



Strasbourg, 12 June 2015

CDL-JU(2015)012
Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**14th meeting of the Joint Council
on Constitutional Justice**

MINI-CONFERENCE ON

**“BLASPHEMY AND OTHER LIMITATIONS TO THE
FREEDOM OF EXPRESSION”**

Bucharest, Romania

12 June 2015

**“A brief overview of the ‘constitutional balancing’ between free
speech and protected interests connected to religious beliefs”**

REPORT BY

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“A brief overview of ‘constitutional balancing’ between free speech and protected interests connected to religious beliefs”

Do we really need blasphemy laws to protect religious faiths?

According to the dictionary of law, blasphemy was formerly “the crime of ridiculing or denying God or the Christian religion in a scandalous way”.¹ Blasphemy law was a law limiting the freedom of speech relating to blasphemy. At its most general level, the question of this conference is whether democratic principles justify blasphemy laws, that is, restrictions on free speech.

At the very beginning of my paper, I should make a clear distinction between blasphemy and incitement to religious hatred. Blasphemy is the act of attacking the religious belief itself: insulting or showing contempt or lack of reverence for God, to religious or holy persons or things, or toward something considered sacred. Religious hatred, by contrast, is about attacking religious believers, in particular their social status. Public incitement to hatred of a vulnerable religious minority falls into the latter category. In what follows, I will only talk about the former case, attacking or ridiculing religious belief.

Since Christianity was handled as part of the laws of the land for a long time, prosecutions for attacks on Christianity have a long history in Europe. Sir William Blackstone, the leading authority on the common law, observed that blasphemous libel was punished by English law “for Christianity is part of the laws of the land”.² In the beginning, those who committed blasphemy were sentenced to death, but in the 17th century, the death penalty for blasphemy was abolished. Since then, those who were prosecuted for blasphemy have been sentenced to imprisonment or a fine. In 1668 Adriaan Koerbagh, a friend of Spinoza, provoked the anger of the Calvinist clergy.³ He ridiculed a number of traditional religious doctrines and practices, and among the teachings he advanced were that Jesus is not divine, that God is identical with nature, that everything is necessitated by the laws of nature, and that miracles are impossible. He was tried and sentenced to imprisonment on charges of blasphemy.⁴

Similarly, people were jailed in England and in the United States for writing essays and pamphlets that denied the existence of God and declared that “the whole story concerning (Jesus Christ) is as much a fable and fiction as that of the god Prometheus.”⁵ As Jeremy Waldron rightly pointed out, in these cases, the logic of blasphemous libel required courts to find ways of seeing Christianity as an indispensable support of government.⁶ However, since the Age of Enlightenment, a radical shift in the understanding of blasphemy has occurred. Secularisation, the separation of church and state, has led to the acceptance of the fact that it is not for the State to protect gods of different religions.

In the 20th century, some courts realised that the prosecutions for blasphemy is inappropriate, since “however vulnerable the Christian religion may be, it was not something that the law had any business trying to protect”.⁷

1 Dictionary of Law, Peter Collin Publishing, London, 2000, p. 38.

2 William Blackstone: Commentaries on the Laws of England, vol. 4, ch. 4, Cavendish, 2001, p. 46.

3 In his writing on the *Een Bloemhof van allerley lieflijkheyd* (A Flower Garden of all Kinds of Loveliness).

4 Steinberg, Justin, “Spinoza's Political Philosophy”, The Stanford Encyclopedia of Philosophy (Winter 2013 Edition), Edward N. Zalta(ed.), <http://plato.stanford.edu/archives/win2013/entries/spinoza-political/>

5 Jeremy Waldron: The Harm in Hate Speech, Harvard University Press, 2012, p. 22.

6 Ibid.

7 Ibid, p. 25, 30.

In 1952, in its so-called 'Miracle Decision', the United States Supreme Court reviewed a New York statute which permitted the banning of motion picture films on the ground that they are "sacrilegious".⁸ According to the interpretation of New York's highest court, "no religion, as that word is understood by the ordinary, reasonable person, shall be treated with contempt, mockery, scorn and ridicule". Based on this interpretation, after receiving hundreds of letters, the New York Commissioner of Education prohibited the public exhibition of the motion picture 'The Miracle' (Rosellini's *Il Miracolo*). The Supreme Court determined that the provision which allowed a censor to forbid the commercial showing of a motion picture film it deemed to be "sacrilegious" was a "restraint on freedom of speech". Since then in the United States, a prosecution for blasphemy would violate the Constitution's free speech clause.

