RELIGIOUSLY OFFENSIVE SPEECH: A DOCTRINAL INQUIRY*

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ABSTRACT

The article conceptualises the phenomenon of 'religiously offensive speech' under free speech theory and doctrine, particularly under the ECHR and the ICCPR. It argues that much of the disagreement in the debate about 'religiously offensive speech' has been caused by not properly distinguishing between offence caused to religions as such, offence caused to individual religious believers, and offence caused to public order interests. Offence caused to public order interests is of significant importance in justifying restrictions on religiously offensive speech. The concept of 'offence caused to individual religious believers' has legal relevance only under certain circumstances. The article will argue that it is appropriate not to speak of a 'right not to be offended in one's religious sentiments' but rather of a 'right not to be insulted for, or because of, one's religious sentiments'. The notion of 'defamation of religions' should be rejected.

Keywords: Freedom of Expression; Religious Sentiments; Hate Speech; Defamation of Religions; Balancing Conflicting Rights

* This article builds on and further develops ideas from the author's book Media Freedom as a Fundamental Right, (Cambridge: Cambridge University Press, 2015), especially Chapter 12 thereof.

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Introduction

For a long time, many sociologists believed that the ‘disenchantment’ of the (Western) world through enlightenment and rationalisation led to a privatisation of religious faith. However, the Muhammad cartoon controversy in 2005, the outrage caused by the ‘Innocence of Muslims’ video in 2012 and the debate following the murders of members of the French satirical weekly newspaper Charlie Hebdo are just a few well-known examples of fierce conflicts between freedom of expression and respect for religious sentiments. The laws protecting and limiting freedom of expression are entrusted with the important task of preventing injury in discourse on religious matters with a view to the long underestimated significance of religious denominations in ‘post-secular societies’.

Attitudes towards the conflict between freedom of speech and religious freedom oscillate between ‘religious traditionalism’ and ‘secularist fundamentalism’. Religious traditionalism would suppress any speech that shows disrespect towards religious sentiment. Expressions of such an approach are seen in the concept of ‘defamation of religions’ and extensive application of blasphemy laws, such as Article 216 of the Turkish Criminal Law Code. By contrast, secularist fundamentalism defends the right to say

2 Jürgen Habermas, “Notes on Post-Secular Society”, p. 17.
4 For example, in 2013, pianist and composer Fazil Say has been convicted of blasphemy over a series of comments he made on Twitter; for further information please refer to: Constanze Letsch, “Turkish Composer and Pianist Convicted of Blasphemy on Twitter”, The Guardian, 16 April 2013, <http://www.theguardian.com/world/2013/apr/15/turkish-composer-fazil-say-convicted-blasphemy>, (Date Accessed: 8 June 2016). In early 2015, a court in Ankara announced shutting down Facebook webpages hosting cartoons of the Prophet Muhammad; for further information please refer to: “Islamkritische Facebookseiten Sollen Gesperrt Werden”, Frankfurter Allgemeine Zeitung, 26 January 2015, <http://
everything, even if it intentionally slanders religious sentiment. Especially in ‘Western’ countries, where religion is still perceived as an essentially private matter, people often misjudge the importance religion plays in other countries around the globe or for minorities within their own country. The 2012 ‘Innocence of Muslims’ video and the reactions it caused are proof of that.\(^5\) Freedom of expression, if properly conceptualised not as an ‘unlimited license to talk’\(^6\), but as a means to foster public discourse in a pluralistic and tolerant democratic society, must negotiate a middle ground between these two extremes. This article will demonstrate that much of the disagreement in the debate about ‘religiously offensive speech’ has been caused by not properly distinguishing between the following types of ‘offences’:

- Offence caused to religions, or ‘beliefs’, as such (a concept which, as will be argued here, should have no legal relevance);
- Offence caused to individual religious believers (a concept which has legal relevance under certain circumstances); and
- Offence caused to public order interests (which is of significant importance in justifying restrictions on religiously offensive speech).

The article thus contributes to conceptualising the phenomenon of ‘religiously offensive speech’ under current legal doctrine and free speech theory with regard to measures criminalising such speech and other means of prohibition, such as administrative regulation and private law. It will focus on the legal situation in Europe, particularly on the European Convention on Human Rights (ECHR) and the case-law of the European Court of Human Rights (ECtHR), thereby also taking into consideration the In-


\(^6\) Alexander Meiklejohn, “The First Amendment is an Absolute”, *Supreme Court Review*, 1961, p. 249.
ternational Covenant on Civil and Political Rights (ICCPR) and the jurisprudence of the Human Rights Committee. US First Amendment doctrine, which varies significantly from the European approach, will be excluded from a detailed discussion.

**Freedom of Expression under the ECHR and the ICCPR**

Article 10(1) ECHR states: “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. …” Similarly, Article 19(2) ICCPR provides that “[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”. Articles 10(1)(2) ECHR and 19(2) ICCPR thus distinguish between the freedom to impart and receive ideas, on the one hand, and to receive and impart information, on the other hand, as separate sub-categories of freedom of expression. The provisions thus protect both statements of fact (‘information’), and value judgments (opinions, comments or ‘ideas’). The difference between facts and opinion lies in their susceptibility to proof: while the veracity of facts can be demonstrated, value judgments are not susceptible to proof.7 The distinction between statements of fact and value judgments gains significance, for example, in defamation cases or in cases involving the denial of historical facts. However, religiously offensive speech often does not fit into the fact-opinion dichotomy. This applies, in particular, to statements that are reflective of belief rather than of opinion or empirical proof, such as the existence of God and the denial thereof. Such speech, although protected by Articles 10(1) ECHR and 19(2) ICCPR, can therefore not be treated the same as statements of facts or the presentation of one’s opinion.

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Religious faith (or atheism) is not comparable to, for example, a philosophical idea. The difference between opinion, factual knowledge and faith has already been identified by Kant.

