



Strasbourg, 28 mars 2007

Etude n°406 / 2006

CDL-AD(2007)006add  
arc-en-ciel

**COMMISSION EUROPEENNE POUR LA DEMOCRATIE PAR LE DROIT**  
**(COMMISSION DE VENISE)**

**ANNEXE I**

**RECUEIL DES LEGISLATIONS NATIONALES EUROPEENNES<sup>1</sup>**

**en matière de**

**BLASPHEME, INSULTES RELIGIEUSES  
ET INCITATION A LA HAINE RELIGIEUSE**

**Préparé par M Louis-Léon Christians (Expert, Belgique)  
Avec l'assistance du Secrétariat de la Commission**

---

<sup>1</sup> Traductions non officielles

**TABLE DES MATIERES**

Albania .....	5
Andorra .....	5
Armenia .....	5
Austria .....	6
Azerbaijan .....	6
Belgique .....	7
Bosnia-Herzegovina .....	8
Bulgaria .....	9
Cyprus .....	10
Croatia .....	11
Czech Republic.....	12
Denmark.....	13
Espagne .....	13
Estonia .....	15
Finland .....	16
« The Former Yugoslav Republic of Macedonia » .....	16
France .....	17
Georgia .....	22
Germany.....	24
Greece .....	25
Hungary .....	27
Ireland .....	28
Iceland .....	29
Italie .....	30
Latvia.....	31
Liechtenstein.....	32
Lithuania.....	33
Luxembourg.....	35
Malta .....	35
Moldova .....	36
Monaco .....	37
Montenegro .....	39
The Netherlands.....	39
Norway.....	41
Poland .....	42
Portugal.....	43
Romania .....	44
Russian Federation .....	45
Saint-Marin .....	47
Serbia .....	47
Slovakia .....	48
Slovenia .....	49
Sweden .....	50
Suisse.....	51
Turkey .....	51
Ukraine .....	53
United Kingdom .....	55

## TABLEAU RECAPITULATIF

PAYS	Blasphème	Atteintes aux sentiments religieux Insultes aux doctrines	Trouble à l'exercice du culte et/ou de la liberté religieuse	Sacrilège envers un objet de culte	Incitation à la discrimination ou à la haine religieuse
Albanie			X		X
Allemagne		X	X		X
Andorre		X	X	X	
Arménie					X
Autriche	X		X	X	X
Azerbaïdjan			X		X
Belgique			X	X	X
Bosnie-Herzégovine			X		X
Bulgarie			X		X
Chypre		X	X		X
Croatie		X			X
Danemark	X	X		X	X
Espagne	X	X	X	X	X
Estonie			X		X
Finlande	X	X	X	X	X
France			X		X
Géorgie			X		
Grèce	X	X	X	X	X
Hongrie			X	X	X
Irlande	X				X
Islande		X	X		X
Italie	X	X	X	X	X
Lettonie		X	X		X
FRY Macédoine		X	X		X
Liechtenstein	X	X	X	X	X
Lituanie		X	X		X
Luxembourg			X	X	
Malte					X
Moldova					X
Monaco			X	X	X
Montenegro			X		X
Norvège		X	X		X
Pays-Bas	X	X	X	X	X
Pologne		X	X	X	X
Portugal		X	X	X	X
République tchèque		X			X
Roumanie			X		X
Royaume-Uni		X			X
Fédération de Russie		X	X	X	X
Saint-Marin	X		X	X	
Serbie		X			X
Slovaquie		X			X

Slovénie		x	x		x
Suède					x
Suisse		x	x	x	x
Turquie		x			x
Ukraine		x	x	x	x

### **Albania**

There is no specific legislation prohibiting blasphemy and/or religious insult in Albania. The Criminal Code however contains a specific section in relation to “Criminal acts against freedom of religion”.

#### ***Criminal Code, Article 131 Obstructing the activities of religious organizations***

Ban on the activity of religious organizations, or creating obstacles for the free exercise of their activities, is sentenced to a fine or to up to three years of imprisonment.

#### ***Criminal Code, Article 132 Ruining or damaging objects of worship***

Ruining or damaging objects of worship when it has inflicted the partial or total loss of their values is punishable by a fine or to up to three years of imprisonment.

#### ***Criminal Code, Article 133 Obstructing religious ceremonies***

Ban on creating obstacles for participating in religious ceremonies, as well as for freely expressing religious beliefs, constitutes criminal contravention and is sentenced to a fine or up to one year of imprisonment.

#### ***Criminal Code, Article 265 Inciting national, racial or religious hatred and conflict***

Inciting nationality, racial and religious hatred or conflict as well as preparing, propagating, or preserving with the intent of propagating, of writings with that content, is sentenced to a fine or to up to ten years of imprisonment.

### **Andorra**

#### ***Code pénal (1995), Article 122***

Ceux qui auront commis des actes de profanation, outrage ou destruction dans des édifices destinés au culte ou à l'occasion de cérémonies religieuses seront punis d'un emprisonnement d'un maximum de quatre ans.

#### ***Code pénal (1995), Article 301***

Quiconque aura offensé publiquement les sentiments religieux ou aura empêché ou perturbé les actes ou cérémonies religieuses sera puni d'un emprisonnement d'une durée maximale de six mois.

### **Armenia**

#### ***Criminal Code, Article 226. Inciting national, racial or religious hatred.***

1. Actions aimed at the incitement of national, racial or religious hatred, at racial superiority or humiliation of national dignity, are punished with a fine in the amount of 200 to 500 minimal salaries, or with correctional labor for up to 2 years, or with imprisonment for a term of 2-4 years.

2. The actions envisaged in part 1 of this Article committed: publicly or by mass media, with violence or threat of violence; by abuse of official position; by an organized group, are punished with imprisonment for the term of 3 to 6 years.

## **Austria**

The Austrian legal system does not prohibit any sort of blasphemy or religious insult in a general way. However, the Criminal Code forbids some acts under specific circumstances.

### ***Criminal Code, Section 188 - disparaging of religious precepts***

Whoever publicly disparages or mocks a person or a thing, respectively, being object of worship or a dogma, a legally permitted rite, or a legally permitted institution of a church or religious society located in Austria in a manner capable of giving rise to a justified annoyance is liable to imprisonment for a term not exceeding six months or to a fine.

### ***Criminal Code, Section 189 - disturbance of the practice of religion***

1. Whoever forcibly or threatening with force precludes or disturbs divine service or an act of divine service of a church or religious society located in Austria is liable to imprisonment for a term not exceeding two years
2. Whoever is up to mischief at a place destined for a legally permitted practice of religion or on the occasion of a legally permitted public divine service or a legally permitted act of divine service or with an object directly destined for a legally permitted divine service of a church or religious society located in Austria in a manner capable of giving rise to a justified annoyance is liable to imprisonment for a term not exceeding six months or to a fine.

### ***Criminal Code, Section 283 - Incitement***

Whoever publicly calls upon or goads to a hostile act against a church or religious society located in Austria or against a group belonging to such a church or religious society, a race, a people, a tribe, or a state in a manner capable of endangering public order or incites against or insults or decries in a way which hurts the human dignity a group belonging to a race, a people, a tribe, or a state is liable to imprisonment for a term not exceeding two years.

## **Azerbaijan**

### ***Constitution (1995), Article 18 - Religion and State.***

Religion shall be separated from the State in the Azerbaijan Republic. All religions shall be equal by law. The spread and propaganda of religions which humiliate human dignity and contradict the principles of humanity shall be banned. □The State education system shall be of secular character.

