Parliamentary **Assembly**
Assemblée parlementaire

Freedom of expression and respect for religious beliefs

Report
Committee on Culture, Science and Education
Rapporteur: Mrs Sinikka Hurskainen, Finland, Socialist Group

Summary

The Assembly aims at contributing to the current discussions on freedom of expression and respect for religious beliefs in modern Europe. The central issue is whether freedom of expression should be reduced in order to meet increasing sensitivities of certain religious groups. The position taken in this report is that it should not.

Parliaments, religious communities in Europe and journalists and their professional organisations are encouraged to discuss freedom of expression and respect for religious beliefs in their respective contexts.

After taking stock of the different approaches in Europe, the Assembly will revert to this issue on the basis of a report on legislation relating to blasphemy, religious insults and hate speech against persons on grounds of their religion.

_____

A.   Draft Resolution

1.   The Parliamentary Assembly of the Council of Europe reaffirms that there cannot be a democratic society without the fundamental right to freedom of expression. The progress of society and the development of every individual depend on the possibility of receiving and imparting information and ideas. This freedom 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, in accordance with Article 10 of the European Convention on Human Rights.

2.   Freedom of thought, conscience and religion constitutes a necessary requirement for a democratic society and one of the essential freedoms of individuals for determining their perception of human life and society. Conscience and religion are a basic component of human culture. In this sense, they are protected under Article 9 of the European Convention on Human Rights.

3.   Freedom of thought and freedom of expression in a democratic society must, however, permit open debate on matters relating to religion and beliefs. The Assembly recalls in this regard its Recommendation 1396 (1999) on religion and democracy. Modern democratic societies are made up of individuals of different creeds and beliefs. Attacks on individuals on grounds of their religion or race cannot be permitted but blasphemy laws should not be used to curtail freedom of expression and thought.

4.   The Assembly emphasises the cultural and religious diversity of its member states. Christians, Muslims, Jews and members of many other religions are at home in Europe as well as those without any religion. Religions have contributed to the spiritual and moral values, ideals and principles which form the common heritage of Europe. In this respect, the Assembly stresses Article 1 of the Statute of the Council of Europe which stipulates that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage.

5.   The Assembly underlines its commitment to ensuring that cultural diversity becomes a source of mutual enrichment, not of tension, through a true and open dialogue among cultures on the basis of mutual understanding and respect. The overall aim should be to preserve diversity in open and inclusive societies based on human rights, democracy and the rule of law, by fostering communication and improving the skills and knowledge necessary for living together peacefully and constructively within European societies, between European countries and between Europe and neighbouring regions.

6.   Reactions to images perceived as negative, transmitted through books, films, cartoons, paintings and the Internet, have recently caused widespread debates about whether – and to what extent - respect for religious beliefs should limit freedom of expression. Questions have also been raised on the issues of media responsibility, self-regulation and self-censorship.

7.   Blasphemy has a long history. The Assembly recalls that laws punishing blasphemy and criticism of religious practices and dogmas have often had a negative impact on scientific and social progress. The situation started changing with the enlightenment and progressed further towards secularisation. Modern democratic societies tend to be secular and more concerned with individual freedoms. The recent debate about the Danish cartoons raised the question of these two perceptions.

8.   In a democratic society, religious communities are allowed to defend themselves against criticism or ridicule in accordance with human rights legislation and norms. States should support information and education about religion so as to develop better awareness of religions as well as a critical mind in its citizens in accordance with Assembly Recommendation 1720 (2005) on education and religion. States should also develop and vigorously implement sound strategies to combat religious discrimination and intolerance.

9.   The Assembly also recalls that the culture of critical dispute and artistic freedom has a long tradition in Europe and is considered as positive and even necessary for individual and social progress. Only totalitarian systems of power fear them. Critical dispute, satire, humour and artistic expression should, therefore, enjoy a wider degree of freedom of expression and recourse to exaggeration should not be seen as provocation.

10.   Human rights and fundamental freedoms are universally recognised, in particular under the Universal Declaration of Human Rights and International Covenants of the United Nations. The application of these rights is not, however, universally coherent. The Assembly should fight against any lowering of these standards. The Assembly welcomes the United Nations Secretary-General's initiative on an alliance of civilisations which aims to mobilise concerted action at the institutional and civil society levels to overcome prejudice, misperceptions and polarisation. A true dialogue can only occur when there is genuine respect for and understanding of other cultures and societies. Values such as respect for human rights, democracy, rule of law and accountability are the product of mankind's collective wisdom, conscience and progress. The task is to identify the roots of these values within different cultures.

11.   Whenever it is necessary to balance human rights which are in conflict with each other in a particular case, national courts and national legislators have a margin of appreciation. In this regard, the European Court of Human Rights has held that, whereas there is little scope for restrictions on political speech or on the debate of questions of public interest, a wider margin of appreciation is generally available when regulating freedom of expression in relation to matters liable to offend intimate personal moral convictions or religion. What is likely to cause substantial offence to persons of a particular religious persuasion will vary significantly from time to time and from place to place.

