HATRED**

on the basis of comments by

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** his document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents..*

I. Introduction

1. In its Resolution 1510(2006) on Freedom of expression and respect for religious beliefs¹, the Parliamentary Assembly of the Council of Europe addressed the question of whether and to what extent respect for religious beliefs should limit freedom of expression. It expressed the view that freedom of expression should not be further restricted to meet increasing sensitivities of certain religious groups, but underlined that hate speech against any religious group was incompatible with the European Convention on Human Rights. 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 report and recommendations [...] of the Venice Commission.

2. By a letter of 11 October 2006, the Secretariat of the Parliamentary Assembly, on behalf of Mrs Sinikka Hurskainen, Rapporteur of the Committee on Culture, Science and Education on this matter, requested the Venice Commission to prepare an overview of national law and practice concerning blasphemy and related offences with a religious aspect in Europe.

3. A working group was promptly set up within the Venice Commission, composed of Mr Pieter van Dijk (member, the Netherlands), Ms Finola Flanagan (member, Ireland) and Ms Hanna Suchocka (member, Poland). Mr Louis-Léon Christians, Professor at Louvain University, Belgium, was invited to join the group as an expert and to collect the domestic provisions relating to blasphemy, religious insults and incitement to hatred of the Council of Europe members States. Mr Christians' preliminary report was submitted to the Venice Commission in December 2006; it was subsequently supplemented and updated, where necessary, by the Commission members, and finalised by the Secretariat (CDL(2008)090add). It collects the legal provisions which are in force in all CoE member States, and contains some references to the relevant case-law of the national courts.

4. A preliminary discussion of the request submitted to the Venice Commission took place at the meeting of the Sub-commission on Fundamental Rights which was held in Venice on 13 December 2006. At this meeting, in the light of the impossibility, under the applicable time constraints, to dispose of exhaustive information on the practice and case-law of all CoE member States, it was decided to send a more detailed questionnaire to a selected number of countries in order to obtain some indication of current trends and problems in Europe, as well as of related legal practices. The questionnaire was sent to twelve States (Albania, Austria, Belgium, Denmark, France, Greece, Ireland, the Netherlands, Poland, Romania, Turkey, the United Kingdom). Annexe II (CDL(2008)add2) contains the replies received from these twelve States.

5. The working group also relied on the material and information collected by the Committee of Experts for the Development of Human Rights (DH-DEV) relating to the national legislation on hate speech².

6. The Working group exchanged information with the above Committee of Experts as well as with the Secretariat of the European Commission against Racism and Intolerance (ECRI)³. It wishes to thank them for the fruitful co-operation.

¹ Adopted by the Parliamentary Assembly on 28 June 2006 (19th sitting)

² GT-DH-DV A (2006)008 Addendum, Human Rights in a Multicultural Society, Compilation of the replies received from the member States to the questionnaire on hate speech. This information concerns 37 countries.

³ http://www.coe.int/T/e/human_rights/ecri/1-ECRI

7. A preliminary report was discussed at the meeting of the Sub-Commission on Fundamental Rights on 15 March 2007 and was subsequently adopted by the Commission at its 70th Plenary Session (Venice, 16-17 March 2007). This preliminary report was subsequently sent to the Parliamentary Assembly.

8. On 29 June 2007, the Parliamentary Assembly adopted Recommendation 1805(2007) on “Blasphemy, religious insults and hate speech against persons on grounds of their religion”, which contains references to the Commission’s preliminary report.

9. The Commission subsequently organised, in co-operation with the Hellenic League of Human Rights, an International Round Table on “Art and Sacred Beliefs: From Collision to Co-existence”, which took place in Athens on 31 January-1 February 2008. At this round-table, which gathered lawyers, artists, journalists, MPs and representatives of the civil society, the intersection between freedom of expression and freedom of religion was extensively discussed, with a view to proposing constructive solutions to the conflicts which have been occurring in recent times.

10. The present report was discussed and adopted by the Commission at its ... Plenary Session (Venice, ... 2008).

II. Applicable international standards⁴

11. Article 9 of the European Convention on Human Rights (ECHR) provides:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.

12. Article 10 ECHR provides:

1. Everyone has the right to freedom of expression. this right shall include freedom to hold opinions and to receive and impart information an ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

13. Article 14 ECHR provides:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

13. Article 1 of Protocol 12 to the ECHR provides:

⁴ For a full review of relevant international standards, see: Anne Weber, Handbook on Hate Speech, to be published.

1 The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2 No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

14. The Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, provides:

Article 3 – Dissemination of racist and xenophobic material through computer systems

1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:

distributing, or otherwise making available, racist and xenophobic material to the public through a computer system.

2 A Party may reserve the right not to attach criminal liability to conduct as defined by paragraph 1 of this article, where the material, as defined in Article 2, paragraph 1, advocates, promotes or incites discrimination that is not associated with hatred or violence, provided that other effective remedies are available.

3 Notwithstanding paragraph 2 of this article, a Party may reserve the right not to apply paragraph 1 to those cases of discrimination for which, due to established principles in its national legal system concerning freedom of expression, it cannot provide for effective remedies as referred to in the said paragraph 2.

Article 4 – Racist and xenophobic motivated threat

1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:

threatening, through a computer system, with the commission of a serious criminal offence as defined under its domestic law, (i) persons for the reason that they belong to a group, distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors, or (ii) a group of persons which is distinguished by any of these characteristics.