### ***Constitution (1995), Article 47 - Freedom of Thought and Speech.***

Every Person shall have the freedom of Thought and Speech. Nobody shall be forced to identify or refuse his/her ideas and principles. □Propaganda inciting racial, ethnic or religious animosity or hostility shall be banned.

### ***Law on Freedom of Religious Belief, No. 281, No. 16 article 694 (Bulletin of the Supreme Council of the Azerbaijan Republic 1992-00-00) (MOD. 2001) Article 1. Freedom of Religious Belief***

Everyone shall determine his attitude to religion independently and shall have the right to practice any kind of religion alone or together with others and to express or disseminate his belief concerning his attitude to religion.

Laying any kind of obstacles to any person in determining his attitude to religion, in his religious beliefs, worship, participation in execution of religious rituals and ceremonies shall not be allowed. Propagating of religious beliefs, religious mode of life and worship by using force or with the aim to breed strife among people and forcing religious beliefs shall be prohibited.

Restrictions on the exercise of freedom of religious belief may be imposed only in such cases as are necessary for the considerations of national security and public safety and for the protection of rights and freedoms compatible with the international obligations of the Republic of Azerbaijan

Carrying out religious propaganda by foreigners and persons without citizenship shall be prohibited. (inserted into Article 1 by Law No. 222-IQD of 27 December 1996 (Collection of Legislation of the Republic of Azerbaijan, 1997, No. 3, Article 171).

Parents or the persons replacing them may educate their children based on mutual consent, in accordance with their religious belief and attitude towards religion.

***Criminal Code (Collection of Legislation of the Republic of Azerbaijan, 2000, No. 4(II), Article 251, entered into force on 1 September 2000), Article 167 - Interference with religious rituals***

An illegal interference with religious rituals shall be punishable by a fine in the amount one hundred to five hundred minimum wages, or community works for a term of one hundred and sixty to two hundred forty hours, or corrective works for a term of up to one year.

***Criminal Code, Article 283 - Instigating national, racial or religious enmity***

1. Actions aimed at instigating national, racial or religious enmity, at debasing national dignity, as well as at restricting the rights of the citizens or establishing their superiority based on their national, racial or religious affiliation, if such actions are committed in public or using mass media, shall be punishable by a fine in the amount one thousand to two thousand minimum wages, or restriction of liberty up to three years, or imprisonment for a term of two to four years.

2. The same actions, if committed:

1. by using force or threatening to use force;
2. by a person by using his or her official position;
3. by an organized group

shall be punishable by imprisonment for a term of three to five years.

**Belgique**

***Code pénal, Article 142.***

Toute personne qui, par des violences ou des menaces, aura contraint ou empêché une ou plusieurs personnes d'exercer un culte, d'assister à l'exercice de ce culte, de célébrer certaines fêtes religieuses, d'observer certains jours de repos, et, en conséquence, d'ouvrir ou de fermer leurs ateliers, boutiques ou magasins, et de faire ou de quitter certains travaux, sera punie d'un emprisonnement de huit jours à deux mois et d'une amende de vingt-six francs à deux cents francs.

***Code pénal, Article 143.***

Ceux qui, par des troubles ou des désordres, auront empêché, retardé ou interrompu les exercices d'un culte qui se pratiquent dans un lieu destiné ou servant habituellement au culte ou dans les cérémonies publiques de ce culte, seront punis d'un emprisonnement de huit jours à trois mois et d'une amende de vingt-six francs à cinq cents francs.

**Code pénal, Article 144.**

Toute personne qui, par faits, paroles, gestes ou menaces, aura outragé les objets d'un culte, soit dans les lieux destinés ou servant habituellement à son exercice, soit dans des cérémonies publiques de ce culte, sera punie d'un emprisonnement de quinze jours à six mois et d'une amende de vingt-six francs à cinq cents francs.

**Code pénal, Article 145.**

Sera puni des mêmes peines celui qui, par faits paroles, gestes ou menaces, aura outragé le ministre d'un culte, dans l'exercice de son ministère.

S'il l'a frappé, il sera puni d'un emprisonnement de deux mois à deux ans et d'une amende de cinquante francs à cinq cents francs.

**Code pénal, Article 146.**

Si les coups ont été cause d'effusion de sang, de blessure ou de maladie, le coupable sera puni d'un emprisonnement de six mois à cinq ans et d'une amende de cent francs à mille francs.

**Loi du 25 février 2003 tendant à lutter contre la discrimination et modifiant la loi du 15 février 1993 créant un Centre pour l'égalité des changes et la lutte contre le racisme**

Article 2. .../... § 6. Le harcèlement est considéré comme une forme de discrimination lorsqu'un comportement indésirable qui est lié aux motifs de discrimination figurant au § 1er a pour objet ou pour effet de porter atteinte à la dignité d'une personne et de créer un environnement intimidant, hostile, dégradant, humiliant ou offensant.

§ 7. Tout comportement consistant à enjoindre à quiconque de pratiquer une discrimination à l'encontre d'une personne, d'un groupe, d'une communauté ou de leurs membres pour un des motifs <visés au § 1<sup>er</sup>> est considéré comme une discrimination au sens de la présente loi.

.../...

Article 6. § 1er. Est puni d'emprisonnement d'un mois à un an et d'une amende de cinquante EUR à mille EUR ou d'une de ces peines seulement :

- quiconque, dans l'une des circonstances indiquées à l'Article 444 du Code pénal, incite à la discrimination, à la haine ou à la violence à l'égard d'une personne, d'un groupe, d'une communauté ou des membres de celle-ci, en raison du sexe, de l'orientation sexuelle, de l'état civil, de la naissance, de la fortune, de l'âge, de la conviction religieuse ou philosophique, de l'état de santé actuel ou futur, d'un handicap ou d'une caractéristique physique;

- quiconque, dans l'une des circonstances indiquées à l'Article 444 du Code pénal, donne une publicité à son intention de recourir à la discrimination, à la haine ou à la violence à l'égard d'une personne, d'un groupe, d'une communauté ou des membres de celle-ci, en raison du sexe, de l'orientation sexuelle, de l'état civil, de la naissance, de la fortune, de l'âge, de la conviction religieuse ou philosophique, de l'état de santé actuel ou futur, d'un handicap ou d'une caractéristique physique.

**Bosnia-Herzegovina****Criminal Code of the Federation of Bosnia and Herzegovina 1998, article 150**

(1) Whoever publicly incites or fans national, racial or religious hatred or discord or hostility between constitutional nations and other living in Bosnia and Herzegovina or the Federation, shall be punished with a sentence of imprisonment for a term between one year and five years.

(2) If an act referred to in paragraph 1 of this Article has been committed by coercion, molestation, jeopardizing of safety, exposing to derision of national, ethnic or religious symbols,



damaging belongings of another, desecrating monuments or graves, the perpetrator shall be punished with a sentence of imprisonment for a term of between one and eight years.

(3) Whoever commits an act referred to in paragraphs 1 and 2 of this Article abusing his/her position or authority, or if disorder, violence or other grave consequences for the living together of constitutional nations and others living in Bosnia and Herzegovina or the Federation resulted from these acts, shall be punished for the act referred to in paragraph 1 by imprisonment for a term between one and eight years and for the act referred to in paragraph 2 by imprisonment for a term of between one and ten years.