12.   The Assembly is of the opinion that freedom of expression as protected under Article 10 the European Convention on Human Rights should not be further restricted to meet increasing sensitivities of certain religious groups.

13.   The Assembly calls on parliaments in member states to hold debates on freedom of expression and the respect for religious beliefs, and on members to report back to the Assembly about the results of these debates.

14.   The Assembly encourages religious communities in Europe to discuss freedom of expression and respect for religious beliefs within their own community and to pursue a dialogue with other religious communities in order to develop a common understanding and a code of conduct for religious tolerance which is necessary in a democratic society.

15.   The Assembly also invites media professionals and their professional organisations to discuss media ethics with regard to religious beliefs and sensitivities. The Assembly encourages the creation of press complaints bodies, media ombudspersons or other self-regulatory bodies, where such bodies do not yet exist, which should discuss possible remedies for offences to religious persuasions.

16.   The Assembly encourages intercultural and interreligious dialogue based on universal human rights, involving – on the basis of equality and mutual respect – civil society, as well as the media, with a view to promoting tolerance, trust and mutual understanding which are vital for building coherent societies and strengthening international peace and security.

17.   The Assembly resolves to revert to this issue on the basis of a report on legislation relating to blasphemy, religious insults and hate speech against persons on grounds of their religion, after taking stock of the different approaches in Europe, including the application of the European Convention on Human Rights.

B.   Explanatory memorandum by Mrs Hurskainen

I.   Introduction

1.   When I tabled a Motion for a Resolution on blasphemy, religious insults and hate speech against persons on grounds of their religion in June 2005, this subject had not yet become a nearly global controversy over freedom of expression and respect for religious believes. This changed when cartoons about Mohammed were published in the Danish newspaper Jyllands-Posten, were reprinted in other newspapers, were used by political and religious leaders for political gains, and when Muslims around the world voiced deep consternation.

2.   The Assembly held a current affairs debate on freedom of expression and respect for religious beliefs at its Standing Committee on 17 March 2006, and decided to have another debate on the subject at the June part session.

3.   For the preparation of this report, the Committee on Culture, Science and Education held a hearing on freedom of expression and respect for religious beliefs in Paris on 18 May 2006. I thank all participants for their active contributions to the very interesting debate we had. The record is available separately as AS/Cult (2006) 28, rev.

4.   I appreciated having had a meeting with the President of the Republic of Finland, Mrs Tarja Halonen. I also met with representatives of the Evangelical Lutheran Church in Finland, the Finnish Orthodox Church, the Catholic Church in Finland, the Jewish Community of Finland, the Islamic Congregation of Finland, the Islamic Community of Finland and the Finnish Seamen's Mission as well as academic experts in order to discuss relevant questions concerning this subject.

5.   Mrs Halonen had launched in September 2001 the organisation of annual meetings with the representatives of the three monotheist religions in Finland. She invited youth representatives of the religious communities to a first meeting in summer 2006.

6.   Last but not least, I should like to thank Dr Tuomas Martikainen of Abo Akademi University, Finland, who assisted in the hearing on 18 May and prepared a background document which has been used for my report.

7.   Through this report, I attempt to contribute to the current discussions on freedom of expression and respect for religious beliefs in modern Europe and enhance the understanding of the social structures in which they take place. The central issue is whether freedom of expression should be reduced in order to meet increasing sensitivities of certain religious groups. The position taken here is that it should not.

8.   The Council of Europe brings together all states in Europe on the basis of shared fundamental freedoms, human rights, democracy, the rule of law and cultural co-operation. Its European Convention on Human Rights functions as a pan-European constitution defining such rights like freedom of expression and freedom of religion. Therefore, it is not only appropriate for the Council of Europe to deal with this subject, it is necessary.

II.   Issues at stake

9.   There cannot be a democratic society without the fundamental right to freedom of expression. The progress of society and the development of every individual depend on the possibility of receiving and imparting information and ideas. This freedom 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, in accordance with Article 10 of the European Convention on Human Rights.

10.   Freedom of thought, conscience and religion constitutes a necessary requirement for a democratic society and one of the essential freedoms of individuals for determining their perception of human life and society. Conscience and religion are a basic component of human culture. In this sense, they are protected under Article 9 of the European Convention on Human Rights. Freedom of

thought and freedom of expression in a democratic society must, however, permit open debate on matters relating to religion and beliefs. It is therefore necessary to discuss and define the appropriate balance and the limits in this regard.

11.   We must be aware that various kinds of print and electronic media are central to how populations are able to cope and come to terms with increasing religious diversity. Due to developments of communication technology, media can easily and rapidly spread news and images with sometimes unintended results Europe-wide and even globally. The *Satanic Verses of Salman Rushdie affair* (1988) and the *Jyllands-Posten Mohammed cartoons controversy* (2005) are examples of salient public discourses on religious belief and freedom of expression of European origin that have reached such a global level.

12.   Whereas Europe has never been religiously uniform, there is no doubt that a number of developments have made the continent more diverse than it has ever been both religiously and with regard to other value systems. These processes include the lessening social authority of traditional Christian churches, new religious movements, religious activity of populations of immigrant origin and increasing numbers of people with no religious affiliation. Despite the weakened social position of Christian majority churches in Europe, they still remain important social forces in most states and societies. Christianity has provided most of the concepts and the context of interpreting religious developments in Europe. This is strengthened by the fact that many traditional Christian churches still enjoy some kind of favoured position in comparison to other religious organisations and traditions.