Article 5 – Racist and xenophobic motivated insult

1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:

insulting publicly, through a computer system, (i) persons for the reason that they belong to a group distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors; or (ii) a group of persons which is distinguished by any of these characteristics.

2 A Party may either:

a require that the offence referred to in paragraph 1 of this article has the effect that the person or group of persons referred to in paragraph 1 is exposed to hatred, contempt or ridicule; or

b reserve the right not to apply, in whole or in part, paragraph 1 of this article.

Article 6 – Denial, gross minimisation, approval or justification of genocide or crimes against humanity

1 Each Party shall adopt such legislative measures as may be necessary to establish the following conduct as criminal offences under its domestic law, when committed intentionally and without right:

distributing or otherwise making available, through a computer system to the public, material which denies, grossly minimises, approves or justifies acts constituting genocide or crimes against humanity, as defined by international law and recognised as such by final and binding decisions of the International Military Tribunal, established by the London Agreement of 8 August 1945, or of any other international court established by relevant international instruments and whose jurisdiction is recognised by that Party.

2 A Party may either

a require that the denial or the gross minimisation referred to in paragraph 1 of this article is committed with the intent to incite hatred, discrimination or violence against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors, or otherwise

b reserve the right not to apply, in whole or in part, paragraph 1 of this article.

15. The United Nations International Covenant on Civil and Political Rights in its Art. 20(2) provides:

every kind of propaganda for national, racial or religious hatred, which constitutes incitement to discrimination, hostility, or violence must be prohibited by law.

16. Article 4 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination calls up on states parties to it to

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, and also the provision of any assistance to racist activities, including the financing thereof.

17. Recommendation No. R(97)20 on "Hate Speech"⁵ of the Committee of Ministers of the Council of Europe contains the following relevant principles:

Principle 2

The governments of the member states should establish or maintain sound legal framework consisting of civil, criminal and administrative law provisions on hate speech which enable administrative and judicial authorities to reconcile in each case respect for freedom of expression with respect for human dignity and the protection of the reputation or the rights of others. To this end, governments of member states should examine ways and means to:

- stimulate and co-ordinate research on the effectiveness of existing legislation and legal practice;
- review the existing legal framework in order to ensure that it applies in an adequate manner to the various new media and communications services and networks;
- develop a co-ordinated prosecution policy based on national guidelines respecting the principles set out in this recommendation;
- add community service orders to the range of possible penal sanctions;
- enhance the possibilities of combating hate speech through civil law, for example by allowing interested non-governmental organisations to bring civil law actions, providing for compensation for victims of hate speech and providing for the possibility of court orders allowing victims a right of reply or ordering retraction;
- provide the public and media professionals with information on legal provisions which apply to hate speech.

Principle 3

The governments of the member states should ensure that in the legal framework referred to in Principle 2, interferences with freedom of expression are narrowly circumscribed and applied in a lawful and non-arbitrary manner on the basis of objective criteria. Moreover, in accordance with the fundamental requirement of the rule of law, any limitation of, or interference with, freedom of expression must be subject to independent judicial control. This requirement is particularly important in cases where freedom of expression must be reconciled with respect for human dignity and the protection of the reputation or the rights of others.

Principle 4

National law and practice should allow the courts to bear in mind that specific instances of hate speech may be so insulting to individuals or groups as not to enjoy the level of protection afforded by Article 10 of the European Convention on Human Rights to other forms of expression. This is the case where hate speech is aimed at the destruction of the rights and freedoms laid down in the Convention or at their limitation to a greater extent than provided therein.

Principle 5

⁵ Adopted by the Committee of Ministers on 30 October 1997 at the 607th meeting of the Ministers' Deputies

National law and practice should allow the competent prosecution authorities to give special attention, as far as their discretion permits, to cases involving hate speech. In this regard, these authorities should, in particular, give careful consideration to the suspect's right to freedom of expression given that the imposition of criminal sanctions generally constitutes a serious interference with that freedom. The competent courts should, when imposing criminal sanctions on persons convicted of hate speech offences, ensure strict respect for the principle of proportionality.

Principle 6

National law and practice in the area of hate speech should take due account of the role of the media in communicating information and ideas which expose, analyse and explain specific instances of hate speech and the underlying phenomenon in general as well as the right of the public to receive such information and ideas. To this end, national law and practice should distinguish clearly between the responsibility of the author of expressions of hate speech, on the one hand, and any responsibility of the media and media professionals contributing to their dissemination as part of their mission to communicate information and ideas on matters of public interest on the other hand.

Principle 7

In furtherance of Principle 6, national law and practice should take account of the fact that:

- reporting on racism, xenophobia, anti-Semitism or other forms of intolerance is fully protected by Article 10, paragraph 1, of the European Convention on Human Rights and may only be interfered with under the conditions set out in paragraph 2 of that provision;
- the standards applied by national authorities for assessing the necessity of restricting freedom of expression must be in conformity with the principles embodied in Article 10, as established in the case law of the Convention's organs, having regard, *inter alia*, to the manner, content, context and purpose of the reporting;
- respect for journalistic freedoms also implies that it is not for the courts or the public authorities to impose their views on the media as to the types of reporting techniques to be adopted by journalists.