***Criminal Code of the Federation of Bosnia and Herzegovina 1998, article 356***

(1) Whoever disturbs or prevents performance of religious ceremonies, shall be fined or punished by imprisonment for a term not exceeding one year.

(2) Whoever commits the offence from paragraph 1. of this Article by use of force or serious threat of using the force, shall be punished by imprisonment for a term between three months and three years.

**Bulgaria**

***Criminal Code, §164 -Crimes against Religious Denominations***

§164: A person who propagates hatred on a religious basis by speech, through the press, action or in another way, shall be punished by deprivation of liberty for up to three years or by corrective labour.

***Criminal Code, §165 - Crimes against Religious Denominations***

(1) Whoever, by force or threat, obstructs the citizens to profess their faith or carry out their rituals and services which do not violate the laws of the country, the public peace and the good morals shall be punished by imprisonment of up to one year.

(2) The same punishment shall be imposed on those who, in the same way, compels another to participate in religious rituals and services.

(3) For the acts under art. 163 committed against groups of the population, individual citizens or their property in connection with their religious belonging shall apply the punishments stipulated by it.

***Criminal Code, §166 - Crimes against Religious Denominations),***

(Suppl., SG 28/82; Amend. SG 92/02, amend. SG 103/04) Whoever forms a political organisation on religious grounds or whoever, through speeches, publications, act or in any other way, uses the church or the religion for propaganda against the authority or its activities shall be punished by imprisonment of up to three years, unless he is a subject to a more serious punishment.

***Religious Denominations Act (1949), Article 4 (1)***

Every Bulgarian citizen has the right to freely practice his or her religion through words, prints, or images, either individually or with others.

(2) The right to practice a religion shall not be restricted by the state unless it is:

1. directed against national security, public order, national healthy ethics, or rights and freedoms of other citizens;
2. used for political ends;
3. used for the incitement of racial, ethnic or religious hatred and hostility

***Religious Denominations Act (1949), Article 15 (1).***

The status of religious organization may be granted when the faith and the liturgical practice on the basis of which the religious institution has been founded are not directed against national security, public order, national health, ethics, the rights and freedoms of other citizens, the achievement of political goals, or the incitement of racial, ethnic or religious hatred and hostility.

***Religious Denominations Act (1949), Article 38 (1). The status of religious institution may be withdrawn:***

1. when the public practice of religion performed by the institution is directed against national security, public order, national health, ethics, rights and freedoms of other citizen, or when the institution uses the faith or its liturgical and ritual practice for political goals, or for the incitement of racial, ethnic or religious hatred and hostility.

**Cyprus*****Constitution, Article 18 – Freedom of thought, conscience and religion***

1. Every person has the right to freedom of thought, conscience and religion.
2. All religions whose doctrines or rites are not secret are free.
3. All religions are equal before the law. Without prejudice to the competence of the Communal Chambers under this Constitution, no legislative, executive or administrative act of the Republic shall discriminate against any religious institution or religion.
4. Every person is free and has the right to profess his faith and to manifest his religion or belief, in worship, teaching, practice or observance, either individually or collectively, in private or in public, and to change his religion or belief.
5. The use of physical or moral compulsion for the purpose of making a person change or preventing him from changing his religion is prohibited.
6. Freedom to manifest one's religion or belief shall be subject only to such limitations as are prescribed by law and are necessary in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person.
7. Until a person attains the age of sixteen the decision as to the religion to be professed by him shall be taken by the person having the lawful guardianship of such person.
8. No person shall be compelled to pay any tax or duty the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own.

***Constitution, Article 19***

1. Every person has the right to freedom of speech and expression in any form.
2. This right includes freedom to hold opinions and receive and impart information and ideas without interference by any public authority and regardless of frontiers.

3. The exercise of the rights provided in paragraphs 1 and 2 of this Article may be subject to such formalities, conditions, restrictions or criminalities as are prescribed by law and are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the reputation or rights of others or for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.

***Criminal Code, Section 47 (2), Cap. 154***

Whoever enters into an act publicly with the intention to promote feelings of ill will and hostility between different communities or religious groups by reason of his racial or ethnic origin or his religion is guilty of an offence and may be convicted to a maximum sentence of imprisonment for up to five years.

***Criminal Code, Section 51(A), Cap. 154***

Whoever publicly in any manner and in any way procures the inhabitants to acts of violence against each other; or promotes feelings of ill will and enmity between different classes or communities or persons in the Republic, is guilty of misdemeanour and is liable to imprisonment for twelve months or to a fine of 1000 pounds or both and in case of a legal entity a fine of 3000 thousand pounds may be imposed.

***Criminal code, Sections 138, 139, 140, 141 and 142, provide for offences relating to religion:***

- Insult to religions (section 138),
- Disruption of religious gatherings (section 139),
- Unlawful entrance to burial places (section 140)
- Offending religious sentiments by words or conduct (section 141)
- Publications insulting religion (section 142)

***Amending Laws 11/92, 6(III)/95 and 28(III)/99 amending the law ratifying the CERD establish as criminal offences:***

- To incite acts which are likely to cause discrimination, hatred, or violence against any person or group of persons on account of their racial or ethnic origin, or their religion. The offence is committed when a person incites as above in public either orally or through the press or by means of any document or picture or any other means. The criminality is that of imprisonment not exceeding two years, or a fine not exceeding one thousand pounds, or both.

- To express ideas insulting to any person or group of persons by reason of their racial or ethnic origin, or their religion. The offence is committed when a person acts as above in public either orally or through the press or by means of any documents or pictures or any other means. The criminality is that of imprisonment not exceeding one year, or a fine not exceeding five hundred pounds, or both.

In conformity with a recommendation of the Committee for the Elimination of Racial Discrimination, the 1999 amendments mean that it is no longer necessary that the incitement to racial hatred be intentional for the corresponding offence to be committed.

**Croatia**

***Constitution (as amended on 28 March 2001), Article 39***

Any call for or incitement to war, or resort to violence, national, racial, or religious hatred, or any form of intolerance is prohibited and punishable.

***Criminal Code (as amended on 1 October 2004), Article 174***

(3) Anyone who publicly speaks and expresses ideas of supremacy of one race over another, of one ethnic or religious group over another, of one gender over another, of one nation over another or one skin colour over another, with the aim of inciting racial, religious, gender, national, ethnic hatred or hatred based on the skin colour, or with the aim of belittling, shall be punished by a term of imprisonment of between 3 months and 3 years.

**Czech Republic*****Criminal Code, § 198 - Vilification of the nation, race and conviction***

(1) A person who publicly defames :

1. any nation, its language or any race, or
2. a group of inhabitants for their political conviction, religion or lack of religious faith, shall be punished by imprisonment for a term of up to one year.

(2) A person who commits a crime stated in section 1 together with at least two more persons shall be sentenced to imprisonment for a term of up to three years.

***Criminal Code, §198a- Incitement to a national and racial hatred***

(1) Whoever publicly incites hatred of another nation or race or calls for restriction of the rights and freedoms of other nationals or their members, shall be sentenced to imprisonment for a term of up to two years.

(2) The same sentence shall apply to a person, who aids and abets an offender to commit an act mentioned in subsection 1.

***Criminal Code, §260 Support and propagation of movement aiming at suppressing the rights and freedoms of the citizens***

(1) A person who supports or propagates movement demonstrably aiming at oppressing the rights and freedoms of citizens or declares national, racial, class or religious hatred, shall be punished by a custodial sentence from one up to five years.