In *Handyside v. United Kingdom*, the ECtHR established, and has since then reiterated: “Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man”. Freedom of expression is not only applicable to information or ideas “that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population”. The choice of the form in which someone expresses oneself lies, in the first place, in the speaker’s or publisher’s discretion. Article 19(2) ICCPR expressly provides that freedom of expression includes freedom to impart information and ideas “either orally, in writing, in print, in the form of art, or through any other medium of one’s choice”. This also applies to Article 10 ECHR. The freedom to employ a medium of one’s choice thus

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9 Immanuel Kant, *Critique of Judgment*, (Translation by J.H. Bernard, London: Macmillan, 1914, p. 403, emphasis in the translation): ‘Cognisable things are of three kinds: things of opinion (opinable); things of fact (scibile); and things of faith (mere credible).’


covers employment of the arts, such as a caricature - a medium which has engendered much debate concerning religiously offensive speech. There is no warrant in freedom of speech doctrine to afford categorically less protection to such ‘artistic speech’ than to, for example, newspaper articles. Freedom of expression also covers a certain degree of exaggeration and even provocation, including vulgar phrases and a satirical style.12

That freedom of expression also includes, to a certain extent, the right to show disrespect to religions has also been emphasised by the Human Rights Committee in its General Comment No. 34. The Committee highlighted:

“Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in [Article 20(2) ICCPR]. Such prohibitions must also comply with the strict requirements of [Article 19(3) ICCPR], as well as such articles as 2, 5, 17, 18 and 26. The Committee also indicated that it would not be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.”13

Limits to Religiously Offensive Expression

Both free speech theory and doctrine concede that freedom of expression is not unlimited. According to Baruch Spinoza (later Benedict de Spinoza), one of the strongest advocates for a secular society replete with freedom and toleration in the early modern period14, expression may be limited if a speaker causes injury to himself or to others, or if the speaker causes danger to the public peace in general by speaking fraudulently, in anger or

12 For further information please refer to: ECtHR, Tuğalp v. Turkey, (Application Nos: 32131/08 and 41617/08), 21 February 2012, para. 48.

13 “General Comment No. 34, Article 19: Freedoms of opinion and expression”, Human Rights Committee, CCPR/C/GC/34, 21 July 2011.

hatred, or by ‘seditiously’ acting against the laws.\textsuperscript{15} This idea was further developed by Kant, who justified limitations to one’s freedom of action under the condition that it was necessary to reconcile their actions with everyone else’s freedom.\textsuperscript{16} Similarly, according to John Stuart Mill’s ‘harm principle’, the actions of individuals should be limited when necessary to prevent harm to other individuals; where such harm is done, society is justified in imposing restrictions.\textsuperscript{17} Rawls’ first principle of justice takes the same line: accordingly, “each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others”.\textsuperscript{18} Consequently, there is a general duty inherent in human rights to not violate the rights of others while exercising one’s own liberties.

Articles 10(2) ECHR and 19(3) ICCPR have codified those tenets by allowing interferences with freedom of expression for the protection of public order interests and the protection of individual rights, respectively. Under Article 10(2) ECHR, public order interests include national security, territorial integrity, public safety, the prevention of disorder and crime, the protection of health, the protection of morals and the maintenance of the authority and impartiality of the judiciary. ‘Rights of others’ in terms of limitations on freedom of expression include the right to respect for one’s reputation or privacy, and also, as will be argued further below, the right to respect for one’s religious sentiments, as personality rights. Moreover, as has been shown above, in its interpretation by the Human Rights Committee the Covenant allows prohibitions of displays of lack of respect for a religion, including blasphemy laws, under the conditions of Article 19(3)

\begin{itemize}
\item \textsuperscript{15} Benedict de Spinoza, \textit{Tractatus Theologico-Politicus}, (Translation by R.H.M. Elwes, A Theologico-Political Treatise, Complete Four Part Edition, 1891), Chapter XX, paras. 17, 18, 23, 24.
\end{itemize}
ICCPR and ‘under the specific circumstances envisaged’ in Article 20(2) ICCPR. Article 20(2) ICCPR requests State Parties to prohibit “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”.

Against this backdrop, religiously offensive speech may be limited for two reasons: either for the protection of superseding public order interests or due to the actual harm such speech inflicts on others. However, the notion of ‘defamation of religions’ as such must be rejected.

The Notion of ‘Defamation of Religions’

In April of 1999, the UN Human Rights Commission approved a resolution entitled ‘Defamation of Religions’, which had originally been brought before the Commission by Pakistan under the draft title ‘Defamation of Islam’. Following the initiative particularly sustained by countries with predominantly Muslim populations, the Human Rights Commission, and subsequently the UN Human Rights Council, adopted several resolutions in opposition to ‘defamation of religions’. Similar resolutions were adopted between 2005 and 2010 by the UN General Assembly.

21 “Combating defamation of religions”, UN General Assembly, Resolution 60/150, 16 December 2005; “Combating defamation of religions”, UN General
However, the concept of ‘defamation of religions’ is problematic for three reasons. First, it seems unjustifiable to distinguish ‘religion’ as particularly worthy of protection, as opposed to, say, ethnic origin or nationality. Second, the notion of ‘defamation of religions’ is at odds with human rights doctrine, as human rights serve to protect individuals, and not religions. Religions are not protected by international human rights law. To be sure, Articles 9 ECHR and 18 ICCPR safeguard ‘freedom of religion’. However, freedom of religion protects believers, and not belief systems. Similar considerations apply to laws protecting the ‘honour’ of public authorities and to the prohibition of criticism of public institutions, such as, for instance, ‘the army’ or ‘the administration’: The individuals working in and for those institutions are worthy of protection, but the institutions as such are not. Third, laws on defamation of religions lead to legal uncer-


tainty. Authorities would be tasked with the burden of deciding, first, what actually constitutes a religion; second, which aspects of the religion - gods, symbols, sacred figures - should be protected; and third, what qualifies as a ‘defamation’ of that religion. While courts often have to decide on the definition of a ‘religion’, the second and the third aspects in particular would be prone to abuse, which raises even greater concerns if the ‘defamation of religions’ codification would be of a criminal law nature. The concept of ‘defamation of religions’ should thus be rejected.