18. The Council of Europe's European Commission against Racism and Intolerance (ECRI), in its general policy recommendation No. 1⁶, calls upon member states to

"Ensure that national criminal, civil and administrative law expressly and specifically counter racism, xenophobia, anti-semitism and intolerance, *inter alia* by providing:

- that discrimination in employment and in the supply of goods and services to the public is unlawful;
- that racist and xenophobic acts are stringently punished through methods such as:
 - defining common offences but with a racist or xenophobic nature as specific offences;
 - enabling the racist or xenophobic motives of the offender to be specifically taken into account;
 - that criminal offences of a racist or xenophobic nature can be prosecuted *ex officio*;
- that, in conformity with the obligations assumed by States under relevant international instruments and in particular with Articles 10 and 11 of the European Convention on Human Rights, oral, written, audio-visual expressions and other forms of expression, including the electronic media, inciting to hatred, discrimination or violence against racial, ethnic, national or religious groups or against their members on the grounds that they belong to such a group are legally categorised as a criminal offence, which should also cover the production, the distribution and the storage for distribution of the material in question [...].

19. In its general policy recommendation No. 7⁷, ECRI makes *inter alia* the following recommendations concerning domestic criminal legislation:

"18. The law should penalise 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;

⁶ ECRI general policy recommendation No. 1 on Combating racism, xenophobia, antisemitism and intolerance Adopted by ECRI on 4 October 1996, at: http://www.coe.int/t/e/human_rights/ecri/1-ecri/3-general_themes/1-policy_recommendations/recommendation_n1/1-Recommendation_n%B01.asp#TopOfPage

⁷ ECRI general policy recommendation N7 on national legislation to combat racism and racial discrimination, Adopted by ECRI on 13 December 2002, at http://www.coe.int/t/e/human_rights/ecri/1-ecri/3-general_themes/1-policy_recommendations/recommendation_n7/3-Recommendation_7.asp

- 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;
- e) the public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes;
- f) the public dissemination or public distribution, or the production or storage aimed at public dissemination or public distribution, with a racist aim, of written, pictorial or other material containing manifestations covered by paragraphs 18 a), b), c), d) and e); [...]

20. The Committee of Ministers' Declaration on freedom of political debate in the media adopted in February 2004 holds that defamation or insult by the media should not lead to prosecution, unless the seriousness of the violation of the rights or reputation of others makes it a strictly necessary and proportionate penalty, *especially where other fundamental rights have been seriously violated through defamatory or insulting statements in the media, such as hate speech (emphasis added)*⁸.

21. In its Recommendation 1805(2007) on Blasphemy, religious insults and hate speech against persons on grounds of their religion, the Parliamentary Assembly of the Council of Europe considers that "national law should only penalise expressions about religious matters which intentionally and severely disturb public order and call for public violence".⁹

III. National legislation on blasphemy, religious insults and inciting religious hatred

22. The Venice Commission has collected the criminal law provisions of Council of Europe member states relating to blasphemy, religious insults and incitement to religious hatred¹⁰. This information is contained in document CDL(2008)090add. The Commission has also sought more specific and detailed information about the legislation and legal practice in a selected number of member States (Albania, Austria, Belgium, Denmark, France, Greece, Ireland, the Netherlands, Poland, Romania, Turkey and the United Kingdom); this information is contained in document CDL(2008)090add2. The Commission's analysis set out hereinafter is based on this information.

23. Most States penalise **the disturbance of religious practice** (for instance, the interruption of religious ceremonies).

24. **Blasphemy** is an offence in only a minority of member States (Austria, Denmark, Finland, Greece, Italy, Liechtenstein, the Netherlands, San Marino)¹¹. It must be noted in this context that there is no single definition of "blasphemy". In the Merriam-Webster, blasphemy is defined as: 1: the act of insulting or showing contempt or lack of reverence for God b: the act of claiming the attributes of deity; 2: irreverence toward something considered sacred or inviolable. According to the report of the Committee on Culture, Science and Education on

⁸ The criminalisation of defamation on the ground of race, colour, language, religion, nationality, or national or ethnic origin recommended by ECRI does not conflict with the modern trends towards decriminalisation of defamation, which concerns more particularly the cases of criticism of politicians and other public figures.

⁹ Assembly debate on 29 June 2007, adopted by the Assembly on 29 June 2007. See also Resolution 1510(2006) on "Freedom of expression and respect for religious beliefs", adopted by the Assembly on 28 June 2006. See also the statement of the Human Rights Commissioner: "Do not criminalize critical remarks against religions", of 11 June 2007, available at the Commissioner's website at www.commissioner.coe.int

¹⁰ The criminal legislation of several States also imposes limitations on the freedom of association and assembly with a view to preventing hate speech.

¹¹ The introduction of the criminal offence of blasphemy is being discussed in Ireland in order to implement Article 40 § 6.1(I) of the Constitution.

Blasphemy, religious insults and hate speech against persons on grounds of their religion¹², 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. The Irish Law Reform Commission suggested a legal definition of "blasphemy" as "Matter the sole effect of which is likely to cause outrage to a substantial number of adherents of any religion by virtue of its insulting content concerning matters held sacred by that religion".¹³

25. The penalty incurred for blasphemy is generally a term of imprisonment (mostly, up to three, four or six months; up to two years in Greece for malicious blasphemy) or a fine.