(2) A person shall be punished by custodial sentence up to three years in following case:

1. if he/she commits the act stated in section 1 by means of press, film, radio, television or by similar efficient means,
2. if he/she commits such act as a member of an organized group, or
3. if he/she commits such act during military preparedness of the state.

***Criminal Code, § 261***

Whoever publicly shows sympathy for fascism or other similar movements stated in § 260, shall be punished by custodial sentence from six months up to three years.

***Statute No. 40/1995***

The advertisement must not contain material which would be in dissention with morality, especially elements insulting national or religious feeling, menacing morality in general or propagating violence. It must not contain elements belittling human dignity or use a motive of fear.

## Denmark

### ***Criminal Code (Consolidated Act No. 1000 of 10. May 2006, the Criminal Code (Lovbekendtgørelse 2006-10-05 nr. 1000) Entry into force: 1. July 2006), § 140***

Any person who, in public, mocks or scorns the religious doctrines or acts of worship of any lawfully existing religious community in this country shall be liable to imprisonment for any term not exceeding four months.

### ***Criminal Code, § 266b***

1. Any person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, scorned or degraded on account of their race, colour, national or ethnic origin, religion, or sexual inclination shall be liable to a fine or to imprisonment for any term not exceeding two years.

2. It shall be considered an aggravating circumstance if the conduct can be characterised as propaganda.

(This provision was inserted in the Criminal Code in 1971 in connection with Denmark's ratification of the International Convention on the Elimination of All Forms of Racial Discrimination, to ensure full compliance with article 4 of ICERD).

## Espagne

Une loi du 9 juin 1988 a abrogé l'article 239 du code pénal qui disposait: "Celui qui a blasphémé par écrit ou de manière publique ou par des paroles ou des actes qui ont produit un grave scandale public sera puni d'une peine d'emprisonnement majeure et d'une amende de 30.000 à 50.000 pesetas").

### ***Code pénal, Article 22.***

Sont considérées comme circonstances aggravantes :

4. Commettre un délit motivé par le racisme, l'antisémitisme ou tout autre type de discrimination liée à l'idéologie, la religion, ou les croyances de la victime, sa race ou sa nation d'origine, son sexe ou orientation sexuelle, sa maladie ou son handicap.

### ***Code pénal, Article 510.***

1. Ceux qui provoquent la discrimination, la haine ou la violence contre tout groupe ou association pour des motifs à caractère raciste, antisémite, ou tout autre [motif] en se référant à l'idéologie, la religion ou les croyances, la situation familiale, l'appartenance de ses membres à une ethnie ou une race, une origine nationale, le sexe, l'orientation sexuelle, une maladie ou un handicap, seront puni d'une peine de prison d'un à trois ans, et une amende de six à douze mois.

2. Seront passibles de la même peine tous ceux qui étant conscients du caractère faux des informations ou de mépris de la vérité qui en résulte, divulguent des informations injurieuses envers les groupes ou associations, leur idéologie, leurs religion ou croyance, l'appartenance de leurs membres à une race ou ethnie, leur appartenance nationale, leur sexe, leur orientation sexuelle, leur maladie ou handicap.

**Code pénal, Article 515.**

Toute association illicite sera passible d'une peine en prenant en considération :

5. celles promouvant la discrimination, la haine ou la violence contre les autres personnes, groupes en association en raison de leur idéologie ou croyances, l'appartenance de leurs membres ou de certains d'entre eux à une ethnie, race ou nation, leur sexe, leur orientation sexuelle, leur situation familiale, leur maladie ou handicap ; ou toutes celles qui incitent à le faire.

**Code pénal, Article 522. –**

Sont passibles d'une peine de 4 à 10 mois:

1 - ceux qui, par la violence, l'intimidation, la force ou tout autre contrainte illégitime, empêcheraient un ou plusieurs membres d'une Confession Religieuse d'exercer les actes propres aux croyances qu'il professe ou d'assister à ces mêmes actes.

2 - ceux qui, par les mêmes moyens forceraient, un ou plusieurs autres à pratiquer ou à assister à des actes de culte ou de rites ou à réaliser des actes révélateurs de profession ou non profession d'une religion, ou encore à en changer.

**Code pénal, Article 523. –**

Celui qui, par la violence, la menace, le tumulte ou la voie de fait, empêcherait, interromprait ou perturberait les actes, les fonctions, les cérémonies ou les manifestations des confessions religieuses inscrites au Registre Public correspondant du Ministère de la Justice et de l'Intérieur, sera puni par une peine de prison pouvant aller de 6 mois à 6 ans, si le fait a été commis dans un endroit destiné au culte et par une peine de 4 à 10 mois si le fait est commis ailleurs.

**Code pénal, Article 524. –**

Celui qui, dans un temple, un lieu de culte ou pendant des cérémonies religieuses exécuterait des actes de profanation, offensant les sentiments religieux légalement sous tutelle, sera puni par une peine de prison de 6 mois à 1 an ou par une amende de 4 à 10 mois.

**Code pénal, Article 525. –**

1. Seront passibles d'une peine de 8 à 12 mois ceux qui, pour offenser les sentiments des membres d'une confession religieuse, feraient, publiquement, oralement, par écrit ou dans un document quelconque outrageraient leur dogme, croyance, rites ou cérémonies, ou vexeraient, en public, ceux qui les professent ou pratiquent. 2. Seront passibles des mêmes peines ceux qui outrageront en public, oralement ou par écrit, ceux qui ne professent aucune religion ou croyance.

**Code pénal, Article 526. –**

Celui qui, manquant au respect dû à la mémoire des morts violerait les sépulcres ou sépultures, profanerait un cadavre ou ses cendres, ou qui, pour outrager, détruirait, altérerait, endommagerait les urnes funéraires, les panthéons, pierres tombales ou niches, sera puni par une peine d'arrêt de 12 à 24 week-end et une amende de 3 à 6 mois.

**Code pénal, Artículo 607.**

1. Ceux qui visent à la destruction totale ou partielle d'un groupe national ethnique, racial ou religieux ou sont coupables de tout autre acte faisant partie de la liste ci-dessous, seront passibles :

- i. de réclusion de 15 à 20 ans s'ils commettent un meurtre d'un de ses membres. Si dans les faits on compte deux ou plus de circonstances aggravantes, la peine sera graduellement supérieure ;
  - ii. de réclusion de 25 à 30 ans s'ils sont coupables d'une agression sexuelle contre un de ces membres ou provoquent des lésions répertoriés dans l'article 149 ;
  - iii. de réclusion de 8 à 15 ans, s'ils soumettent le groupe ou tout individu en faisant partie à des conditions d'existence qui mettraient en danger sa vie ou perturberaient gravement sa santé ; s'ils infligent un des lésions prévues dans l'article 150 ;
  - iv. de la même peine de réclusion allant de 4 à 8 ans s'ils infligent toute autre lésion différente de celles énumérées dans les alinéas 2 et 3 de ce paragraphe.
2. La diffusion par tout moyen de la ou des doctrines qui nient ou justifient les délits énumérés dans le paragraphe antérieur de cet article, ou qui prétendent réhabiliter tout régimes ou institution qui favorisent les pratiques semblables (à celles décrites dans les paragraphes intérieurs), seront passibles d'une peine de réclusion allant de 1 à 2 ans.