The concept of ‘defamation of religions’ has also been rejected implicitly by the Council Framework Decision on combating racism and xenophobia. Article 1 of that Framework Decision requires Member States to take measures necessary to ensure that certain behaviours are punishable as criminal offences. These behaviours include public incitement to violence or hatred directed at a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin. Article 1(3) of the Framework Decision then clarifies that the reference to religion in Article 1 of that Framework Decision “is intended to cover, at least, conduct which is a pretext for directing acts against a group of persons or a member of such a group defined by reference to race, colour, descent, or national or ethnic origin”. The Framework Decision


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thereby covers incitement to hatred or violence on religious grounds only if such incitement is of a racist or xenophobic nature, but it does not cover such speech for the sake of protecting a particular religion itself.28

Right to Respect for One’s Religious Sentiments

It is controversial whether freedom of religion, as protected by Article 9 ECHR and Article 18 ICCPR, includes a right not to have one’s religious beliefs offended. This question is of huge practical significance. If interferences with religiously offensive speech may only be based on public order concerns, then there is a presumption that the freedom of expression prevails, since public interest exceptions to freedom of expression must be construed narrowly.29 However, if one accepts a right not to be offended in one’s religious feelings or sentiments as an integral aspect of freedom of religion, this would require a system for balancing conflicting rights of equal claim.30 In addition, the Convention and Covenant States would then even be under a positive obligation to prohibit speech that offends the religious sentiments of others, as states are obliged to not merely negatively abstain from interfering with Convention and Covenant guarantees; the beneficiaries of these guarantees may also be entitled to positive action in order to secure their rights and freedoms in the first place. Because of the

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28 For further information please refer to: “Mapping of complementary standards on racism, racial discrimination, xenophobia and related intolerance”, Council of the European Union, 12243/1/10, 5 November 2010, p. 7.


status positivus of human rights\textsuperscript{31}, states are under an obligation to ensure the protection of human rights and are thus required to take positive action to protect individuals from interference by other parties, corresponding to an entitlement of the beneficiary of that human right.\textsuperscript{32} Therefore, individuals would have standing to bring a case against a Convention or Covenant State for failing to protect them from offences against their religious sentiments.

In their joint dissenting opinion to Otto-Preminger-Institut v. Austria, Judges Palm, Pekkanen, and Makarczyk wrote: “The Convention does not, in terms, guarantee a right to protection of religious feelings. More particularly, such a right cannot be derived from the right to freedom of religion, which in effect includes a right to express views critical of the religious opinions of others”.\textsuperscript{33} This view finds support in academic literature.\textsuperscript{34} By


\textsuperscript{33} ECtHR, Otto-Preminger-Institut v. Austria, (Application No: 13470/87), 20 September 1994, joint dissenting opinion of Judges Palm, Pekkanen and Makarczyk, para. 6.

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contrast, the majority opinion in Otto-Preminger-Institut v. Austria held that the purpose of the Austrian authorities when prohibiting the religiously offensive film Das Liebeskonzil 'was to protect the right of citizens not to be insulted in their religious feelings by the public expression of views of other persons.' The Court therefore accepted that the impugned measures pursued 'the protection of the rights of others' within the meaning of Article 10(2) ECHR.35

However, it appears that the disagreement in this debate is to a certain extent caused by negligence to properly distinguish between the following kinds of ‘offences’:36

- Speech offending religions as such;
- Offence caused to individual religious believers; and
- Offence caused to public order interests.

As has been shown before, the concept of ‘defamation of religions’ has to be rejected. However, the notion of offences to beliefs must be distin-

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36 For further information please refer to: Luis López Guerra, “Blasphemy and Religious Insult: Offenses to Religious Feelings or Attacks on Freedom”, p. 309. By contrast, please refer to: George Letsas, "Is There a Right not to Be Offended in One’s Religious Beliefs?", p. 242, who compares religious offence grounds with 'offending someone's football team'. Yet this comparison is inapt: The comparison should not be that someone's football team is offended ('Manchester United is ...'), but rather that an individual is offended, for example, as a fan of this football team ('Because you are a fan of Manchester United, you are ...'); there lies a significant difference.
guished from offence caused by speech to individual believers, that is, the second category of offences caused. The ‘right not to be offended in one’s religious feelings’ is not identical with the interest that one’s religion should not be offended. In order to analyse whether there is a ‘right not to be offended in one’s religious feelings’, it is necessary to ask at first whether there is a right not to be offended in the first place. Such a right exists only to the extent that the offence causes legally cognisable harm and not mere inconvenience on behalf of the recipient. Under human rights doctrine, this is the case if expression interferes with a person’s honour or reputation, which are protected together with the right to privacy by Article 17(1) ICCPR and under the umbrella term of ‘the right to respect for one’s private life’ under Article 8(1) ECHR. Under domestic law, the concepts of honour and reputation are usually protected by the torts of defamation and insult, and sometimes even classified as criminal offences. It is therefore more appropriate to speak of a ‘right not to be defamed or insulted’ rather than of a general ‘right not to be offended’. Following upon this, one has to inquire whether the notions of defamation and insult can be applied to religious sentiments. It appears that this is the case indeed: Together with privacy, honour and reputation are aspects of an individual’s personality. But this also applies to freedom of religion, and hence to one’s


religious sentiments and convictions as part of the *forum internum*. According to the ECtHR, freedom of thought, conscience and religion is ‘in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life’. Freedom of religion is thus to be conceptualised as one aspect of an individual’s personality rights. As a consequence, just as insulting speech may cause harm to a person’s honour and reputation, it may also cause harm to an individual’s religious sentiments, an act which the religious believer has a right to be protected against. Hence, similar to the ‘legitimate expectation of privacy’, an individual’s ‘legitimate expectation of respect for one’s religious sentiments’ has to be weighed against the freedom of expression on a case-by-case basis. This line of reasoning also refutes the argument that a right not to be insulted in one’s religious beliefs’ favours religious believers over atheists. It follows that an atheist of course also has a right not to be insulted or harassed, be it because of his or her atheistic conviction, or for any other reason.