26. The offence of blasphemy is, nowadays, rarely prosecuted in European states.

27. **Religious insult**¹⁴ is a criminal offence in approximately half the member States (Andorra, Cyprus, Croatia, the Czech Republic, Denmark, Spain, Finland, Germany¹⁵, Greece, Iceland, Italy, Lithuania, Norway¹⁶, the Netherlands, Poland, Portugal, Russian Federation, Slovak Republic, Switzerland, Turkey and Ukraine), while insult as such is generally considered as a criminal or administrative offence in all countries.

28. The penalty incurred is generally a term of imprisonment, varying significantly amongst member States and ranging from a few months (four or six) to one, two, three and even five years (in Ukraine). A pecuniary fine is always an alternative to imprisonment.

29. **Negationism**, in the sense of public denial of historical facts or genocide with a racial aim, is an offence in a few countries (Austria, Belgium, France, Switzerland). In other countries such as Germany, certain activity amounting to negationism may come within the definition of the offence of incitement to hatred.

30. **Discrimination** of various kinds, including on religious grounds, is prohibited at constitutional level in all Council of Europe member states. Some States, in addition, have specific laws or provisions against discrimination.

31. In some countries, the commission of *any* crime with an ethnic, racial, religious or similar motive constitutes a general aggravating circumstance (for example France, Georgia, Italy, Luxembourg, Sweden, Spain and Ukraine). In some countries, certain specific crimes (e.g. murder) only are aggravated by a racial or similar motive (e.g. Belgium, France, Georgia, and Portugal).

32. Practically all Council of Europe member States (with the exception of Andorra, Georgia, and San Marino) provide for an offence of **incitement to hatred**¹⁷. In some of these countries

¹² Doc. 11296, 8 June 2007.

¹³ There exist several other definitions: see Angela Evenhuis, *Blasphemous matter. Blasphemy, defamation of religion and Human Rights*, Magenta Foundation, 2008, p.8.

¹⁴ There is no general definition of "religious insult".

¹⁵ In Germany it is a condition to have disturbed the public peace for the offence to materialise. Similarly, in Portugal it is required to have breached the peace.

¹⁶ Prosecution of religious insults is only done when it is in the public interest to do so.

¹⁷ There is no generally recognised definition of "incitement to hatred", or "hate speech". The Committee of Ministers, in its Recommendation (97)20, provides the following working definition: the term "hate speech" shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism 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

(e.g. Austria, Cyprus¹⁸, Greece, Italy¹⁹ and Portugal), however, the law punishes incitement to *acts likely to create discrimination or violence*, not to mere hatred. In some States (e.g. Lithuania), the law penalises both (incitement to violence carrying more severe penalties).

33. In most member States, the treatment of incitement to *religious* hatred is a subset of incitement to general hatred, the term “hatred” generally covering racial, national and religious hatred in the same manner²⁰, but at times also hatred on the ground of sex or sexual orientation, political convictions, language, social status, physical or mental disability. In Malta, in Slovakia and in “the Federal Yugoslav Republic of Macedonia”, however, religion is not specifically foreseen as a ground for hatred.

34. In several States (e.g. Armenia, Bosnia and Herzegovina, Latvia, Montenegro, Serbia, Slovenia, Ukraine), the fact that the incitement to hatred has been committed through, or has actually provoked violence constitutes an aggravating circumstance.

35. Hate speech is not a so-called “hate crime”. Hate crimes always comprise two elements: 1) a criminal offence committed with 2) a bias motive. As speech would not be a crime without the bias motive, it lacks the first essential element of hate crimes.²¹

36. However, “direct and immediate incitement to criminal acts” is prohibited in all member States: in those countries where what is penalised is not incitement to *hatred* as such, but incitement to *violent acts or through violent acts*, such incitement would qualify as a hate crime. General and specific penalty enhancements (see para 31 above) also qualify as hate crime legislation.

37. In the majority of member States (with the exception of Albania, Estonia, Malta, Moldova, Montenegro, the Netherlands, Poland, Serbia, Slovenia and Ukraine, and the United Kingdom but with the exception of one’s private dwelling), the incitement to hatred must occur in public. In Armenia and France, the fact that the incitement is committed in public represents an aggravating circumstance.

38. In Austria and Germany, the incitement to hatred must disturb the public order in order for it to become an offence. In Turkey, it must clearly and directly endanger the public.

immigrant origin. The European Court of Human Rights referred to “all forms of expression which spread, incite, promote or justify hatred based on intolerance (including religious intolerance)” (Gunduz v. Turkey judgment of 4 December 2003, § 40.)

¹⁸ In Cyprus, incitement to acts which are likely to cause discrimination, hatred or violence is penalised.

¹⁹ In Italy, the law distinguishes between incitement to commit discriminatory acts and incitement to commit violent acts.

²⁰ In its policy recommendation no. 7, ECRI uses “racism” to mean “the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons”; ECRI uses “direct racial discrimination” to mean “any differential treatment based on a ground such as race, colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.” It must be noted in addition that the European Court of Human Rights has recently stated that “no difference in treatment which is based exclusively or to a decisive extent on a person’s ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures.” (Eur.Court HR, Timishev v. Russia judgment of 13 December 2005 (final on 13 March 2006), § 58).

²¹ See the ODIHR Hate Crime Legislative Guide, which will be available publicly in late 2008 at <http://tandis.odihr.pl> and at <http://www.legislationline.org/2008>.

39. Some States provide for specific, more stringent or severe provisions relating to incitement to hatred through the mass media (for example Armenia, Azerbaijan, Czech Republic and Romania).