## **Estonia**

### ***Constitution, article 12***

The incitement of national, racial, religious or political hatred, violence or discrimination shall be prohibited and punishable by law. The incitement of hatred, violence or discrimination between social strata shall equally be prohibited and punishable by law.

### ***Criminal code (2000), §151***

incite to hatred or violence on the basis of nationality, race, colour, sex, language, origin, religion, political opinion, financial or social status : Up to three years' imprisonment

### ***Criminal code (2000), §154***

A person who interferes with the religious affiliation or religious practices of a person, unless the religious affiliation or practices are detrimental to the morals, rights or health of other people or violate public order, shall be punished by a pecuniary punishment or up to one year of imprisonment.

### ***Criminal Code (2000), § 201***

Violation of public order or attacks against person or his or her rights in course of exercise of one's religion

(1) Forming or leading a grouping whose activities in the course of proclamation of religious doctrine or a religious ceremony are related to violation of public order, damaging the health of persons or other attacks to the life or rights of persons, or inducing a person to refuse to perform his or her civil duties, is punishable by a fine or detention or up to five years' imprisonment.

(2) Active participation in the activities of a grouping specified in subsection (1) of this section, or promotion of the commission of acts prescribed by the religious doctrines or ceremonies of such grouping, is punishable by a fine or detention or up to three years' imprisonment.

(19.05.93 entered into force 27.06.93 - RT I 1993, 33, 539)

## Finland

### ***Criminal Code of Finland as amended by law 563/1998, S. 10 Breach of the sanctity of religion***

A person who

(1) publicly blasphemes against God or, for the purpose of offending, publicly defames or desecrates what is otherwise held to be sacred by a church or religious community, as referred to in the Act on the Freedom of Religion (267/1998), or

(2) by making noise, acting threateningly or otherwise, disturbs worship, ecclesiastical proceedings, other similar religious proceedings or a funeral, shall be sentenced for a breach of the sanctity of religion to a fine or to imprisonment for at most six months.

### ***Criminal Code of Finland as amended by law 563/1998, S. 11 - Prevention of worship***

(1) A person who employs or threatens violence, so as to unlawfully prevent worship, ecclesiastical proceedings or other similar religious proceedings arranged by a church of religious community, as referred to in the Act on the Sanctity of Religion, shall be sentenced for prevention of worship to a fine or to imprisonment for at most two years.

(2) An attempt is punishable.

### ***Criminal Code, Section 8 of Chapter 11***

covers ethnic agitation and criminalises the spreading of statements or other information among the public where a certain "race", a national, ethnic or religious group or a comparable group is threatened, defamed or insulted.

## « The Former Yugoslav Republic of Macedonia »

### ***Criminal Code (23 July 1996), Article 319 - Causing national, racial or religious hate, discord and intolerance***

(1) A person who by force, mistreatment, endangering the security, ridicule of the national, ethnic or religious symbols, by damaging other people's objects, by desecration of monuments, graves, or in some other manner causes or excites national, racial or religious hate, discord or intolerance, shall be punished with imprisonment of one to five years.

(2) A person, who commits the crime from item 1 by misusing his position or authorization, or if because of these crimes, riots and violence were caused among people, or a property damage with a large extent was caused, shall be punished with imprisonment of one to ten years.

### ***Criminal Code, 23 July 1996, Article 399 - Hindering a religious ceremony***

A person who unlawfully hinders the performance of a religious ceremony shall be punished with a fine, or with imprisonment of up to one year.

### ***Law on Religious Communities and Religious Groups (Official Gazette of the Republic of Macedonia, No. 35/1997), Article 18***

Religious activities and religious rituals are performed in churches, mosques, and other temples, as well as in yards that are part of these facilities, on cemeteries and other facilities of the religious community or group. Performing religious activities and religious rituals cited in Paragraph 1 of this Article cannot break the public order and peace, as well as the religious feelings and other freedoms and rights of the citizens who do not belong to the religious community or group.



**Law on Religious Communities and Religious Groups (Official Gazette of the Republic of Macedonia, No. 35/1997), Article 30**

With a fine of the amount of 30.000-50.000 denars will be fined:

- Person who forces or thwarts a citizen to give contributions intended for religious and humanitarian aims (Article 16 Paragraph 2);
- Person who performs religious ritual or activities outside the facilities from Article 18 Paragraph 1;
- Person who performing religious rituals or activities violates the public order and peace, as well as the religious feelings and other freedoms and rights of the citizens (Article 18 Paragraph 2), and
- Person who performs religious ritual without request of a citizen in his residence, of underage without appropriate agreement and in hospitals, homes for old people and alike institutions, contrary to the house rules (Article 20 Paragraph 1, 2 and 3).

**France**

**Loi du 29 juillet 1881 sur la liberté de la presse, article 24**

Seront punis de cinq ans d'emprisonnement et de 300 000 F d'amende ceux qui, par l'un des moyens énoncés à l'article précédent, auront directement provoqué, dans le cas où cette provocation n'aurait pas été suivie d'effet, à commettre l'une des infractions suivantes :

(...)

Ceux qui, par l'un des moyens énoncés à l'article 23<sup>2</sup>, auront provoqué à la discrimination, à la haine ou à la violence à l'égard d'une personne ou d'un groupe de personnes à raison de leur origine ou de leur appartenance ou de leur non appartenance à une ethnie, une nation, une race ou une religion déterminée, seront punis d'un an d'emprisonnement et de 300000 F d'amende ou de l'une de ces deux peines seulement .

En cas de condamnation pour l'un des faits prévus par l'alinéa précédent, le tribunal pourra en outre ordonner :

1° Sauf lorsque la responsabilité de l'auteur de l'infraction est retenue sur le fondement de l'article 42 et du premier alinéa de l'article 43 de la présente loi ou des trois premiers alinéas de l'article 93-3 de la loi n° 82-652 du 29 juillet 1982 sur la communication audiovisuelle, la privation des droits énumérés aux 2° et 3° de l'article 131-26 du code pénal pour une durée de cinq ans au plus ;

2° L'affichage ou la diffusion de la décision prononcée dans les conditions prévues par l'article 131-35 du code pénal.

---

<sup>2</sup> Article 23 (Loi n° 72-546 du 1 juillet 1972 Journal Officiel du 2 juillet 1972) (Loi n° 85-1317 du 13 décembre 1985 art. 18-i Journal Officiel du 24 décembre 1985)

« Seront punis comme complices d'une action qualifiée crime ou délit ceux qui, soit par des discours, cris ou menaces proférés dans des lieux ou réunions publics, soit par des écrits, imprimés, dessins, gravures, peintures, emblèmes, images ou tout autre support de l'écrit, de la parole ou de l'image vendus ou distribués, mis en vente ou exposés dans des lieux ou réunions publics, soit par des placards ou des affiches exposés au regard du public, soit par tout moyen de communication audiovisuelle, auront directement provoqué l'auteur ou les auteurs à commettre ladite action, si la provocation a été suivie d'effet .

Cette disposition sera également applicable lorsque la provocation n'aura été suivie que d'une tentative de crime prévue par l'article 2 du code pénal . »

**Loi du 29 juillet 1881 sur la liberté de la presse, Article 29§2<sup>3</sup>**

Toute expression outrageante, termes de mépris ou invective qui ne renferme l'imputation d'aucun fait est une injure .