The United Kingdom maintained the crime of blasphemy for a much longer period. However, very recently, in 2008, the United Kingdom abolished its laws against blasphemy (the common law offences of blasphemy and blasphemous libel) in England and Wales with the passage of the Criminal Justice and Immigration Act.⁹ This year, Norway and Iceland repealed their longstanding blasphemy laws.¹⁰ Today, most of European Union countries do not have laws against blasphemy, but there are blasphemy laws for instance in Austria, Denmark, Finland, Greece, Italy and Ireland, not to mention the East-European states.¹¹ However, a shift could be detected recently. In those countries where blasphemy clauses still exist, convictions are extremely rare or there is no relevant case law at all (see for instance Ireland), so in most of the cases blasphemy bans are dead letters. Moreover, even in those European Union countries where blasphemy is an offence, renewed calls are being heard to eliminate the offence from the legal system.¹²

The international community appears to agree with the abolition of blasphemy clauses. In 2008, a Venice Commission report stated that "it is neither necessary nor desirable to create an offence of religious insult (that is, insult to religious feelings) simpliciter" and that "the offence of blasphemy should be abolished (which is already the case in most European States) and should not be reintroduced".¹³ In 2013, the Council of the European Union adopted guidelines noting that the "right to freedom of religion or belief, as enshrined in relevant international standards, does not include the right to have a religion or a belief that is free from criticism or ridicule".¹⁴ And recently, the United Nations Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeld, advocated in his latest annual report that "States should repeal anti-blasphemy laws, anti-conversion laws and any other discriminatory criminal law provisions, including those based on religious laws."¹⁵

8 Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495.

9 Section 79(1).

10 Eugene Volokh: Norway repeals blasphemy law, in response to Charlie Hebdo murders, *The Washington Post*, May 8, 2015. Kevin Rawlinson: Iceland repeals blasphemy ban after Pirate party campaign, *Guardian*, 3 July 2015. <http://www.theguardian.com/world/2015/jul/03/iceland-repeals-blasphemy-law-pirate-party-campaign>

11 See the analysis of the domestic laws concerning blasphemy in Venice Commission: Tackling blasphemy, insult and hatred in a democratic society, www.venice.coe.int

12 Growing calls to rescind blasphemy law, 9 January 2015, *yle uutiset*, http://yle.fi/uutiset/growing_calls_to_rescind_blasphemy_law/7727737

Colette Browne: Let's repeal our blasphemy law if we really want to honor 'Charlie', *Irish Independent*, 9 January 2015, <http://www.independent.ie/opinion/columnists/colette-browne/lets-repeal-our-blasphemy-law-if-we-really-want-to-honour-charlie-30893656.html>

13 Report on the relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of blasphemy, religious insult and incitement to religious hatred, adopted by the Venice Commission at its 76th Plenary Session (Venice, 17-18 October 2008) 89. b) and c).

14 Council of the European Union: Guidelines on the promotion and protection of freedom of religion or belief adopted at the Foreign Affairs Council meeting Luxembourg, 24 June 2013, 32a.

15 Report of the Special Rapporteur on freedom of religion or belief, UN Human Rights Council 28th session, A/HRC/28/66, 29 December 2014.

After the Charlie Hebdo massacre, a new global campaign was launched by a coalition of humanist organisations in order to abolish blasphemy laws altogether.¹⁶ However, the idea that countries should consider retaining or adopting blasphemy laws has also occurred.¹⁷

Charlie Hebdo was not the first magazine to be attacked because of its alleged blasphemous content. In 2005, the Jyllands-Posten published the so-called “Danish cartoons” of Muhammad, which resulted in many violent protests in the Muslim world with a loss of many human lives. This January, twelve people were killed when gunmen stormed the offices of Charlie Hebdo responding to satirical images published in the magazine. After the attacks, a debate began on whether magazines (the press) had the right to publish and others to republish the blasphemous cartoons, which treated the prophet in an irreverent fashion as the most sacred figure within Islam.¹⁸ So the question is this: do we need blasphemy laws to protect religious beliefs from such cartoons?

Apparently, there is a clash between two fundamental rights: the right to free speech and the freedom of religion. But, a closer look may reveal that restricting blasphemous cartoons may pose a threat to free speech, while publishing those cartoons does not mean a threat to freedom of religion.