40. The intention to stir up hatred is generally not a necessary element of the offence, but it is so in Cyprus, Ireland, Malta, Portugal, Ukraine and England and Wales. In some member States, recklessness is taken into account too. In Ireland, for example, it is a defence for the accused to prove not to have intended to stir up hatred or not to have intended or *been aware* that the words, behaviour or material concerned might be threatening, abusive or insulting. In Italy, the words, behaviour or material in question must stir up, or be intended to stir up, or *be likely to stir up* hatred. In Norway, the offence of incitement to hatred may be committed willingly or *through gross negligence*.

41. The maximum prison sentence incurred for incitement to hatred varies significantly (from one year to ten years) among member states²²: one year (Belgium, France, the Netherlands); eighteen months (Malta); two years (Austria, Cyprus, Czech Republic, Denmark, Iceland, Lithuania, Slovenia, Sweden); three years (Azerbaijan, Bulgaria, Croatia, Estonia, Hungary, Italy, Latvia, Moldova, Norway, Poland, Slovakia, Spain, Turkey); four years (Armenia); five years (BiH, Germany, Monaco, Montenegro, Portugal, Serbia, “the Former Yugoslav Republic of Macedonia”, Ukraine); ten years (Albania). In all countries, a prison term is alternative to or cumulative with a pecuniary fine.

IV. **General Remarks**

A. Scope of the reflection

42. The Parliamentary Assembly requested an overview of the legislation of the Council of Europe member States in regard of religious offences within the context of the reciprocal limitations of freedom of expression and freedom of religion.

43. The following questions arise:

- Is there a need for specific supplementary legislation in this area ?
- To what extent is criminal legislation adequate and/or effective for the purpose of bringing about the appropriate balance between the right to freedom of expression and the right to respect for one’s beliefs?
- Are there alternatives to criminal sanctions?

B. Criminal legislation as basis for interference with freedom of expression

44. Freedom of expression, guaranteed by Article 10 ECHR, constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend shock or disturb.²³

45. A democracy should not fear debate, even on the most shocking or anti-democratic ideas. It is through open discussion that these ideas should be countered and the supremacy of

²² Information on penalties is not available for all states.

²³ ECtHR, *Giniewski v. France* judgment of 31 January 2006, § 43.

democratic values be demonstrated. Mutual understanding and respect can only be achieved through open debate. Persuasion through open public debate, as opposed to ban or repression, is the most democratic means of preserving fundamental values.

46. The second paragraph of Article 10 ECHR provides for the possibility of imposing *formalities, conditions, restrictions or penalties* on freedom of expression, as are prescribed by law and are necessary in a democratic society in pursuit of specifically listed legitimate interests.

47. In the Commission's view, however, in a true democracy imposing limitations on freedom of expression should not be used as a means of preserving society from dissenting views, even if they are extreme. Ensuring and protecting open public debate, should be the primary means of protecting inalienable fundamental values such freedom of expression and religion at the same time as protecting society and individuals against discrimination. It is only the publication or utterance of those ideas which are fundamentally incompatible with a democratic regime because they incite to hatred that should be prohibited.

48. Measures and acts to ensure respect for the religious beliefs of others pursue the aims of "protection of the rights and freedoms of others" and of "protecting public order and safety". These aims can justify restrictions on the right to freedom of expression.²⁴ Indeed, the European Court of Human Rights has held that, in order to ensure religious peace, States have an obligation to avoid as far as possible expressions that are gratuitously offensive to others and thus an infringement of their rights, and which therefore do not contribute to any form of public debate capable of furthering progress in human affairs.²⁵ Respect for the religious feelings of believers can legitimately be thought to have been violated by provocative portrayals of objects of religious veneration or offensive attacks on religious principles and dogmas; these may in certain circumstances be regarded as malicious violation of the spirit of tolerance, which must also be a feature of a democratic society²⁶.

49. There is a view that, to the extent that religious beliefs concern a person's relation with the metaphysical, they can affect the most intimate feelings and may be so complex that an attack on them might cause a disproportionately severe shock. In this respect, it is argued that they differ from other beliefs such as political or philosophical beliefs, and, it is argued, that they deserve a higher degree of protection²⁷.

50. At any rate, the concepts of pluralism, tolerance and broadmindedness on which any democratic society is based mean that the responsibility that is implied in the right to freedom of expression does not, as such, mean that an individual is to be protected from exposure to a religious view simply because it is not his or her own.²⁸ The purpose of any restriction on freedom of expression must be to protect individuals holding specific beliefs or opinions, rather than to protect belief systems from criticism. The right to freedom of expression implies that it should be allowed to scrutinise, openly debate, and criticise, even harshly and unreasonably, belief systems, opinions, and institutions, as long as this does not amount to advocating hatred against an individual or groups.

²⁴ See inter alia ECtHR, *Murphy v. Ireland* judgment of 10 July 2003, § 64

²⁵ ECtHR, *Otto-Preminger-Institut, v. Austria* Judgment of 20 September 1994, § 56.

²⁶ ECtHR, *Otto-Preminger-Institut*, cit. § 47

²⁷ See N. Alivizatos, "The limits of liberalism", speech pronounced at the international round table "Art and Sacred Beliefs: from Collision to Co-existence", Athens (to be published)

²⁸ ECtHR, *Murphy*, cit. § 72.