**Loi du 29 juillet 1881 sur la liberté de la presse, Article 31**

Sera punie de la même peine , la diffamation commise par les mêmes moyens, à raison de leurs fonctions ou de leur qualité, envers un ou plusieurs membres du ministère, un ou plusieurs membres de l'une ou de l'autre Chambre , un fonctionnaire public, un dépositaire ou agent de l'autorité publique, un ministre de l'un des cultes salariés par l'Etat, un citoyen chargé d'un service ou d'un mandat public temporaire ou permanent, un juré ou un témoin, à raison de sa déposition.

La diffamation contre les mêmes personnes concernant la vie privée relève de l'article 32 ci-après.

**Loi du 29 juillet 1881 sur la liberté de la presse, Article 32**

La diffamation commise envers les particuliers par l'un des moyens énoncés en l'article 23 sera punie d'une amende de 80.000 F.

La diffamation commise par les mêmes moyens envers une personne ou un groupe de personnes à raison de leur origine ou de leur appartenance ou de leur non appartenance à une ethnie, une nation, une race ou une religion déterminée sera punie d'un an d'emprisonnement et de 300000 F d'amende ou de l'une de ces deux peines seulement .

En cas de condamnation pour l'un des faits prévus par l'alinéa précédent, le tribunal pourra en outre ordonner :

1° L'affichage ou la diffusion de la décision prononcée dans les conditions prévues par l'article 131-35 du code pénal.

**Loi du 29 juillet 1881 sur la liberté de la presse, Article 33**

L'injure commise par les mêmes moyens envers les corps ou les personnes désignés par les articles 30 et 31 de la présente loi sera punie d'une amende de 80.000 F.

L'injure commise de la même manière envers les particuliers, lorsqu'elle n'aura pas été précédée de provocations, sera punie d'une amende de 80.000 F.

---

<sup>3</sup>La Cour de cassation s'est prononcée le 16 février dernier, en assemblée plénière, sur le sens et la portée de propos rapportés par voie de presse et poursuivis comme constitutifs du délit d'injure publique raciale, prévu et puni par les articles 29, alinéa 2, et 33, alinéa 3, de la loi du 29 juillet 1881. Selon le premier de ces textes, « toute expression outrageante, termes de mépris ou invective qui ne renferme l'imputation d'aucun fait est une injure », tandis que, selon le second, « sera punie de six mois d'emprisonnement et de 22 500 euros l'injure (...) envers une personne ou un groupe de personnes à raison de leur origine ou de leur appartenance ou de leur non-appartenance à une ethnie, une nation, une race ou une religion déterminée ». Les juges du fond avaient, à deux reprises, une première censure étant intervenue par arrêt de la chambre criminelle, interprété les propos incriminés « les juifs, c'est une secte, c'est une escroquerie » comme relevant d'un débat théorique sur l'influence des religions eu égard au contexte dans lequel ils avaient été prononcés, dans le cadre d'une interview dénonçant le fait religieux, et avaient estimé qu'ils ne constituaient pas une attaque dirigée contre la communauté juive en tant que communauté humaine. La Cour de cassation a censuré cette interprétation et a jugé que les propos en cause ne relevaient pas de la libre critique du fait religieux participant d'un débat d'intérêt général mais constituaient une injure visant un groupe de personnes en raison de son origine. Elle a, en outre, analysé ces propos au regard de la liberté d'expression garantie par l'article 10 de la Convention EDH, lequel prévoit que des restrictions puissent lui être apportées sous certaines conditions. À la lumière de l'interprétation de ce texte par la Cour EDH, la Cour de cassation a jugé que la répression des propos litigieux constituait une restriction nécessaire à la liberté d'expression dans une société démocratique. Cass. ass. plén., 16 févr. 2007, n° 06-81.785, P+B+R+I, Consistoire central union des communautés juives de France c/ M. Dieudonné Cour de cassation, 16 févr. 2007, communiqué JCP G 2007, act. à paraître.

Sera punie de six mois d'emprisonnement et de 150.000 F d'amende l'injure commise, dans les conditions prévues à l'alinéa précédent, envers une personne ou un groupe de personnes à raison de leur origine ou de leur appartenance ou de leur non appartenance à une ethnie, une nation, une race ou une religion déterminée<sup>4</sup>

---

<sup>4</sup> Cour de Cassation de France, Chambre civile 1, Audience publique du 14 novembre 2006, Cassation partielle sans renvoi, N° de pourvoi : 05-15822, Publié au bulletin

Attendu que la société GIP, titulaire de la marque de vêtements Marithé François Girbaud (MFG) a, à l'occasion du lancement de sa collection de printemps 2005, fait apposer une affiche, du 1er au 31 mars 2005, sur une surface de 400 m<sup>2</sup> de la façade d'un immeuble de la porte Maillot à Neuilly-sur-Seine, qui consistait en une photographie inspirée du tableau "La Cène" de Léonard de Vinci, ses participants étant remplacés par des femmes portant des vêtements de la marque et accompagnées d'un homme dos nu ; que l'association Croyances et libertés, estimant que cette publicité était injurieuse à l'égard de la communauté des catholiques, a demandé au juge des référés qu'il soit interdit à l'agence Air Paris et à la société MFG d'afficher, de diffuser ou de publier la photographie litigieuse au motif qu'elle constituerait une injure au sens des articles 29, alinéa 2, et 33, alinéa 3, de la loi du 29 juillet 1881 et à ce titre un trouble manifestement illicite ; que cette association a ensuite limité ses prétentions à l'affichage public de la photographie litigieuse ; que par ordonnance du 10 mars 2005, le tribunal de grande instance de Paris, retenant l'existence de l'injure alléguée, a interdit aux sociétés GIP et JC Decaux publicité lumineuse d'afficher la photographie en tous lieux publics et sur tous supports, ordonné l'interruption de son affichage, fixé une astreinte de 100 000 euros, mis hors de cause les autres défendeurs ; que l'affiche a été déposée le 11 mars 2005 et remplacée par l'image de la seule table précédemment utilisée dépourvue de tout personnage ;

Sur le premier moyen du pourvoi n° B 05-15.822 de la société GIP et de son pourvoi incident au pourvoi n° W 05-16.001 qui sont identiques :

Attendu qu'il est fait grief à l'arrêt d'avoir rejeté les exceptions de nullité de la procédure alors qu'en décidant que la société GIP à qui aucune citation n'avait été signifiée lorsqu'elle avait comparu avec son dirigeant personnellement assigné, avait néanmoins bénéficié d'un temps suffisant pour préparer sa défense quelles que soient les conditions de sa citation au prétexte que la qualité de l'intervention du conseil de la société GIP et de son dirigeant avait établi la parfaite connaissance que celui-ci avait du dossier, la cour d'appel a violé les articles 16 et 468 du nouveau code de procédure civile ;

Mais attendu que la cour d'appel, qui a constaté que lorsqu'elle s'était présentée devant le juge, la société GIP était assistée d'un avocat qui avait reçu communication du dossier dont il avait démontré la parfaite connaissance qu'il en avait par la qualité de son intervention a, dans l'exercice de son pouvoir souverain, estimé qu'elle avait disposé d'un délai suffisant pour préparer sa défense ; qu'elle a pu en déduire que la cause de l'irrecevabilité de la demande avait disparu du fait de la régularisation intervenue au moment où le juge a statué ;

D'où il suit que le moyen ne peut qu'être rejeté ;

Et sur le moyen unique du pourvoi incident éventuel n° W 05-16.001 de l'association Croyances et libertés :

