

Provisional edition

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

Recommendation 1805 (2007)¹

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

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

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

4. With regard to blasphemy, religious insults and hate speech against persons on the grounds of their religion, the state is responsible for determining what should count as criminal offences within the limits imposed by the case-law of the European Court of Human Rights. In this connection, the Assembly considers that blasphemy, as an insult to a religion, should not be deemed a criminal offence. A distinction should be made between matters relating to moral conscience and those relating to what is lawful, matters which belong to the public domain, and those which belong to the private sphere. Even though today prosecutions in this respect are rare in member states, they are legion in other countries of the world.

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

¹ *Assembly debate* on 29 June 2007 (27th Sitting) (see Doc. 11296, report of the Committee on Culture, Science and Education, rapporteur: Mrs Hurskainen, Doc. 11319, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Bartumeu Cassany, and Doc. 11322, opinion of the Committee on Equal Opportunities for Women and Men, rapporteur: Mr Dupraz). *Text adopted by the Assembly* on 29 June 2007 (27th Sitting).

6. Recalling its Recommendation 1720 (2005) on education and religion, the Assembly emphasises the need for greater understanding and tolerance among individuals of different religions. Where people with different religions know more about the religion and religious sensitivities of each other, religious insults are less likely to occur out of ignorance.
7. In this context, the Assembly welcomes the initiative of the United Nations to set up a new body under the theme “Alliance of Civilisations” to study and support contacts between Muslim and so-called Western societies, but feels that such an initiative should be enlarged to other religions and non-religious groups.
8. The Assembly recalls the relevant case-law on freedom of expression under Article 10 of the European Convention on Human Rights developed by the European Court of Human Rights. Whereas there is little scope for restrictions on political speech or on the debate of questions of public interest, the Court accepts a wider margin of appreciation on the part of contracting states when regulating freedom of expression in relation to matters liable to offend intimate personal convictions within the sphere of morals or, especially, religion.
9. However, the Assembly stresses that this margin of appreciation is not unlimited and that any restrictions on the freedom of expression must comply with the case-law of the European Court of Human Rights. Freedom of expression – guaranteed under Article 10 of the European Convention on Human Rights – is of vital importance for any democratic society. In accordance with the Statute of the Council of Europe, common recognition of democratic values is the basis for membership of the Council of Europe.
10. The Assembly is aware that, in the past, national law and practice concerning blasphemy and other religious offences often reflected the dominant position of particular religions in individual states. In view of the greater diversity of religious beliefs in Europe and the democratic principle of the separation of state and religion, blasphemy laws should be reviewed by member states and parliaments.
11. The Assembly notes that under the International Convention on the Elimination of All Forms of Racial Discrimination, signatory parties are obliged to condemn discrimination and take effective measures against it. All member states signatory to this convention must ensure that members of a particular religion are neither privileged nor disadvantaged under blasphemy laws and related offences.
12. The Assembly reaffirms that hate speech against persons, whether on religious grounds or otherwise, should be penalised by law in accordance with the General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination produced by the European Commission against Racism and Intolerance. For speech to qualify as hate speech in this sense, it is necessary that it is directed against a person or a specific group of persons. National law should penalise statements that call for a person or a group of persons to be subjected to hatred, discrimination or violence on grounds of their religion.
13. The Assembly emphasises that freedom of religion as protected by Article 9 of the European Convention on Human Rights also protects religions in their establishing values for their followers. While religions are free to penalise in a religious sense any religious offences, such penalties must not threaten the life, physical integrity, liberty or property of an individual or women’s civil and human rights. In this context, the Assembly recalls its Resolution 1535 (2007) on threats to the lives and freedom of expression of journalists and strongly condemns the death threats issued by Muslim leaders against journalists and writers. Member states have the obligation to protect individuals against religious penalties which threaten the right to life and the right to liberty and security of a person under Articles 2 and 5 of the European Convention on Human Rights. No state has the right to impose itself such penalties for religious offences, either.
14. The Assembly notes that member states have the obligation under Article 9 of the European Convention on Human Rights to protect freedom of religion including the freedom to manifest one’s religion. This requires protection against disturbances by others of such manifestation. However, these rights may sometimes be subject to certain justified limitations. The challenge facing the authorities is how to strike a fair balance between the interests of individuals as members of a religious community in ensuring respect for their right to manifest their religion or their right to education, and the general public interest or the rights and interests of others.

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

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

17. The Assembly recommends that the Committee of Ministers:

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

17.2. ensure that national law and practice:

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

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

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

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

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

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

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

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

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

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

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

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