Thus conceptualised, the scope of the ‘right not to be offended in one’s religious feelings’ is significantly limited. It is triggered only in cases in which one particular, identifiable individual is the target of another person’s menacing, harassing or insulting speech. This may include derogatory expressions about religious institutions or religious dogmas when expressed directly towards a religious person. For example, the way a religiously offensive cartoon is presented towards, or presented by reference to, a specific, individual believer may give rise to a claim of, for example, insult or defamation. However, in *Axel Springer AG v. Germany (No. 1)*,

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40 For further information please refer to: Niraj Nathwani, "Religious Cartoons and Human Rights - a Critical Legal Analysis of the Case Law of the European Court of Human Rights on the Protection of Religious Feelings and its Implications in the Danish Affair concerning Cartoons of the Prophet Muhammad", p. 497, who even speaks of a 'competition [of religious believers] against atheists'.

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the Strasbourg Court required that ‘an attack on a person’s reputation must attain a certain level of seriousness’ in order for Article 8 ECHR to come into play.\(^4\) The same must apply to the protection of one’s religious sentiments as another personality right: the offence caused to religious sentiments has to ‘attain a certain level of seriousness’. These are cases usually judged according to the law of defamation and insult, harassment, the protection of privacy, etc. Article 216(2) of the Turkish Penal Code orders punishment for a person who ‘openly humiliates another person just because he belongs to different social class, religion, race, sect, or comes from another origin’.\(^4\) This is a codification of the right not to be insulted, and thus serves to protect an individual’s personality rights. It is thus more appropriate not to speak of a ‘right not to be offended in one’s religious sentiments’ but rather of a ‘right not to be insulted for, or because of, one’s religious sentiments’. Yet even in those cases in which the right not to be insulted applies—be it with a view to one’s religious sentiments, or be it for any other reason—the conflicting interests must be balanced on a case-by-case basis following the principle of proportionality. Although freedom of religion, like freedom of expression, has no direct horizontal effect, those freedoms have to be taken into account by domestic courts when applying the law of defamation, privacy, harassment etc.\(^4\) In particular, the right not to be insulted for one’s religious feelings should not


serve to stifle criticism of church dignitaries or religious debates which are of considerable interest to the concerned religious community.44 High-ranking church officials are in their influence and public perception—at least within religious communities—comparable to politicians in general. Therefore, similar freedom of expression standards should apply to speech concerning religious figures.

Public Order Interests

Publications that insult religious sentiments might not only violate the interests of individual persons, but also of society as a whole. Such speech can have a harmful effect on social peace in general by generating or reinforcing hatred in the community, or leading to hateful attitudes, discrimination, suppression and exclusion of particular groups, and even physical violence.45 There are various international provisions and documents dealing with incitement to religious hatred. As was cited above, Article 20(2) ICCPR stipulates that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. Therefore, Article 20(2) requires positive state action to prohibit the acts enumerated in this provision. Other EU secondary laws provide public policy exceptions allowing restrictions on speech that include incitement to hatred, discrimination or violence, such as Articles 3, 6 and 9 of the Audiovisual Media Services Directive and Article 3 of the


Moreover, on domestic level, Article 216(3) of the Turkish Penal Code punishes open disrespect for the religious belief of a group only ‘if such act causes potential risk for public peace’. By comparison, Section 166 of the German Criminal Code penalises the public defamation of the religion or ideology of others, of a church or other religious or ideological association or their institutions or customs only if the defamation occurs ‘in a manner that is capable of disturbing the public peace’. These blasphemy laws do thus not protect religions as such but rather the public interest in preserving public order.

The Strasbourg Court usually justifies interferences with attacks on the underlying values of the European Convention—equality, anti-discrimination, tolerance, and democracy—, or even excludes such speech from the protection of Article 10 ECHR altogether by virtue of Article 17 ECHR. Such attacks may consist of expressions of racism, anti-Semitism, Holocaust negationism and Islamophobia. In contrast to the approach taken by the US Supreme Court, it is not necessary that the speech incites imminent lawless action; to the contrary, the ECtHR also allows for the harmful effect on social peace and political stability at large to justify an interference with freedom of expression. Similarly, the Human Rights Commit-


48 Translation provided by M. Bohlander/juris GmbH; emphasis added by the author.


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tee held that the notion of ‘others’ within the meaning of Article 19(3)(a) ICCPR may not only refer to other individual persons, but also to a community as a whole. For instance, in Faurisson v. France, the Committee held that restrictions may be permitted on statements which are liable to raise or strengthen anti-Semitic feeling.\textsuperscript{52} Similarly, in Ross v. Canada, the Human Rights Committee regarded an interference with a teacher’s freedom of expression after the teacher had published materials that expressed hostility towards persons of the Jewish faith as justified and supported by Article 20(2) ICCPR.\textsuperscript{53} Against this backdrop, there can exist a legitimate public interest in preserving peace and stability when suppressing speech that causes offence to religious sentiments. Moreover, public order interests may not only be invoked against religiously offensive speech, but also against religious extremism.\textsuperscript{54}

With regard to the individual believers who are only indirectly addressed by religiously offensive speech, it is therefore appropriate not to speak of a ‘right’ not to be offended in one’s religious sentiments, but rather of a legitimate ‘interest’ in the absence of such offence. To be specific, offended individuals are in such cases not violated in their (human) rights by the publication of religiously offensive speech; nevertheless, the state has to take their legitimate interests into account when considering an interference with such publications based on grounds within the meaning of Article 10(2) ECHR and Article 19(3) ICCPR. Presumably this is what the majority of the ECtHR’s Chamber in Otto-Preminger-Institut v. Austria intended when it spoke of the ‘rights of others’ in their decision. It is well-known that the Strasbourg Court has a rather generous understand-

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  \item \textsuperscript{52} Human Rights Committee, \textit{Faurisson v. France}, (Communication No: 550/1993), 8 November 1996 [9.6].
  \item \textsuperscript{53} Human Rights Committee, \textit{Ross v. Canada}, (Communication No: 736/1997), 18 October 2000 [11.5-11.6].
  \item \textsuperscript{54} For further information please refer to: ECtHR, \textit{Refah Partisi (the Welfare Party) and Others v. Turkey}, (Application Nos: 41340/98, 41342/98, 41343/98 and 41344/98), 13 February 2003, para. 67 and 95; \textit{mutatis mutandis}, ECtHR, \textit{Gündüz v. Turkey}, (Application No: 35071/97), 4 December 2003.
\end{itemize}
ing of the notion of ‘rights of others’, a concept which is not necessarily identical with that of subjective, individual rights such as those defined in the ECHR.\textsuperscript{55}