13.   The Council of Europe has dealt with related issues for many years, and it makes sense to recall the main texts in this context. They have been produced by the *Parliamentary Assembly* on religious tolerance in a democratic society (Recommendation 1202), religion and democracy (Recommendation 1396), religion and change in central and eastern Europe (Recommendation 1556), diaspora cultures (Recommendation 1688), and education and religion (Recommendation 1720), as well as by the *Committee of Ministers* on "Hate Speech" (Recommendation (97) 20) and on the media and the promotion of a culture of tolerance (Recommendation (97) 21), and by the *European Commission against Racism and Intolerance*: General policy recommendations No 1 Combating Racism, Xenophobia, Anti-Semitism and Intolerance (1996), No 5 Combating Intolerance and Discrimination against Muslims (2000), No 7 on National Legislation to Combat Racism and Racial Discrimination (2002), No 9 on the Fight against Anti-Semitism (2004). The backbone for these reports and recommendations is the European Convention on Human Rights.

III.   Definitions

III.1.   Religion

14.   The academic study of religion has, until today, not been able to produce a definition of religion that would be universally applicable and acceptable. In addition, religion is such a multifaceted phenomenon that it cannot be meaningfully reduced to a single dimension. Religion incorporates devotional and participatory dimensions, that include beliefs, norms, experiences and practices in the private, communal and public spheres. The notion of religious belief as the most central aspect of religion has been disputed, and it is considered to carry a Protestant Christian bias.

15.   Three common types of definitions of religion that are used in the sociology of religion illustrate the flexibility of the phenomenon. The *substantial* definitions identify religion as a community's relationship to a transcendent or non-empirical realm, often with references to a God, gods, spirits or other transcendent beings. This notion is closest to the way how religion is commonly understood among the public as well as in legislation, implicitly at least. The *functional* definitions identify religion as a community's relationship to its unifying moral principles that are sacralised though various kinds of rituals. No reference to a transcendent realm is necessary. The functional understanding of religion is broader than the substantial one, and it encompasses entities that many consider non-religious, such as certain forms of nationalism. The *verstehen* (understanding) definitions refer to the self-understanding of particular groups, whether they consider themselves as religious or not. The first two definitions are based on outside observations, whereas the last refers to self-positioning of a group or an individual to a social reality, where religion is an observable

phenomenon. It is this last sense, when both groups and individuals increasingly refer to themselves today as s*piritual* in contrast to *religious,* that is seen as an outdated, rigid form of spirituality/religion.

16.   Irrespective of the "true nature" of religion, it is always to some extent socially constructed and structurally supported as a category of thought and action in a particular context. The recognition that the concept of religion is at least in part socially constructed, allows us to understand how certain traditions (e.g. "Turkish Islam") become transformed into "religions" (e.g. "Islam of the Turks in Germany"), and adapting to the norms and expectations of its new location. Basically, it is to recognise human cultures' ability to change, adapt and find new and suitable forms to its environment. For instance, religious communities of immigrant origin, such as most Muslim communities in Europe, have been undergoing long and diverse internal disputes over what counts as the religion of Islam in a new context, where social structures do not fully support Islamic practice as it was done in the countries of origin. Similar processes have taken place among other imported religious traditions.

17.   A common strategy among religious communities of immigrant origin in transforming traditional practices into novel ones is to negotiate between what counts as "religious" and what is seen as "cultural". If certain practices are defined as "cultural" (e.g. female circumcision), they are seen as prone to change, and can be modified or abandoned. If they are defined as "religious" (e.g. five daily prayers), they are reaffirmed as fundamental features of religion, and thus in principle unchangeable, even though pragmatic modifications may be allowed. The process of social negotiations in modifying traditional practices to suit the new environment is to be understood as an example of the process of *structural adaptation* of new populations and traditions to European societies. What makes the situation complicated is that a wide variety of positions have been taken in these negotiations, which are sometimes in an antagonistic relationship to each other. This is one of the main reasons, why it is highly to difficult to make generalisations over how, for instance, European Muslims relate to specific issues, and whether or not they consider these issues as religious.

III.2. Religious insults

18.   Religious insults are recognised in all cultures and religions. It can be a question of general ridicule, mockery or satire, or some specific form of religious insult, for instance blasphemy. Incitement to hatred on grounds of religion is another possibility. Anti-Semitism and Islamophobia are concepts that are used in this regard for hatred towards Jews or Muslims respectively. There is, however, a large variety in how religious insults are interpreted, sanctioned and settled. From the viewpoint of a religious community, religious insults can vary from minor to major offences both in degree of severity and in regard to possible forms of sanctions.