51. Restrictions on the right to freedom of expression must be made “in accordance with the law”. The nature and quality of the domestic legislation are therefore important, and so are the interpretation and application of the law, which depend on practice. Domestic law is interpreted and applied by domestic courts, which therefore play a vital role in bringing about the balance of interests and deciding whether an interference with the right to freedom of expression is necessary in a democratic society, and notably whether it is proportionate to the legitimate aims pursued.

52. Member States enjoy a certain but not unlimited margin of appreciation in that respect. The absence of a uniform European concept of the requirements of the protection of the rights of others in relation to attacks on religious convictions broadens the Contracting States’ margin of appreciation when regulating freedom of expression in relation to matters liable to offend intimate personal convictions within the sphere of morals or religion.²⁹ 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, especially in an era characterised by an ever growing array of faiths and denominations: State authorities are therefore better placed than the international judge to appreciate what is “necessary in a democratic society”.³⁰

53. When looking into the extent of permissible restrictions on freedom of expression, the Commission stresses that a difference can be made between, on the one hand, works of art (in whatever form, such as painting, sculpture, installation, music, including pop music, theatre, cinema, books, poetry), and, on the other hand, statements or publications expressing an opinion (speech that is audible in public, journalism, public speaking, tv/radio debate etc). However, a work of art may contain political comment and an ostensibly political expression may also be or become accepted as art. In respect of both forms of expression, therefore, restrictions will only be possible if they cause an undue interference in a guaranteed right of another person or group as per Art 17 ECHR, having regard to the permissible limitations in Art 10(2) ECHR.

54. Before proceeding with the analysis of the forms of interference with freedom of expression, the Commission wishes to underline that what it may be necessary to limit in a democratic society is not the freedom of artistic or intellectual or other expression in itself, but the *manner and extent of circulation* of the intellectual or artistic product (the ideas expressed, the work of art created, the book or articles written, the cartoon drawn and and so on). This explains why it is, at least theoretically, possible to hold accountable for incitement to hatred or religious insults not only and not even primarily the author of a statement or work of art, but also those who have directly or indirectly contributed to the circulation of such statement or work of art: a publisher, an editor, a broadcaster, a journalist, an art dealer, an artistic director or a museum manager.

55. There exist several forms of sanction of freedom of expression³¹, including:

- administrative fines;
- civil law remedies, including liability for damages;
- restraints on publication of periodicals, magazines, newspapers or books, or on art exhibitions;
- criminal sanctions, both fines and imprisonment.

²⁹ ECtHR, *Giniewski*, cit., § 44; *Aydin Tatlav v. Turkey* judgment of 2 May 2006, §§ 26,27..

³⁰ ECtHR, *Murphy*, cit., § 67

³¹ Similarly, freedom of assembly and association may be restricted in order to protect the rights of others.

56. Criminal sanctions related to unlawful forms of expression which impinge on the right to respect for one's beliefs, which are specifically the object of this report, should be seen as last resort measures to be applied in strictly justifiable situations, when no other means appears capable of achieving the desired protection of individual rights in the public interest.

57. It is beyond doubt that hate speech towards members of other groups including religious groups "is in contradiction with the Convention's underlying values, notably tolerance, social peace and non-discrimination". Consequently, the author of hate speech "may not benefit from the protection afforded by Article 10 of the Convention". This arises by virtue of Article 17 of the Convention, which provides: "*Nothing in [the] Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention*".³² No one is allowed to abuse his or her right to freedom of expression to destroy or unduly diminish the right to respect for the religious beliefs of others.

58. Hate speech thus justifies criminal sanctions. Indeed, the pan-European introduction of sanctions against incitement to hatred has a very strong symbolic value, which goes beyond the objective difficulty of defining and prosecuting the crime of incitement to hatred. This trend is in accordance with General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination produced by the European Commission against Racism and Intolerance (ECRI). Similarly, the European Court of Human Rights has stated that "as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance (including religious intolerance), provided that any "formalities", "conditions", "restrictions" or "penalties" imposed are proportionate to the legitimate aim pursued".³³

59. The application of hate legislation must be measured in order to avoid an outcome where restrictions which potentially aim at protecting minorities against abuses, extremism or racism, have the perverse effect of muzzling opposition and dissenting voices, silencing minorities, and reinforcing the dominant political, social and moral discourse and ideology.

60. The need for specific criminal legislation prohibiting blasphemy and religious insults is more controversial. There are two opposite views in this respect: one advocating the repeal of legislation on blasphemy and religious insults altogether; and one advocating the introduction of offences of religious insults or even specific offences of "incitement to religious hatred".

61. In this respect, it is worth recalling that it is often argued that there is an essential difference between racist insults and religious insults: while race is inherited and unchangeable, religion is not, and is instead based on beliefs and values which the believer will tend to hold as the only truth. This difference has prompted some to conclude that a wider scope of criticism is acceptable in respect of a religion than in respect of a race. This argument presupposes that while ideas of superiority of a race are unacceptable, ideas of

³² See ECtHR, Pavel Ivanov v. Russia, dec. 20.02.2007; see also Günduz v. Turkey judgment of 14 December 2003, § 41, where the Court states as follows "Furthermore, as the Court noted in Jersild v. Denmark (judgment of 23 September 1994, Series A no. 298, p. 5, § 35), there can be no doubt that concrete expressions constituting hate speech, which may be insulting to particular individuals or groups, are not protected by Article 10 of the Convention. In the case of Norwood v. the United Kingdom, the Court stated that "a general, vehement attack against a religious group, linking the group as a whole with a grave act of terrorism, is incompatible with the values proclaimed and guaranteed by the Convention, notably tolerance, social peace and non-discrimination" (Norwood v. the United Kingdom (dec.), no. 23131/03, 16 November 2004). See also ECtHR, Garaudy v. France, dec. 24 June 2003, and Lawless v. Ireland, judgment of 1 July 1961, Series A no. 3, p. 45, § 7.