**Striking a Balance between Freedom of Expression and the Interest of Public Order**

‘Balancing’ conflicting rights and interests aims at avoiding, to the fullest extent possible, sacrificing one right for the other. It seeks an optimising compromise between conflicting or ‘colliding’ principles. Rather than one interest necessarily preceding the other, as is the case with rules, principles—such as human rights and the interest in maintaining public order—are norms requiring the greatest possible realisation.\textsuperscript{56} This also applies to freedom of expression. Both freedom of expression and the principle conflicting with it should be realised to an optimal extent. This requires considering the value attached to the exercise of freedom of expression, on the one hand, and the gravity of the interference in pursuit of the conflicting interest, on the other. As a consequence, a ‘balancing exercise’ is not a binary procedure. It is a consideration of alternatives that achieve only part of the aim, but also interfere only partly with the protected right. It requires comparing the marginal benefit to the protected interest with the marginal damage inflicted upon the right that has been interfered with.\textsuperscript{57}

\textsuperscript{55} For further information please refer to: ECtHR, *McGuinness v. United Kingdom*, (Application No: 39511/98), 8 June 1999: “constitutional principles which underpin a democracy”, here: the requirement for elected representatives in a state based on a monarchical model of government to take an oath of allegiance to the monarch; ECtHR, *Animal Defenders International v. United Kingdom*, (Application No: 48876/08), 22 April 2013, para. 78: “the aim of preserving the impartiality of broadcasting on public interest matters and, thereby, of protecting the democratic process”.


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Factors to be Considered with Regard to the Impugned Statement

Following from free speech theory and ECtHR jurisprudence, the factors a court ought to consider when imposing or reviewing restrictions on religiously offensive speech are the following:

i. The extent to which the impugned statement contributes to a matter of public concern;

ii. Whether the publication reflects the speaker’s own opinion, or whether it is a third-party statement;

iii. Whether less offensive means to get the message across were available;

iv. The likeliness that the speech will cause unlawful action;

v. The veracity of the underlying facts; and

v. The context in which the speech was made.

Publications on matters of public concern are of utmost importance for any democratic society, and thus deserve strong protection. For further information please refer to: ECtHR, Lingens v. Austria, (Application No: 9815/82), 8 July 1986; Oberschlick v. Austria (No. 1), (Application No: 11662/85), 23 May 1991, para. 59; ECtHR, Castells v. Spain, (Application No: 11798/85), 23 April 1992, para. 46; ECtHR, Flux v. Moldova (No. 1), (Application No: 28702/03), 20 November 2007, para. 32.

public discourse does not stop at the gates of religious or moral claims; instead, such claims themselves must be subject to public discourse. One of the most effective ways to challenge such claims is to violate them. The intention of a publisher to open up or to contribute to a debate on existing religious claims must therefore be taken into account when a balance is sought between freedom of expression and the legitimate protection of religious feelings.

As an example, in *Giniewski v. France* the impugned article challenged a number of principles of the Catholic faith. The Strasbourg Court acknowledged that the article was part of a view which the applicant wished to express as a journalist and historian on the possible reasons behind the extermination of the Jews in Europe, and thus on a matter of great public interest in a democratic society. Furthermore, the Court emphasised that the applicant’s article was not gratuitously offensive or insulting, and did not incite disrespect or hatred. The Court thus held that an order against the defendant to pay damages to the complainant association—the General Alliance against Racism and for Respect for the French and Christian Identity (*Alliance générale contre le racisme et pour le respect de l'identité française et chrétienne* (AGRIF))—and, in particular, to publish a notice of the ruling in a national newspaper at his own expense, violated Article 10 ECHR.

**ii.** The question of whether the publication reflects the speaker’s own opinion, or whether it is a third-party statement, is of particular relevance for the journalistic media and for internet platforms hosting readers’ comments. In the seminal ECtHR decision *Jersild v. Denmark*, the ECtHR

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62 ECtHR, *Giniewski v. France*, (Application No: 64016/00), 31 January 2006, para. 52; on this factor in the balancing exercise see further below.
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drew a distinction between the hostile statements of the interviewees—a group of young people calling themselves ‘the Greenjackets’—and the alleged violation of the law by the journalist conducting and broadcasting the interviews. The Court observed that news reporting based on interviews constitutes one of the most important means whereby the media is able to play its vital role of ‘public watchdog’. Therefore, “the punishment of a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so.”  

By contrast, the Strasbourg Court did not sufficiently consider the fact that the impugned statement was not the publisher’s own in I.A. v. Turkey. In this case the Court upheld a fine against the proprietor and managing director of a publishing house which had published a novel conveying the author’s views on philosophical and theological issues in a novelistic style.

If offensive speech is disseminated via an internet platform, such as social media networks, the liability of the internet service provider depends on the principle of ‘innocent dissemination’. This defence implies that no one may be liable for content that they merely distribute, but of which they are not the author, which they do not themselves adopt and of which they do not have knowledge, provided that the absence of knowledge was not due to any negligence on their part. This principle is codified, for example, in Articles 12-15 e-commerce Directive. Any sweeping liability


65 For further information please refer to: Jan Oster, “Communication, defamation and liability of intermediaries”, Legal Studies, Vol. 35, No. 2, 2015, pp. 348-368. Although the article related to the law of defamation, its basic ideas can be transferred to other areas of dissemination of third-party speech.
of internet service providers for religiously offensive third-party content disseminated using their services is therefore disproportionate. This would apply, for example, to the announcement of the Ankara court to shut down Facebook pages hosting cartoons of the Prophet Muhammad.

iii. The particular methods employed in opposing or denying religious beliefs may also be crucial factors for the balancing exercise enacted between interests of a peaceful enjoyment of religious beliefs and the right to freedom of expression. To be sure, the speaker enjoys considerable discretion when choosing the means to disseminate his or her statement. As stated before, the freedom to use the medium of one’s choice covers the various forms of the arts, such as satire and caricature. Moreover, freedom of expression is also applicable to information or ideas that shock, offend or disturb. However, Article 10(2) ECHR attaches ‘duties and responsibilities’ to the exercise of this freedom. This includes a duty to avoid, as far as possible, an expression that is ‘gratuitously offensive to others or profane.’ Acceptable satirical comment seeks to make a critical contribution to an issue of general concern rather than insulting the other person, and the humorous character must be cognisable for the average reader.