19.   Furthermore, there are several specific concepts, such as blasphemy and sacrilege with distinct meanings. *Blasphemy* in its current meaning is the defamation of the name of God, and is closely related to the Judeo-Christian tradition. *Sacrilege* is the violation or injurious treatment of a sacred object. Both blasphemy and sacrilege have been used in a more general sense, referring to almost any religious insult or violation of the sacred. Other concepts that are frequently found in the same context include *heresy*, *apostasy* and *infidelity*, referring to different kinds of violations and transgressions of religious norms and boundaries. One more relevant concept is *antinomianism* that refers to the subversion of a religious or moral code. Many religious insults in the arts have an antinomian character by turning the religious code upside-down, but such elements are also common among religious mystics, who protest against religious *legalism*.

20.   It should, nevertheless, be recalled that there are considerable differences both between religions and within them, in what is considered religiously insulting behaviour or action. What makes the situation difficult is that even though on an abstract theological level religious insults can often be relatively easily identified, in practice the understandings, responses and reactions to such insults do not follow a consequent logic, but are rather intertwined with many other issues. For instance, the reactions to Salman Rushdie's book "The Satanic Verses" among the many Muslim and ethnic communities were remarkably different. The same happened again in regard to the Jyllands-Posten Muhammad cartoons controversy.

21.   Laws prohibiting religious insults, or more specifically blasphemy, have been either abandoned or not used in most European societies since the first half of the twentieth century, but the timing of this development has greatly varied between countries. There are few recent exceptions of blasphemy trials, including *Wingrove v. United Kingdom* and *Gündüz v. Turkey*. The main reasons for abandoning blasphemy laws in Europe has been the post-Enlightenment critique of the perceived misuse of clerical and church power in earlier blasphemy trials, the rise of the secular state and the increased importance of individual human rights. Despite a decrease of religious control in Europe, conceptualisations, discussions and cases of religious insults are affected by the Christian religious tradition even today.

III.3. Freedom of expression and religion

22.   Freedom of expression refers to being able to freely seek, receive and express information without censorship and regardless of the medium used. The right to freedom of expression is guaranteed under international law through several human rights instruments, such as Article 19 of the Universal Declaration of Human Rights and Article 10 of the European Convention on Human Rights. The philosophical bases of freedom of expression are to be found in liberalism and libertarianism.

23.   The right to freedom of expression is not absolute in any society. Restrictions to freedom of expression should, according to international law, be founded on legitimate and necessary legal bases. For instance, they should protect the fundamental rights of others, including prevention of defamation, or to be motivated through the protection of national security and public order. Restrictions should also be the exception, not the rule.

24.   Due to secularisation and growing pluralism of values, religion has become more commonly seen as a private matter, and that it is not the state's mission to control religious actions and behaviour, but rather support individual freedom. This is also reflected in diminished support for group-level protection of religious rights, and in the expansion of rights to freely express anti-religious sentiments. The development has been strengthened by the perceived conservatism of many Christian churches in issues such as abortion, homosexual relations, etc., which appear as antithetical toward liberal democratic principles of individual freedom and rights.

25.   While the general legal, political and popular discourses have concentrated on protecting the freedom of the individual, certain exceptions are to be found. Focus on the rights of indigenous populations and ethnic minorities in relation to discrimination, xenophobia and racism have brought group-level legal protection to the centre of attention. The development has, however, for the most been rather insensitive towards specific religious group rights unless religious features have been reconsidered as cultural attributes. For instance, the Sikh turban and dagger in the United Kingdom are seen as cultural, not religious attributes, even though their wearing is religiously motivated.

26.   Depending on the circumstances and the society in question, the observer might get confused with the apparently free mixing of "race", religion, culture, ethnicity, politics, etc. Whereas sociological modernisation theory has convincingly argued for the functional differentiation of social life into structurally independent and self-defining social institutions (e.g., arts, education, law, religion, politics, economy, etc.) that find their places in society side by side, these entities are not separate from each other in people's lives. These institutional realms are always to an extent flexible that also explains how arguments based on the same motive (cf. the Sikh case) can shift from the sphere of culture to religion, to "race", and so on. What is important, however, is that in different social realms different rights are available.

27.   There seem to be two additional issues regarding religious group rights versus freedom of expression. The first one is the perceived threat of traditional churches that they would attempt to control larger social developments on issues that many of them consider problematic, e.g. abortion and regulation of marriage. This would have consequences for people not affiliated with these organisations. The other one is an ethical consideration of giving religious organisations effective legal means to control their internal disputes. If certain expressions, practices or deeds are considered blasphemous or otherwise as religiously insulting by a segment of a religious

organisation, legal instruments could be used as suppressive mechanisms to validate the hegemony of a particular viewpoint.

28. Both issues are intrinsically related to the use of power and the claimed legitimacy of certain interest groups on behalf of the rights of people in general to freely express their critique to religious norms and practices. If legal instruments were implemented, they would freeze the situation and favour segments of the religiously active. For instance, it has been common through history that religious activists, having a legalist understanding of religion, have been persecuting antinomian thinkers and movements through legal instruments in religious traditions such as Christianity and Islam.

29. Nevertheless, it should be asked whether the above mentioned dilemmas and worries are realistic possibilities in modern Europe, as many–but not all–religious organisations claim that there is little understanding toward religious needs or sentiments by public authorities at all. However, religious as well as cultural diversity and pluralism are not truly possible unless group rights are well protected. In this respect religions are in different positions in European states.