³³ ECtHR, Günduz v. Turkey, cit., § 40.

superiority of a religion are acceptable, as it is possible for the believer of the “inferior” religion to refuse to follow some ideas and even to switch to the “superior” religion.

62. In the Commission’s opinion, this argument is convincing only insofar as genuine discussion is concerned but it should not be used to stretch unduly the boundaries between genuine philosophical discussion about religious ideas and gratuitous religious insults against a believer of an “inferior” faith. The Commission would also emphasise that religious convictions are different from philosophical or political convictions, for example, in that religious convictions may not be entirely intellectual. On the other hand, it cannot be forgotten that international instruments and most domestic legislation put race and religion on an equal footing as forbidden grounds for discrimination and intolerance.

63. The Parliamentary Assembly, noting 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, has considered that “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” and 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.”³⁴

64. The Commission agrees with the above consideration.

65. The Commission does not consider it necessary or desirable to create an offence of religious insult *simpliciter* without the element of incitement to hatred as an essential component³⁵. Neither does the Commission consider it essential to impose *criminal sanctions*³⁶. If a statement or work of art does not qualify as incitement to hatred, then it should not be the object of criminal sanctions.

66. It is true that penalising religious insults 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.

67. 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. In addition, one has to be aware of certain difficulties with enforcement of criminal legislation in this area. The intention of the accused speaker or author, the effects of his or her action and the political, social or scientific context in which the contested statements or

³⁴ PACE Recommendation 1805 (2007) on “Blasphemy, religious insults and hate speech against persons on grounds of their religion”

³⁵ This finding does not appear to comply fully with UN Human Rights Council Resolution 7/19 of 27 March 2007 on « Defamation of religion », which reads as follows: « [the Human Rights Council] ... also urges States to provide, within their respective legal and constitutional systems, adequate protection against acts of hatred, discrimination, intimidation and coercion resulting from the defamation of any religion, to take all possible measures to promote tolerance and respect for all religions and their value systems and to complement legal systems with intellectual and moral strategies to combat religious hatred and intolerance ».

³⁶ In its General Policy Recommendation no. 7, ECRI recommends that public insults and defamation against a person or a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin be penalised. The Commission recalls in this respect that the offences of “insult” and “defamation” exist in every member State and can be used, subject to all the relevant legal conditions, also in cases of public insults and defamation on religious grounds.

publications are made constitute elements that may be problematic to evaluate and balance for the prosecuting authorities and the courts. For this reason or for reasons of opportunity within the discretionary powers of the prosecuting authorities, new, specific legislation might raise expectations concerning prosecution and conviction that will not be met. Moreover, too activist an attitude on the part of the latter authorities may place the suspect persons or groups in the position of underdog, and provide them and their goal with propaganda and public support (the role of martyrs).

69. It is true that the boundaries between religious insult (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 religious insults.

70. 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 in this respect that "it is of crucial importance that politicians in their public speeches refrain from making any statement which can provoke intolerance."³⁷ 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.³⁸ On the other hand, however, it has to be pointed out that in most legal systems politicians enjoy certain immunities for their official statements.

71. 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."³⁹

72. The Commission notes in addition that circumstances as regards publication have changed since the arrival of the internet. It is now possible to communicate instantly to a vast number of people in the world at large. Therefore, the power to incite to hatred is far greater than in pre-internet days. Furthermore, publication is now much less in the control of the author or publisher, who may find it impossible to limit publication in the manner he or she would had originally intended.

73. As concerns the content, the Venice Commission wishes to underline 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.

³⁷ ECtHR, *Erbakan v. Turkey* judgment of 6 July 2006, § 64.

³⁸ ECtHR, *Incal v. Turkey* judgment of 9 June 1998, § 46.

³⁹ ECtHR, *Jersild v. Denmark* judgment of 23 September 1994, § 31.

74. 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 protection. 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 are gratuitously offensive to others and infringe their rights.

75. 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"⁴⁰ 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 civil 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. Whether damages were incurred at all or not, and the extent of such damages, are for the courts to determine (including the matter of whether the action is possibly barred by parliamentary immunity). Courts are well placed to enforce rules of law in relation to these issues and to take into account the facts of each situation; they must reflect public opinion in their decisions, or the latter risk not to be understood and accepted, and to lack legitimisation.

77. The Venice Commission underlines however that there is no absolute right not to be offended, and that awards of damages should be carefully and strictly justified and motivated and should not be punitive, lest they should have a chilling effect on freedom of expression.

78. 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 recently 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 religion⁴¹ and that criticism of a doctrine does not necessarily contain attacks on religious beliefs as such⁴². The difference between group libel and individual libel should be carefully taken into consideration.