But if speech is targeted at insulting other people’s religious beliefs or sacred symbols rather than contributing to a debate of general interest, then there is no reason to grant more protection to such speech than to the public order interest in prohibiting religiously offensive speech. This line can, of course, be difficult to draw: expressions may be meant to give social criticism but at the same time hurt religious sentiments to such an extent that the intention to injure is undeniable. At the same time, the public interest in preserving social peace in religious matters is not absolute in nature. As the ECHR stated:


67 For further information please refer to: ECtHR, Nikowitz and Verlagsgruppe News GmbH v. Austria, (Application No: 5266/03), 22 February 2007, para. 25.
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"Those who choose to exercise the freedom to manifest their religion, irrespective of whether they do so as members of a religious majority or a minority, cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith". 68

For example, in Norwood v United Kingdom, the Court applied Article 17 ECHR to an alleged attack directed at the Muslim community. The applicant in this case, a regional organiser for the British National Party (BNP), was convicted for having displayed a large poster of the BNP in the window of his first-floor flat, with the poster including a photograph of the Twin Towers in flames, the words ‘Islam out of Britain – Protect the British People’ and a prohibition sign stamped over the symbol of a crescent and star. The ECtHR agreed with the domestic courts’ assessment that the poster was a public attack on all Muslims in the United Kingdom, linking the religious group with an act of terrorism. Such an attack, the Court held, ‘is incompatible with the values proclaimed and guaranteed by the Convention, notably tolerance, social peace and non-discrimination’. 69

Similarly, in Pavel Ivanov v Russia, the Court decided that the applicant could not invoke Article 10 ECHR because of Article 17 ECHR. The applicant called for the exclusion of Jews from social life, asserted that there is a connection between social, economic and political discomfort and the activities of Jews, and described the alleged malignancy of the Jewish ethnic group. The Court found that these publications were aimed at inciting hatred towards the Jewish people and were therefore in contradiction with the Convention’s underlying values of tolerance, social peace and non-discrimination. 70

Moreover, in I.A. v Turkey, the Court held that Muslim believers legitimately felt to be the object of offensive attacks through the following passages of a novel published by the applicant: “Some of these words

69 ECtHR, Norwood v United Kingdom, (Application No: 23131/03), 16 November 2004, p. 4.
70 ECtHR, Pavel Ivanov v Russia, (Application No: 35222/04), 20 February 2007, p. 4.
were, moreover, inspired in a surge of exultation, in Aisha’s arms. [...] God’s messenger broke his fast through sexual intercourse, after dinner and before prayer. Muhammad did not forbid sexual intercourse with a dead person or a live animal.” Yet this decision has been subject to criticism, even from three judges within the Court’s section itself. This demonstrates how difficult it is to draw the fine line between merely ‘shocking’ or ‘disturbing’ statements, on the one hand, and ‘gratuitously offensive’ publications, on the other. Much of this difficulty is owed to the margin of appreciation granted by the Strasbourg Court to the Convention States’ authorities where religiously offensive speech is concerned.

By contrast, in the case *Aydin Tatlay v. Turkey*, the Court conceded that Muslims could feel offended by a ‘somewhat caustic commentary on their religion’ in a book that included comments critical of the Qur’an. Yet, since the book had been reprinted for the fifth time after the Turkish authorities had authorised the first four editions, the Court decided that the decision to prosecute the fifth edition of the book showed a lack consistency in the attitude of the Turkish authorities. Moreover, the Court observed neither an insulting tone aimed directly at believers, nor an injurious attack against sacred symbols. Furthermore, in *Klein v. Slovakia*, where the applicant journalist had been convicted for publishing an article criticising an archbishop for his call during a TV broadcast for the withdrawal of both the film *The People vs. Larry Flint* and the poster accompanying said film the ECtHR found that the conviction violated Article 10 ECHR, because the article “neither unduly interfered with the right of believers to express

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73 See infra.

74 ECtHR, Aydin Tatlay v. Turkey, (Application No: 50692/99), 2 May 2006, para. 28 (original in French).
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and exercise their religion, nor did it denigrate the content of their religious faith.” The Strasbourg Court held that the strongly worded opinion only concerned the archbishop, but did not denigrate the content of the Catholic faith as such, although some members of the Catholic Church could have been offended by the applicant’s criticism.75

iv. Speech that is likely to cause unlawful action may be restricted. The decisive question is: To what extent are dangers tolerated as a price to be paid for freedom of expression?76 This requires a balancing exercise between suppression of speech that would, if allowed, be harmless, and speech that, if allowed, causes unlawful action.77 The degree of potential harm to be caused is of decisive importance: the more serious the effect, the lower likelihood that harm actually materialises is required for calling in restriction of the speech.