Attendu qu'il est fait grief à l'arrêt d'avoir déclaré recevable l'intervention volontaire de la Ligue française pour la défense des droits de l'homme et du citoyen, alors :

1 / qu'en matière d'infractions prévues et réprimées par la loi du 29 juillet 1881, la qualité de partie au procès est limitée dans les conditions énoncées aux articles 47, 48 et 48-1 et en ce qui concerne l'injure à caractère religieux, les associations agréées ne peuvent exercer que les droits de la partie civile ; en admettant la recevabilité de l'intervention de la ligue, qui n'avait pas pour objet d'obtenir la réparation du préjudice causé par l'injure envers un groupe de personnes en raison de sa religion, la cour d'appel a violé les articles 48, 6 et 48-1 de la loi du 29 juillet 1881 ;

2 / qu'en matière d'infractions prévues et réprimées par la loi du 29 juillet 1881, la qualité de partie au procès est limitée dans les conditions énoncées aux articles 47, 48 et 48-1 et en ce qui concerne l'injure à caractère religieux, les associations agréées ne peuvent agir qu'à la condition que l'infraction poursuivie relève de la cause qu'elles sont habilitées à défendre en justice et en constatant que la Ligue s'était donné pour mission la défense de causes différentes de la défense des victimes de discriminations fondées sur la religion quand seule l'injure envers un groupe de personnes en raison de leur religion était poursuivie, la cour d'appel a violé les articles 48, 6 et 48-1 de la loi du 29 juillet 1881 ;

3 / qu'à défaut d'habilitation légale une association se proposant de défendre un intérêt collectif confinant à l'intérêt général n'a pas d'intérêt à intervenir en justice pour faire valoir ses prétentions concernant l'application d'une infraction et en se bornant à constater que l'association intervenante s'était donné pour mission de défendre les

---

principes de liberté d'expression, de légalité des peines et de liberté de pensée pour admettre son intervention, la cour d'appel a violé les articles 31,330, alinéa 2, et 554 du nouveau code de procédure civile ;

4 / qu'en ne répondant pas au moyen qui soutenait que l'acte d'intervention de la ligue ne précisait pas le nom de la personne physique la représentant, la cour d'appel a violé l'article 455 du nouveau code de procédure civile ;

Mais attendu que la cour d'appel, qui a constaté que la Ligue pour la défense des droits de l'homme et du citoyen qui avait fondé son intervention volontaire sur les articles 7, 9 et 10 de la Convention de sauvegarde des droits de l'homme et des libertés fondamentales entendait défendre le principe qu'il n'y a pas de peine sans loi, celui de la liberté de pensée et celui de la liberté d'expression et non assister les victimes d'une discrimination, en a déduit à bon droit que l'article 48-1 de la loi du 29 juillet 1881 lui était inapplicable ;

D'où il suit que le moyen qui est inopérant dans ses troisième et quatrième branches ne peut qu'être rejeté ;

Mais sur les deuxième et troisième moyens du pourvoi de la société GIP et sur le moyen unique du pourvoi de la Ligue française pour la défense des droits de l'homme et du citoyen :

Vu les articles 29, alinéa 2 , 33, alinéa 3, de la loi du 29 juillet 1881, ensemble l'article 809 du nouveau code de procédure civile, ainsi que 10 de la Convention européenne des droits de l'homme ;

Attendu que pour interdire d'afficher la photographie litigieuse en tous lieux publics et sur tous supports et faire injonction de l'interrompre, la cour d'appel a énoncé que cette affiche, dont la recherche esthétique n'était pas contestée, reproduisait à l'évidence la Cène de Jésus-Christ..., que cet événement fondateur du christianisme, lors duquel Jésus-Christ institua le sacrement de l'Eucharistie, faisait incontestablement partie des éléments essentiels de la foi catholique ;

que dès lors l'installation de l'affiche litigieuse sous la forme d'une bache géante sur le passage d'un très grand nombre de personnes, constituait l'utilisation dévoyée, à grande échelle, d'un des principaux symboles de la religion catholique, à des fins publicitaires et commerciales en sorte que l'association Croyances et libertés était bien fondée à soutenir qu'il était fait gravement injure, au sens des articles 29, alinéa 2, et 33, alinéa 3, de la loi susvisée aux sentiments religieux et à la foi des catholiques et que cette représentation outrageante d'un thème sacré détourné par une publicité commerciale leur causait ainsi un trouble manifestement illicite qu'il importait de faire cesser par la mesure sollicitée ; que ladite composition n'avait d'évidence pour objet que de choquer celui qui la découvrirait afin de retenir son attention sur la représentation saugrenue de la Cène ainsi travestie, en y ajoutant ostensiblement une attitude équivoque de certains personnages, et ce, au profit de la marque commerciale inscrite au-dessus de ce tableau délibérément provoquant ;

que le caractère artistique et l'esthétisme recherchés dans ce visuel publicitaire n'empêchait pas celui-ci de constituer même si l'institution de l'Eucharistie n'y était pas traitée un dévoiement caractérisé d'un acte fondateur de la religion chrétienne avec un élément de nudité racoleur, au mépris du caractère sacré de l'instant saisi ... ;

Qu'en retenant ainsi l'existence d'un trouble manifestement illicite, quand la seule parodie de la forme donnée à la représentation de la Cène qui n'avait pas pour objectif d'outrager les fidèles de confession catholique, ni de les atteindre dans leur considération en raison de leur obéissance, ne constitue pas l'injure, attaque personnelle et directe dirigée contre un groupe de personnes en raison de leur appartenance religieuse, la cour d'appel a violé les textes susvisés ;

Et attendu que la Cour de cassation est en mesure de mettre fin au litige en appliquant la règle de droit appropriée ;

PAR CES MOTIFS :

REJETTE le pourvoi incident éventuel de l'association Croyances et libertés ;

CASSE ET ANNULE, sauf en ce qu'il a déclaré recevable l'intervention volontaire de la Ligue des droit de l'homme et du citoyen ainsi que rejeté l'exception de nullité de la procédure présentée par la société GIP, l'arrêt rendu le 8 avril 2005, entre les parties, par la cour d'appel de Paris ;

Vu l'article 627, alinéa 2, du nouveau code de procédure civile ;

DIT n'y avoir lieu à renvoi ;

Déboute l'association Croyances et libertés de sa demande ;

Condamne l'association Croyances et libertés aux dépens ;

Vu l'article 700 du nouveau code de procédure civile, rejette les demandes ;

Dit que sur les diligences du procureur général près la Cour de cassation, le présent arrêt sera transmis pour être transcrit en marge ou à la suite de l'arrêt partiellement cassé ;

Ainsi fait et jugé par la Cour de cassation, première chambre civile, et prononcé par le président en son audience publique du quatorze novembre deux mille six.

En cas de condamnation pour l'un des faits prévus par l'alinéa précédent, le tribunal pourra en outre ordonner :

1° L'affichage ou la diffusion de la décision prononcée dans les conditions prévues par l'article 131-35 du code pénal.

***Loi du 9 décembre 1905, Article 31***

Sont punis de la peine d'amende prévue pour les contraventions de la 5ème classe et d'un emprisonnement de six jours à deux mois ou de l'une de ces deux peines seulement ceux qui, soit par voies de fait, violences ou menaces contre un individu, soit en lui faisant craindre de perdre son emploi ou d'exposer à un dommage sa personne, sa famille ou sa fortune, l'auront déterminé à exercer ou à s'abstenir d'exercer un culte, à faire partie ou à cesser de faire partie d'une association cultuelle, à contribuer ou à s'abstenir de contribuer aux frais d'un culte.