79. A legitimate concern which arises in this respect is that only the religious beliefs or convictions of *some* would be given protection. It might be so on account of their belonging to the religious majority or to a powerful religious minority; of their being recognised as a religious group. It might also be the case on account of the vehemence of their reactions to insults: a reasonable fear of uncontrollable reactions could lead to specific caution in respect of Muslims, for example.

80. 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 insults and, nowadays, the offence of incitement to hatred.

81. Certain religious groups have undoubtedly shown increasing sensitivities in this regard, and have reacted violently to criticism of their religion. The Commission accepts that, in the

⁴⁰ ECtHR, *Otto-Preminger-Institut*, cit.. § 49.

⁴¹ ECtHR, *Klein v. Slovakia*, judgment of 31 October 2006, § 51

⁴² ECtHR, *Giniewski*, cit. § 51

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.

82. 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 religious group 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.

83. 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.

84. A responsible exercise of the right to freedom of expression should therefore 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.

85. As important as the role of the courts may be in deciding whether a statement amounted to incitement to hatred or whether damages are incurred, the Commission does not think that the relationship between freedom of expression and freedom of religion should not per se regulated through court rulings, but, first and for all, through rational consultation between people, believers and non-believers.⁴³

86. For this reason, the recommendations of PACE, ECRI and many others as to the need to promote dialogue and encourage an ethic of communication for both the media and the religious groups should be taken up by way of urgency. Education leading to better understanding of the convictions of others and to tolerance should also be seen as an essential tool in this respect.

87. In the long term, every component of a democratic society should be able to express in a peaceful manner his or her ideas, no matter how negative, on other faiths or beliefs or dogmas. Constructive debates should take place as opposed to dialogues of the deaf.

88. Mutual understanding and acceptance is perhaps the main challenge of modern societies. Diversity is undoubtedly an asset; but cohabiting with people of different backgrounds and ideas entails the need for everyone to refrain from gratuitous provocation and insults. In the end of the day, it is the price to pay for a new ethics of responsible intercultural relations in Europe and in the world.

⁴³ See D. Christopoulos, D. Dimoulis, Art can legitimately offend, to be published.

V. Conclusions

89. The Venice Commission has examined the European legislation on blasphemy, religious insults and incitement to religious hatred and has extensively reflected on this matter, including at the International Round table on "Art and Religious beliefs: from collision to co-existence", which was held in Athens on 1 – 2 February 2008. The Commission has reached the following conclusions:

90. As concerns the question of whether or not there is a need for specific supplementary legislation in the area of blasphemy, religious insults and incitement to religious hatred, the Commission finds:

a) That incitement to hatred, including religious hatred, should be the object of criminal sanctions as is the case in almost all European States, with the only exceptions of Andorra, Georgia and San Marino. The latter three States should criminalise incitement to hatred, including religious hatred. In the Commission's view, it would be appropriate to introduce an explicit requirement of intention or recklessness, which only few States provide for.

b) That it is neither necessary nor desirable to create an offence of religious insult simpliciter, without the element of incitement to hatred as an essential component.

c) That the offence of blasphemy should be abolished (which is already the case in most European States) and should certainly not be reintroduced.

91. As concerns the question of to what extent criminal legislation is adequate and/or effective for the purpose of bringing about the appropriate balance between the right to freedom of expression and the right to respect for one's beliefs, the Commission reiterates that, in its view, criminal sanctions are only appropriate in respect of incitement to hatred (unless public order offences are appropriate).

92. Notwithstanding the difficulties with enforcement of criminal legislation in this area, there is a high symbolic value in the pan-European introduction of criminal sanctions against incitement to hatred. It gives strong signals to all parts of society and to all societies that an effective democracy cannot bear behaviours and acts which undermine its core values: pluralism, tolerance, respect for human rights and non-discrimination.

93. In the Commission's view, instead, criminal sanctions are inappropriate in respect of religious insults or, even more, of blasphemy.

94. Finally, as concerns the question of whether there are alternative options to criminal sanctions, the Commission recalls that any legal system provides for other courses of action, including civil ones, which can be used in cases other than incitement to hatred.

95. However, it is not exclusively or even primarily for the courts to find the right balance between freedom of religion and freedom of expression, but rather for society at large, through rational discussions between all parts of society, including believers and non-believers.

96. The new ethics of responsible intercultural relations in Europe and in the world which is made necessary by the cultural diversity in modern societies, requires that a responsible exercise of the right to freedom of expression should endeavour to respect the religious beliefs and convictions of others. Self-restraint, in this and other areas, can help, provided of course that it is not prompted by fear of violent reactions, but only by ethical behaviour.

97. This does not mean, however, that democratic societies must become hostage to the excessive sensitivities of certain religious groups: freedom of expression must not indiscriminately retreat when facing violent reactions.

98. The threshold of sensitivity of these groups and of anyone who would feel offended by the legitimate exercise of the right to freedom of expression should be lowered. A democracy must not fear debate, even on the most shocking or anti-democratic ideas. It is through open discussion that these ideas should be countered and the supremacy of democratic values be demonstrated. Mutual understanding and respect can only be achieved through open debate. Persuasion, as opposed to ban or repression, is the most democratic means of preserving fundamental values.

99. For this reason, in the opinion of the Commission, the recommendations of PACE, ECRI and many others as to the need to promote dialogue and encourage an ethics of communication for both the media and the religious groups should be taken up by way of urgency. Education leading to better understanding of the convictions of others and to tolerance should also be seen as an essential tool in this respect.