In this context, one must distinguish between statements intended to incite or produce lawless action, and statements that may cause lawless action carried out by others who feel provoked by the statement. Statements devoted to inciting lawless actions, such as attacks against a particular religious group, are inconsistent with the principles of rational discourse, which necessitates that the force of the better argument should be the only force.78 Therefore, prevention of, and punishment for, such speech is usually justified. Such cases need to be distinguished from those concerning statements that lead to lawless action by others who feel provoked by the statement. As a general principle, speech must not be subject to the ‘Heckler’s veto’. However, speech may, under very narrow circumstances, be prevented if there is a serious and credible threat that criminal acts will be

75 ECtHR, Klein v. Slovakia, (Application No: 72208/01), 31 October 2006, para. 52.
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committed in the case that the statement is made public and the state is not able to prevent those acts. Under such circumstances, public authorities are under two obligations: first, to secure public safety and, second, to bring the perpetrators to justice. Yet the exact details on the application of the ‘Heckler’s veto’ are subject to controversy in both academic literature and case-law.79

v. If a religiously offensive statement is based on facts then the speaker has a responsibility to ensure, to the broadest extent possible, the veracity of those facts. Journalistic media in particular is under an obligation to ascertain whether or not allegations are true by obtaining further information, which includes a reasonable amount of research before publication.80 However, even the mass media is under no obligation to ensure the absolute accuracy of its reportage. The media is entitled to rely on the contents of official reports81 or investigations by professionals specialised in a certain area82 without having to undertake independent research.

vi. Moreover, a court also has to consider the social and historical context of the publication concerned. For example, in Gündüz v. Turkey, the

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80 For further information please refer to: ECtHR, Prager and Oberschlick v. Austria, (Application No: 15974/90), 26 April 1995, para. 37; ECtHR, Europapress Holding d.o.o. v. Croatia, (Application No: 25333/06), 22 October 2009, para. 68.


82 ECtHR, Ungváry and Irodalom Kft v. Hungary, (Application No: 64520/10), 3 December 2013, para. 75.
applicant uttered offensive statements about secularism in Turkey using pejorative terms in a live broadcast debate. The Court recognised that the applicant was taking an active part in a ‘lively public discussion’, his statements were counterbalanced by other participants in the discussion, and his views were expressed as part of a pluralist debate. The Court observed that “the applicant’s statements were made orally during a live television broadcast, so that he had no possibility of reformulating, refining or retracting them before they were made public.”

Where historical debates are concerned, the lapse of time between the historical event and the publication plays a significant role. Even if impugned remarks may reopen a controversy among the public, the passage of time must be taken into account in assessing whether or not a measure is compatible with freedom of expression: “That forms part of the efforts that every country must make to debate its own history openly and dispassionately.”

Factors to be Considered with Regard to the Interference

The factors a court must consider with regard to the restricting act are the following:

i. The principle of legality;

ii. The principle of legitimacy;

iii. The necessity of the interference;

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83 ECtHR, Gündüz v. Turkey, (Application No: 35071/97), 4 December 2003, para. 51.

84 ECtHR, Gündüz v. Turkey, (Application No: 35071/97), 4 December 2003, para. 49.


iv. The proportionality of the penalty imposed; and

v. That the measure must not be discriminatory.

i. The principle of legality, the textual reference to which is the words ‘prescribed/provided by law’ in Article 10(2) ECHR and Article 19(3) ICCPR, requires that: the law on which the interference has been based must be both adequately accessible and foreseeable; it must provide legal protection against arbitrary interferences by public authorities; and it must either be enshrined in a statute or another legally binding document, or it can be judge-made law.87 Criminal laws in particular must satisfy the principle of strict legality, *nullum crimen, nulla poena sine lege*, according to Article 7 ECHR and Article 15(1) ICCPR. Therefore, offences such as ‘disrespecting religious belief’, ‘encouragement of terrorism’88 and ‘extremist activity’89, as well as offences of ‘praising’, ‘glorifying’, or ‘justifying’ terrorism, must be clearly defined in order to ensure that they fulfil the requirement of being ‘prescribed by law’ or ‘provided by law’.

ii. The interference with religiously offensive speech must pursue a legitimate aim, that is, one of the aims mentioned in Article 10(2) ECHR and Article 19(3) ICCPR. States must specify the exact nature of the threat that the exercise of freedom of expression allegedly poses to the protected interests.90 Even the legitimate objectives of national security or public order

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may not justify attempts “to muzzle advocacy of multi-party democracy, democratic tenets and human rights”. 91

iii. The interference must be ‘necessary’, that is, there must have existed no less restrictive means which would have been equally effective. This becomes relevant, for example, where public authorities impose a complete ban on religiously offensive books or films. 92 A less restrictive, but equally effective means might be the requirement of a warning sign that particular audiences might regard a film or a book as offensive, and should be discouraged from watching the film or buying the book. The complete ban may thus be unwarranted.

iv. The gravity of the penalty must be proportionate to the harm inflicted by the impugned statement. Criminal penalties, as provided by, for example, Article 216 of the Turkish Penal Law Code, must be applied with the utmost reservation, even if the imposed fine is comparatively low. 93 The mere threat of criminal penalties can have a dissuasive effect on anyone intending to contribute to a matter of general interest, but who must then consider the risk of criminal liability. 94 As a consequence, the fact that the applicant in I.A. v. Turkey had to pay a total fine equivalent to only 16 US$ does not render the fine as such proportionate. 95 Moreover, mere ad-

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95 See, however, the very short analysis of the Strasbourg Court in ECtHR, I.A. v. Turkey, (Application No: 42571/98), 13 September 2005, para. 32.
ministrative measures or civil law sanctions are to be preferred to measures of a criminal law nature. In addition, the imposition of prison sentences does not only have to be measured against freedom of expression, but also against the prohibition of deprivation of liberty (Article 5 ECHR, Article 9 ICCPR).

v. The interference with religiously offensive speech must not only comply with Article 10 ECHR and Article 19 ICCPR, but also with the requirements of the other articles of the Convention and the Covenant. This includes the prohibition of discrimination according to Article 14 ECHR, Protocol No. 12 to the ECHR and Article 26 ICCPR. Accordingly, states bear the duty of neutrality and impartiality regarding the legitimacy of religious beliefs.96 Courts should apply the same level of protection against speech offending religious minorities as to speech offending the majority of a population. Hence it would be impermissible for any such laws to grant stronger protection in favour of one or certain religions or belief systems.97 This was the case, for example, under the former common law on blasphemy in England and Wales, which prohibited only blasphemy against Christianity, and not that against other religious faiths.98

Review by the Strasbourg Court and the Margin of Appreciation

An analysis of religiously offensive speech and freedom of expression would be incomplete without a critical commentary on the ‘margin of appreciation’ granted by the Strasbourg Court to domestic authorities in such cases.


