Venice Commission: Blasphemy, Religious Insult and Incitement to Religious Hatred

In October 2008, the European Commission for Democracy through Law (the Venice Commission) issued a 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.

The Report was adopted by way of follow-up to the Parliamentary Assembly of the Council of Europe’s (PACE) Resolution 1510 (2006) entitled “Freedom of expression and respect for religious beliefs” (see IRIS 2006-8: 3). Shortly after adopting Resolution 1510, the PACE requested that the Venice Commission “prepare an overview of national law and practice concerning blasphemy and related offences with a religious aspect in Europe”.

The Report begins with a brief account of its own history, before providing a summary overview of international standards applicable to its key focuses. It then marks trends in the Council of Europe Member States’ national criminal legislation on blasphemy, religious insults and inciting religious hatred (detailed legislative provisions are catalogued in supplementary documents). In that context, it emerges that the following specific offences are recognised in national legislation: the disturbance of religious practice, blasphemy, religious insult, negationism, discrimination (including on religious grounds) and incitement to hatred.

In the section entitled, “General Remarks”, the Report seeks to address three main questions:

- 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?

Answers to those questions are provided in the Report’s Conclusions. As regards the first question, the Commission finds that incitement to hatred, including religious hatred, is properly the object of criminal sanctions in almost all European States. It finds that “it is neither necessary nor desirable to create an offence of religious insult (that is, insult to religious feelings) simpliciter, without the element of incitement to hatred as an essential component”. It finds that the offence of blasphemy should be abolished and not be reintroduced.

As to the second question, the Commission takes the view that “criminal sanctions are only appropriate in respect of incitement to hatred (unless public order offences are appropriate)” and that “criminal sanctions are inappropriate in respect of insult to religious feelings and, even more so, in respect of blasphemy”.

In answering the third question, the Commission refers to a “new ethic of responsible intercultural relations in Europe and in the rest of the world” and values such as tolerance, diversity, mutual understanding and open debate. It points to the relevance of dialogue, education and relevant PACE Recommendations and those of the European Commission against Racism and Intolerance (ECRI) for the promotion of such values.

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