IV. Religion in modern Europe

IV.1. Main religious trends

30. Christianity in its various forms has been the majority religion in most parts of Europe for more than a millennium. It is, thus, not surprising that Christian notions of religion, belief, religious community, etc. have been of fundamental importance for European societies, and to their social structure and legislation even today. However, there have been other religions–including Judaism and Islam–that have contributed to the formation of European societies, even though their societal positions have greatly varied during the centuries and in particular societies. Under the European Convention on Human Rights, all religions are equal in their rights and all persons have equal rights irrespective of their religion.

31. Two ideological turning points stand out in the European religious history that brought along a set of key-ideas for contemporary liberal democracies. They were the Protestant Reformation–if understood as process–that transformed the church's relationship to the state and the Enlightenment which provided the ideological cornerstones for modern liberal democracies. Without going into detail with the process of modernisation and its national variations, let us examine the main trends among religions in Europe since the 1950s.

32. First, traditional religious organisations have lost a significant amount of their public authority and membership. The process is commonly called *secularisation*. All major national churches have experienced this, and, as a result, their public voice, social authority and means of executing social control have been reduced.

33. Second, related to secularisation, there are increasing numbers of *people without religious affiliation or beliefs*, but who rather follow non-religious or secular codes of ethics, morals, norms and ways of life.

34. Third, an ever-increasing number of *new religious movements* have been established in Europe. These represent almost all religious traditions of the world. Many of them are called sects or cults, and some of them have been involved in public controversies. The majority of new religious movements do not, however, in any way challenge the existing social order.

35. Fourth, *international migrations* – including, labour and family migrations, refugees, asylum seekers and undocumented migrants – have led to the settlement and establishment of new religious activity, sometimes called *diaspora religions*. Even though Islam has been the main focus, there are also numerous Christian, Buddhist, Hindu, Sikh, etc. communities of immigration origin.

36. Finally, even though these developments can be identified in all European societies, there are salient differences regarding their timing, composure and importance in particular countries. In Eastern Europe the situation has a slightly different character, because of the fall of the Socialist

block. In any case, national differences should not be underestimated. Furthermore, the increase of religious pluralism has been mainly of an urban nature, so that the developments have divided countries regionally.

37.   Religious conflicts have taken place regarding all of the above mentioned main trends, but there are differences. For instance, conflicts related to the majority churches and to religions of immigrant origin might share similar characteristics (e.g., a perceived loss of sympathy to religious ways of life), but their internal dynamics may be of vastly different nature (e.g., efforts to regain political power versus protests against discrimination).

38.   Because religions of immigrant origin, especially Islam, have received a central role in many of recent public debates on religion, some observations regarding the future of these populations are needed. First, there are no signs that the importance of diaspora religions in Europe would decrease in the near future, because of the expected continuation of migration due to the estimated labour shortage, as the European populations are ageing. For instance, one demographic estimate is that of the total Austrian population, there may be as many as 14–26% Muslims in 2050 – in contrast to 4% in 2001. Despite being a prognosis, it nevertheless indicates that the number of Muslims will continue to rise due to immigration and higher fertility. Second, Europe-born generations of Muslims are highly adapted to their respective societies and will challenge contemporary stereotypical presentations of Islam in many ways. As media is one of the main sources forming attitudes and opinions about minority groups, it is, thus, in a central position with regard to creating an atmosphere of mutual tolerance and respect.

IV.2.   Religion and legislation in national contexts

39.   In order to appreciate the specific impact of religion to European national legislation and mentalities, a quote from a publication related to the European Consortium for State and Church Research will make the point:

> "There are few other areas of law in which historic experience, emotional ties and basic convictions have as direct an influence as in civil ecclesiastical law. The diversity of the civil ecclesiastical law systems in the European Union mirrors the diversity of the national cultures and identities. (…) On the other hand, (…) all the systems are based on the common background of Christianity."

40.   The study identifies three main ways in which the 25 EU countries have arranged their legal systems with respect to religion. First, religion and state have close ties and a state church or predominant religion has a favoured position in law (e.g., England, Greece, Finland). Second, religion and state are strictly separated (France, the Netherlands). Third, religion and state are in principle separated, but common interests are identified on several levels (e.g., Belgium, Poland, Spain). The last system can be called covenantal. The legal classification does not, however, always present the social reality in the best way, and in practice the arrangements may look quite different.

41.   In general, religious freedom is well protected in Europe, when it comes to individual rights, even though critical voices are also heard. On the group level we find more differences regarding organisational possibilities, where certain types of religions seem to be favoured. The organisational opportunities are related both to the favoured position of certain religions as well as to the definition of religion applied, including specific requirements that the applicants must fulfil. The Christian notions of congregation and church organisation with specific activities as found in the Christian tradition still guide the expectations of legislators, even though many other religions have traditionally followed different kinds of organisational patterns.