Religious liberty has an important place in democratic societies. The freedom of religion is a fundamental right, closely connected to our inner self, to our human dignity. However, religions do not exist in a vacuum, they operate in societies therefore religions must observe the principles of democracy, first and foremost the freedom of expression that makes democracy possible. There are different arguments for publication in accordance with free speech.

According to Ronald Dworkin, making or giving a comically or grotesquely exaggerated representation of someone or something is a type of speech that should be protected by the fundamental right to free speech. Dworkin emphasised that “ridicule is a distinct kind of expression its substance cannot be repackaged in a less offensive rhetorical form without expressing something very different from what was intended.”¹⁹ And if there is a right to ridicule, and the press has the freedom to publish cartoons as a form of criticism, people should tolerate ridicule even of their beliefs. This is because a person attacking someone's faith or even a cartoon ridiculing the deepest religious beliefs does not require anyone to do something that violates their religious principles. Thus the fundamental right to freedom of religion remains intact. One can argue however, that it causes psychological distress when his or her faith is put under attack. That is an understandable claim, but we should make it clear that there is no right not to be insulted or offended by speech that is shocking or disturbing.

Jeremy Waldron makes a claim for free speech from a different angle. He argues that we should distinguish between the respect accorded to each and every citizen and “the disagreement we might have concerning his or her social and political conviction”. The hatred of beliefs is within the ambit of free speech, but no one has the right to hatred of persons holding these beliefs. We draw this distinction in democratic politics, and Waldron finds no reason why it should not be drawn also in the context of religious life.²⁰ There are disagreements in society not only concerning political convictions, but also concerning the doctrines, the content and the ceremonies of the various religions. Those who think differently

16 End Blasphemy Laws campaign, International Humanist and Ethical Union, iheu.org

17 See for instance Denmark which has recently announced that it keeps its blasphemy law. <http://iheu.org/denmark-announces-it-will-keep-its-blasphemy-law/>

18 More on the classification of the French cartoons, see Neville Cox, ‘After Charlie Hebdo: A Public Forum on Religion, Freedom and Human Rights’, Trinity College Dublin, 27 February 2015.

19 Ronald Dworkin: The Right to Ridicule, The New York Review of Books, Vol. 53, No., 5, March 23, 2006.

20 Waldron, pp. 120-121.

about religions and religious issues should be free to express their opinion in speech and in other ways. Certainly, those who oppose cartoons ridiculing religious beliefs should be free to express their opinion, too.

Last but not least, Timothy Garton Ash warns us that we should defy the so-called “assassin's veto”. The term “assassin's veto” refers to the well-known phrase of the “heckler's veto”. The heckler's veto occurs when an acting party's right to freedom of speech is curtailed or restricted by the government in order to prevent a reacting party's behaviour. In such cases, the excuse of the government for not giving permits to express an opinion in print or on the streets is that the expression of the opinion would create a public danger or put participants in danger because of the violence that might ensue. In a recent case,²¹ the United States Supreme Court found this unacceptable and a deprivation of the freedom of expression, saying that the government cannot grant power to a private actor, the heckler, to unilaterally silence a speaker because of a concern for the violent reaction by the heckler. According to Ash, the Charlie Hebdo massacre was an attempt to impose not the heckler's, but the assassin's veto, which says: “dare to express that and we will kill you”.²² Ash reminds us that “if we are not careful, the conclusion drawn by anyone who wants to impose any taboo will be 'go and get a gun'.”

It seems that the recently published blasphemous cartoons raised many important questions: Is it within the ambit of the freedom of expression to publish blasphemous cartoons? Is there a difference between the attack on a body of beliefs and the attack on the reputation of the believers? Does the public have the right to see whatever it wants no matter what the cost? Is there an overwhelming public interest in viewers having the relevant information, including the cartoons themselves? Should the press reprint the blasphemous cartoons or should it refrain from republishing?

Let me conclude by saying that the most important thing concerning every human rights controversy is the discussion of the pros and the cons which can already lead to a better position. This is the same for blasphemy. That is why I am very much looking forward to our discussions.

21 Hill v. Colorado 530 US 703, 735 (2000)

22 Timothy Garton Ash: Defying the Assassin's Veto, Vol. 62, No. 3, February 19-March 4, 2015, p. 4.