A uniform global, or even regional, conception of the significance of religion in society does not exist. Hence, it is not possible to define in abstract terms what constitutes a permissible interference with freedom of expression where a statement injures the religious feelings of others. What is likely to offend persons of a particular religious conviction varies significantly from time to time and from place to place. In addition, a standard for the definition of legitimate religious sentiments is difficult to establish: are the relevant norms those of a dominant group in society (assimilationism), of one of many groups (pluralism), or even of single individuals (individualism)? Although assimilationism recommends itself from a democratic perspective, it would support the norms of a dominant culture, and thus suppress ‘otherness’. It could eventually lead to Adams’ and Mill’s ‘tyranny of the majority’ and the ‘tyranny of the prevailing opinion and feeling’. On the other hand, pluralism and individualism would safeguard the diversity of cultures, but would in turn allow minorities to impose their values on the majority, a circumstance which might eventually lead to an overstretched ‘political correctness’ to the detriment of public discourse on religious principles.


100 For further information please refer to: ECtHR, Wingrove v. United Kingdom, (Application No: 17419/90), 25 November 1996, para. 58; ECtHR, Murphy v. Ireland, (Application No: 44179/98), 10 July 2003, para. 67.


103 Compare Jan Oster, Media Freedom as a Fundamental Right, p. 214.
a rather broad margin of appreciation where interferences with religiously offensive speech are concerned. In its case-law thus far, the Strasbourg Court has accepted assimilationist approaches; in cases of religiously offensive speech, the Court has mostly decided in favour of the majoritarian religious feelings in a certain country or region.\textsuperscript{104}

The decisive factor for the intensity of the scrutiny, or, conversely, for the breadth of the margin of appreciation, is whether and to what extent either a factual or a normative knowledge-related deficit of the adjudicator is involved. The protection of religious sentiments often implies a normative deficit, because the invoked interest in question lacks consensus amongst the Convention states as "it is not possible to discern throughout Europe a uniform conception of the significance of religion in society."\textsuperscript{105} However, in these cases the epistemic deficit is usually only normative and not factual, as opposed to, for example, cases involving the protection of national security and/or public safety. Courts must therefore strictly scrutinise whether the measure was both suitable and necessary to achieve the aim, while allowing for a margin of appreciation with regard to the proportionality \textit{sensu stricto}.\textsuperscript{106}

This is why the Strasbourg Court's \textit{locus classicus} decision \textit{Otto-Preminger-Institut v. Austria} must be criticised. In \textit{Otto-Preminger-Institut v. Austria}, the Strasbourg Court held that the Austrian courts did not over-


\textsuperscript{106} For further information please refer to: Jan Oster, \textit{Media Freedom as a Fundamental Right}, p. 119.
step their margin of appreciation when they ordered the seizure and subsequently the forfeiture of the film Das Liebeskonzil. The domestic courts acted to ensure religious peace in a particular Austrian region (Tyrol) and prevent people from feeling that they are the object of attacks on their religious beliefs in an unwarranted and offensive manner. “It is”, the Strasbourg Court stated, “in the first place for the national authorities, who are better placed than the international judge, to assess the need for such a measure in the light of the situation obtaining locally at a given time.”

Yet the knowledge-based deficit which allowed the granting of a margin of appreciation to the Austrian authorities was only normative, not factual. It is true that they were in a better position to estimate the importance of religious sentiments in the Austrian region of Tyrol. However, they were not in a better position to decide upon the ‘necessity’ of interference with freedom of expression. Therefore, they should not have been granted a ‘means-selecting’ margin of appreciation. A margin of appreciation for the entire assessment of ‘the need for such a measure’ went too far. The Strasbourg Court should have examined in more detail whether it was actually ‘necessary’ to seize and forfeit the film, which was arguably targeted at a rather small audience anyway. A less intrusive measure would have been, for example, to oblige cinemas to warn potential viewers that Roman Catholics might find the said film offensive.

Similar considerations apply to a margin of appreciation granted for the imposition of a ban on a book or a video film, as was the case in Wingrove v. United Kingdom and İ.A. v. Turkey. It is the Court’s duty to decide whether such measures are actually ‘necessary’ or whether a less intrusive means, such as an obligation to indicate that buyers might find the book or the film offensive, would stand as sufficient. As the joint dissenting opinion in İ.A. v. Turkey succinctly expressed: ‘nobody is ever obliged to buy or read a novel.’

107 ECtHR, Otto-Preminger-Institut v. Austria, (Application No: 13470/87), 20 September 1994, para. 56.

108 ECtHR, İ.A. v. Turkey, (Application No: 42571/98), 13 September 2005, Joint Dissenting Opinion of Judges Costa, Cabral Barreto and Jungwiert, para. 5; by
Conclusion

This article has dealt with the legal aspects of religiously offensive speech. It has shown that one needs to distinguish between the concepts of offence caused to religions, offence caused to individual religious believers, and offence caused to public order interests. While the notion of offence caused to religions should not be accepted as a legal concept, the right of individuals not to be offended in their religious beliefs is a mere sub-category of the right not to be offended in one’s personality rights. Arguably the most important concept that can be used to justify interferences with religiously offensive speech is the public interest in preserving public peace and social cohesion in a democratic, pluralist society. Yet, even such public order interests do not per se justify interferences with religiously offensive speech. Instead, such interferences must be examined on a case-by-case basis, through applying the principle of proportionality. This article should provide guidance for such a legal balancing exercise.

However, this article has not dealt with the social reality of religiously offensive speech. Nevertheless, it should conclude with some remarks on this aspect. The culture and society we live in cannot, and should not, be fully determined and detailed by the law. Even if a particular standpoint on religion—be it a religiously extremist point of view, be it a denying point of view—is protected by freedom of expression, it should not be necessary that it is propagated in such a way that others take offence. In short, not everything that may be said about religion must be said. It is particularly worrying to observe the clash between self-declared anti-religious persons, on the one hand, and religious extremists, on the other, with both claiming the last word on the significance that religion should hold in a society. This conflict cannot be solved by the law; it should be carried out in an open, free and argumentative public discourse, for which the law can only provide the framework. ☺

BIBLIOGRAPHY


Meiklejohn, Alexander, “The First Amendment is an Absolute”, *Supreme Court Review*, 1961.


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