42.   The legal definitions of religion, whether explicit or implicit, are in all cases stricter than the general academic definitions of religions as described earlier. These legal understandings are also closely related to particular historical circumstances of the state, and, thus, we also find significant differences between countries in this respect. For instance, Muslim groups have been able to organise in quite different ways in European countries. There are still many open questions regarding the outcomes of differing legal treatment and its future consequences.

V. Religious pluralism and social cohesion

V.1. Increasing religious pluralism in globalising European societies

43.   The increase of religious pluralism in Europe has come as a surprise for the majority of the continent's inhabitants, political decision makers and academic researchers alike. Even though much of the recent religious pluralism has been introduced by indigenous developments, international migration has amplified it to a large degree. As already indicated, the plurality of religious and other value systems is only likely to increase in the near future.

44.   Due to globalisation, national borders have lost some of their earlier relevance in matters of culture and religion. Increased transnationalism implies that national decision making has more restricted means to control religious developments in their territory than earlier. International organisations, including the European Union and the Council of Europe, are thus of increasing importance in state attempts to control and otherwise come to terms with their populations. Globalisation also highlights the centrality of the role of global and national media in representing and explaining multiple phenomena that transgress traditional boundaries of all kinds. However, the role of the media is in many ways blurred, as they are simultaneously an effect, a cause and an accelerator of globalisation. Hence, increasing transnational bonds have created – at least for the time being – pervasive cultural and religious flows between states, including non-European ones. This has increased both the religious diversity as well as the complexity of issues involved.

45.   Whereas religion as a social force seemed to be weakening in Europe after World War II, the situation has changed since the 1980s, and again since the fall of the Socialist block. Religion has increasingly become both a political force and a source of identity. The development has also been noted globally, and common examples of it are the Islamic Revolution of Iran in 1979, the rise of the Christian Right in the US in the 1980s and Islamist terrorism in the West, especially 9/11. Scholarly interpretations of the rise of religion to the political agenda vary, but it remains certain that the fall of the Socialist block removed a counter-ideology to the so-called global western hegemony and gave place to the politicisation of religion as an alternative. Also, the unsuccessful and sometimes non-existing attempts of European states to provide equal opportunities for migrant populations have provided further openings to religious actors.

46.   European populations of immigrant origin have rapidly and effectively been incorporated into their new host societies, which has made their new environment the single most important sphere of social relations. However, incorporation does not necessarily mean successful integration, as more often than not the migrants have found their places on the margins of the labour market, facing persisting xenophobia and their offspring (the second and subsequent generations) have partially failed to climb the social ladders of education, professional development and welfare. There is thus a widespread failure to become part of the mainstream society and gaining the benefits it brings. National policies, which are still highly central, must increasingly take into account the transnational sphere if they are to succeed.

V.2. Challenges of coexistence

47.   Increasing diversity of religions and values in European societies has brought many challenges. The situation demands self-reflection and adaptation to changed circumstances by citizens, states and other actors, including religious organisations and media. Public discussions are one of the many ways in which these topics are identified, challenged and negotiated, but we should not forget that they are also embedded in a broader social reality.

48.   The claims for publicly recognised legitimacy of religion-specific behaviour and values can be understood as cries for respect as well as signs of protest against discrimination. For instance, whereas the spontaneous beginning of the protests against the cartoons presented in *Jyllands-Posten* has been disputed, the general approval of the criticisms, if not all deeds, by most Muslims needs an explanation. From the minority's point of view, the insensitive if not openly hostile portrayal of their central religious symbols, creed and ideals is easily understood as yet another indication of their suppressed position. In such sensitive situations, it is clear that various actors try to benefit from

these sentiments and push their particular agendas to the front. Opportunistic agendas were quickly raised by certain Muslim leaders, right-wing politicians and states.

49.   Because religious identities in general and Muslim identities in particular have become politicised, it is clear that religion becomes one of the most important arenas for social negotiations regarding integration and social inclusion. This means that religious activities become forums of wider importance, where all kinds of issues are discussed, with or without the use of religious language. European secular states have had great difficulties in accepting religious demands as legitimate, even though they might eventually not be so different were those claims to be "translated" into secular language. Claims by ethnic and "racial" groups are more easily accepted.

50.   Freedom of expression in pluralist societies with several value systems brings forth difficult situations, where mutual tolerance, if not respect and understanding, can be hard to achieve. It appears as if many people have lost their ability to interpret religious messages, but that can be understood also a logical consequence of increased religious diversity. Hence, it is telling that religious leaders were among the first to regret the publication of the *Jyllands-Posten* cartoons, whereas political leaders followed the pack only when they realised how serious the consequences were to become.

VI.   Religion in the public realm

VI.1.   Media as the new public square

51.   Increased value pluralism combined with religious diversity in modern Europe implies that more people than before share parts of their everyday life with people whose values, beliefs and norms are different from their own. Whereas most people do not have the knowledge of other value systems either by dialogical encounters or academic knowledge, they must rely on external sources for their opinions and attitudes. Media in various forms is the main source of information on religions for the majority of people.

52.   The larger the diversity of the population, the larger is the role of media in representing and forming attitudes on different segments of the population. Of course, media is not the only actor, but it is among the most salient ones. Of importance is also that there is no one public space, but rather public spaces of various sub-populations that co-exist, mix and overlap with each other. Some of these also have significant transnational dimensions, especially among specific interest groups and in popular culture. Certain media are more important than others, as they possess more authority and reach larger audiences. The digitalisation of media and the spread of satellite media and the Internet have extended this possible reach to a global level. Usually, only issues that reach the symbolically strongest media with large audiences become of wider interest and debate, and thus the selection of topics and how they are represented is an important form of executing power.

53.   Religious insensitivities as well as insults and mockery of religious symbols are widespread and everyday phenomena in European societies and media. For example, cartoons often portray religious leaders in less than pleasant ways, some genres of popular music (e.g. so-called "black metal") are specialised in anti-Christian rhetoric, stereotypical representations of Muslims and Jews can be found in many places, etc. However, access to and ability to use media in order to disseminate information on one's religious opinions is not on equal grounds. Many religious minority groups do not have the opportunities, resources or means to present their views in mainstream media, but still need to face the images and information that media give or that the public relates to them. This fact raises the responsibility of various media actors as social forces.

VI.2   Models of coexistence

54.   There are no simple solutions to complex social phenomena, but there are several ways to improve mutual understanding and coexistence. Strong legal means of protecting religions from insults, unless it is a question of hate speech, do not seem a realistic alternative. Nevertheless, the Council of Europe has taken the stance that states have a margin of appreciation with regard to balancing human and religious rights in these issues. This inevitably also means that the treatment of people in different societies is expected to vary to some extent in these delicate questions. It remains

an open question whether different kinds of group-level protection against religious insults are on solid ground in all European societies. It remains certain, however, that all (religious) communities do not currently have a similar degree of legal protection. This also implies that the negotiations as to whether certain practices are seen as cultural, ethnic, "racial" or religious will continue to dwell.

55.   Calls and cries for dialogue over perceived civilisational, cultural, ethnic and religious boundaries have been many in recent years. There is certainly a need to find a new *status quo* regarding tolerance and understanding of a changed world through all possible means, including education for combating ignorance, stereotypes and misunderstanding of religions. Religious communities need also to discuss freedom of expression and respect for religious beliefs within their own community and to pursue a dialogue with other religious communities in order to develop a common understanding of religious tolerance. In addition, media professionals and their professional organisations should discuss media ethics with regard to religious beliefs and sensitivities, and should develop their own codes of conduct in this respect.

56.   Many kinds of effort are needed, but it must not be forgotten that public conflicts and discourses over religion also reflect a reality outside the realm of religion and freedom of expression. Dialogue may be useful, but it does not cure the illnesses of social reality such as unemployment, feelings of unworthiness and marginalisation. The social problems facing many Europe's migrant populations cannot be changed by discussion, but by deeds.

57.   It should still be recalled, that within certain boundaries, the ability to criticise and even ridicule both from within the religious traditions and from the outside, is a healthy phenomenon for religious communities themselves. Even though religious leaders often represent idealistic views of harmony and peace of their communities' life, it is well-known that various kinds of misconduct, abuse of power, etc. do take place among religions, just as in any other human activity. As such freedom of expression may provide correctives to redirect efforts to the high ideals that religions claim to represent. In addition, a degree of tolerance of non-legitimate criticism and mockery seems to be the price required for the benefits that liberal democracies provide.

58.   Last but not least we have to position ourselves in the shoes of those who disseminate, challenge and analyse information: journalist, artists, writers, etc. Freedom of expression is their tool and any limitation to it, either by self-censorship or through other means, should be well motivated. Because the boundaries between legitimate and illegitimate discourses and deeds are fuzzy, and cannot but arbitrarily be fixed at some points, those approaching such issues must have general ethical considerations to motivate their decisions. Such norms are provided by professional associations. What makes the situation difficult is that the social reality is complex and many authors do not possess enough insights of the people's lives that they are representing. Thus, they cannot have realistic visions of the possible impacts of their work. Education and dialogue have been pointed out as common and effective solutions to these defects.

59.   The question still remains whether ethical standards, education, dialogue are enough, when a common value base is shrinking. Is it possible to find common fundamentals as suggested by human rights advocates that unite all people? How should these be implemented? Much of the answers depend on the willingness of those who participate in the process. An imperative for motivating people in that is that they feel that their personal and communal integrity is respected. The limits of tolerance must be open for discussion.

VII.   Conclusions

60.   Religious insults exist in all cultures and religions. It can be a question of general ridicule, mockery or satire, or some specific forms of religious insults, for instance blasphemy. It should, nevertheless, be recalled that there are considerable differences both between religions and within them, in what is considered religiously insulting behaviour or action.

61.   What makes the situation difficult is that even though on an abstract theological level religious insults can often be relatively easy to identify, in practice the understandings, responses and reactions to such insults do not follow a consequent logic, but are rather intertwined with many other issues.

62. The increasing diversity of religions and values in European societies has brought many challenges. The situation demands self-reflection and adaptation to changed circumstances by citizens, states and other actors, including religious organisations and media. Public discussions are one of the many ways in which these topics are identified, challenged and negotiated, but we should not forget that they are also embedded in social reality in general.

63. Religious identities in general, and Muslim identities in particular, have become politicised. It is clear that religion becomes one of the most important arenas for social negotiation regarding integration and social inclusion.

64. Whereas most people do not have the knowledge of other value systems either by dialogical encounters or academic knowledge, they must rely on external sources for their opinions and attitudes. Media in various forms is the main source of information on religions for the majority of people.

65. Religious insensitivities as well as insults and mockery of religious symbols are widespread and everyday phenomena in European societies and media. Specific legal means of protecting religions from insults, unless it is a question of hate speech, do not seem a realistic alternative. It remains certain, however, that all (religious) communities do not currently have a similar degree of legal protection in Europe.

66. Calls for dialogue over perceived civilisational, cultural, ethnic and religious boundaries have been many in the recent years. There is certainly a need to find a new *status quo* regarding tolerance and understanding of a changed world through all possible means, including education for combating ignorance, stereotypes and misunderstanding of religions.

67. It should still be recalled, that within certain boundaries, the ability to criticise and even ridicule both from within the religious traditions and from the outside, is a healthy phenomenon for religious communities themselves. Freedom of expression may provide correctives to redirect efforts to the high ideals that religions claim to represent.

68. Because the boundaries between legitimate and insulting critique are not clear, and cannot but arbitrarily be fixed at some point, those approaching such issues must have general ethical considerations behind their decisions. Such norms are provided by professional associations. Education and dialogue are also needed.

69. States with plural value bases can only succeed if both individual and group rights and freedoms are in balance. Tensions are part of the development for a better tomorrow, and the limits of tolerance must be open for discussion.

Doc. 10970

Reporting committee: Committee on Culture, Science and Education

Reference to committee: Reference No 3209 of 10.04.06

Draft resolution adopted by the committee on 22 June 2006

Members of the Committee: Mr Jacques **Legendre** (Chairman), Baroness Hooper, Mr Josef Jařab, Mr Wolfgang Wodarg, (Vice-Chairpersons), Mr Hans Ager, Mr Toomas Alatalu, Mr Emerenzio Barbieri, Mr Rony Bargetze, Mrs Marie-Louise Bemelmans-Videc, Mr Radu-Mircea Berceanu, Mr Levan Berdzenishvili, Mr Italo Bocchino, Mr Božidar Bojović, Mr Ioannis Bougas, Mrs Anne Brasseur, Mr Osman Coşkunoğlu, Mr Vlad Cubreacov, Mrs Maria Damanaki, Mr Joseph Debono Grech, Mr Stepan Demirchyan, Mr Ferdinand Devinski, Mrs Kaarina Dromberg (Alternate: Mrs Sinikka **Hurskainen**), Mrs Åse Gunhild Woie **Duesund**, Mr Detlef Dzembritzki, Mrs Anke Eymer, Mr Relu **Fenechiu**, Mrs Blanca Fernández-Capel, Mrs Maria Emelina Fernández-Soriano, Mr Axel Fischer, Mr José **Freire Antunes**, Mr Ian Gibson, Mr Eamon Gilmore (Alternate: Mr Paschal **Mooney**), Mr Stefan **Glăvan,** Mr Luc Goutry, Mr Vladimir Grachev, Mr Andreas Gross, Mr Kristinn H. Gunnarson, Mrs Azra Hadžiahmetović, Mr Jean-Pol Henry, Mr Rafael **Huseynov**, Mr Raffaele Iannuzzi (Alternate: Mr Giuseppe **Gaburro**), Mrs Halide İncekara (Alternate: Mr Murat **Mercan)**, Mr Lachezar Ivanov, Mr Igor Ivanovski, Mr József Kozma, Mr Jean-Pierre Kucheida, Mr Guy Lengagne, Mrs Jagoda Majska-Martinčević, Mr Tomasz Markowski, Mr Bernard Marquet, Mr Andrew McIntosh (Alternate: Mr Robert **Walter**), Mr Ivan Melnikov, Mrs Maria Manuela **de Melo**, Mr Paskal Milo, Mrs Fausta Morganti, Mrs Christine Muttonen, Mrs Miroslava Němcová, Mr Jakob-Axel Nielsen, Mr Edward **O'Hara**, Mr Andrey Pantev, Mrs Antigoni Pericleous Papadopoulos, Mrs Majda Potrata, Mr Lluis Maria de Puig, Mr Anatoliy Rakhansky, Mr Johannes Randegger, Mr Zbigniew Rau, Mr Zoltán Rockenbauer, Mrs Anta Rugāte, Mr Piero Ruzzante, Mr Volodymyr Rybak, Mr Pär-Axel Sahlberg, Mr André Schneider, Mr Vitaliy Shybko, Mr Yury Solonin, Mr Ninoslav Stojadinović, Mr Valeriy Sudarenkov, Mr Mehmet **Tekelioğlu**, Mr Ed van Thijn, Mr Piotr Wach, Mrs Majléne Westerlund Panke, Mr Emanuelis **Zingeris**.

N.B. The names of those members present at the meeting are printed in bold

Head of Secretariat: Mr Christopher Grayson
Committee secretariat : MM. Ary, Dossow