***Loi du 9 décembre 1905, Article 32***

Seront punis des mêmes peines ceux qui auront empêché, retardé ou interrompu les exercices d'un culte par des troubles ou désordres causés dans le local servant à ces exercices.

***Loi du 9 décembre 1905, Article 33***

Les dispositions des deux articles précédents ne s'appliquent qu'aux troubles, outrages ou voies de fait, dont la nature ou les circonstances ne donneront pas lieu à de plus fortes peines d'après les dispositions du Code pénal.

***Code pénal, Article 132-76***

Dans les cas prévus par la loi, les peines encourues pour un crime ou un délit sont aggravées lorsque l'infraction est commise à raison de l'appartenance ou de la non appartenance, vraie ou supposée, de la victime à une ethnie, une nation, une race ou une religion déterminée.

La circonstance aggravante définie au premier alinéa est constituée lorsque l'infraction est précédée, accompagnée ou suivie de propos, écrits, images, objets ou actes de toute nature portant atteinte à l'honneur ou à la considération de la victime ou d'un groupe de personnes dont fait partie la victime à raison de leur appartenance ou de leur non appartenance, vraie ou supposée, à une ethnie, une nation, une race ou une religion déterminée.

***Code pénal, Article R. 624-3 Diffamation discriminatoire***

La diffamation non publique commise envers une personne ou un groupe de personnes à raison de leur origine ou de leur appartenance ou de leur non appartenance, vraie ou supposée, à une ethnie, une nation, une race ou une religion déterminée est punie de l'amende prévue pour les contraventions de la 4e classe.

***Code pénal, Article R. 624-4 Injure discriminatoire***

L'injure non publique commise envers une personne ou un groupe de personnes à raison de leur origine ou de leur appartenance ou de leur non appartenance, vraie ou supposée, à une ethnie, une nation, une race ou une religion déterminée est punie de l'amende prévue pour les contraventions de la 4e classe.

***Code pénal, article R. 625-7 (Décret n° 2005-284 du 25 mars 2005)***

"La provocation non publique à la discrimination, à la haine ou à la violence à l'égard d'une personne ou d'un groupe de personnes à raison de leur origine ou de leur appartenance ou de leur non appartenance, vraie ou supposée, à une ethnie, une nation, une race ou une religion déterminée est punie de l'amende prévue pour les contraventions de la 5e classe. (1.500 euros

au plus -qui peut être porté au double, dans certains cas de récidive-, et éventuelles peines complémentaires) " (...)

**Loi n° 90-615 du 13 juillet 1990 tendant à réprimer tout acte raciste, antisémite ou xénophobe J.O. du 14/07/1990, Art. 14**

Possibilité, pour les associations oeuvrant contre les discriminations raciales et religieuses, d'exercer le droit de réponse en matière audiovisuelle - Modification de l'art. 6 de la loi n° 82-652 du 29 juillet 1982)

**Code pénal d'Alsace et Moselle, article 166**

Celui qui aura causé un scandale en blasphémant publiquement Dieu par des propos outrageants ou aura publiquement outragé un des cultes chrétiens ou une communauté religieuse établie sur le territoire de la Confédération et reconnue comme corporation, ou les institutions ou cérémonies de ces cultes ou qui, dans une église ou un autre lieu consacré à des assemblées religieuses, aura commis des actes injurieux et scandaleux, sera puni d'un emprisonnement de trois ans au plus"

**Code pénal d'Alsace et Moselle, article 167**

Celui qui, par voie de fait ou menaces, aura empêché une personne d'exercer le culte d'une communauté religieuse établie dans l'Etat [...], ou qui, dans une église, aura par tapage ou désordre volontairement empêché ou troublé le culte ou certaines cérémonies du culte [...] sera puni d'un emprisonnement de trois au plus.

## Georgia

**Constitution (1995), Article 9<sup>5</sup>**

The state recognizes the special importance of the Georgian Orthodox Church in Georgian history but simultaneously declares complete freedom of religious belief and confessions, as well as independence of the church from the state.

**Constitution (1995), Article 19.1**

Every individual has the right to freedom of speech, thought, conscience, religion and belief.<sup>2</sup> The persecution of an individual for his thoughts, beliefs or religion is prohibited as is compulsion to express opinions about them.<sup>3</sup> These rights may not be restricted unless the exercise of these rights infringes upon the rights of other individuals.

---

<sup>5</sup> NB Forum18 25 mai 2005

Georgia's Constitutional Court today (25 May) ruled that mob attacks violated Pentecostal pastor Nikolai Kalutsky's rights to practice his faith freely, Forum 18 News Service has learnt. Sozar Subari, the Human Rights Ombudsperson, is one of many who state that the mobs are instigated by local Georgian Orthodox priest Fr David Isakadze. Subari witnessed an attack by Fr Isakadze and told Forum 18 that "a criminal case should be launched against him. However, it will be difficult to prove that he is responsible as he no longer turns up in person." Fr Isakadze and Archpriest Shio Menabde apparently also led a mob to expel another Orthodox priest, Fr Levan Mekoshvili, from his parish accusing him of being a "liberal". Elsewhere, Baptists and Pentecostals both state that Orthodox priests instigate violence against their congregations. "Until those responsible for the violence – especially Fr David Isakadze – are brought to justice, the constitutional court ruling in Kalutsky's case will make no difference," Baptist Bishop Malkhaz Songulashvili told Forum 18. The Georgian Orthodox Patriarchate failed to respond to questions about its responsibility.

***Criminal Code, Article 59 – Aggravating circumstances of a crime***

Aggravating circumstances of a punishment are [...] f. Commission of a crime with a motive of national, ethnic, racial and religious hatred or hostility; [...]

***Criminal Code, Article 114 - Premeditated murder in aggravating circumstances***

I. premeditated murder based on racial, religious, national or ethnic hatred;

***Art. 122. Premeditated severe injury to health***

is aggravated if based on racial, religious, national or ethnic hatred;

***Article 131 – Torture***

Is aggravated if committed due to national, racial or religious intolerance

***Art. 158. Illegal Interference with the Implementation of a Religious Ceremony***

Interference with the implementation of a religious ceremony violently or by threat, or by abusing a believer or the representative of the church shall be punished by a penalty equal to from 50 to 100 times the daily salary, or by labor in a penalty for a period up to one year, or by the deprivation of liberty for a period up to two years.

The same action committed by the use of a weapon shall be punished by a penalty from hundred to two hundred and fifty times the daily salary, or by the deprivation of liberty for a period of from one to five years with or without dispossession of the right to work for a period of up to five years.

***Art. 169. Illegal Interference with the Creation or Activities of a Political, Public or Religious Union***

Illegal interference with the creation or the activities of a political, public or religious union by violence or threat, or by abuse of authority shall be punished by a penalty equal to from fifty to hundred times the daily salary, or by labor in a penalty for a period up to one year, or by the restriction of liberty for a period up to two years, or by the deprivation of liberty for a period up to two years.

## Germany

### ***Criminal Code (1998), Section 166 - Insulting of Faiths, Religious Societies and Organizations Dedicated to a Philosophy of Life<sup>6</sup>***

#### Section 130 Agitation of the People

(1) Whoever, in a manner that is capable of disturbing the public peace:

1. incites hatred against segments of the population or calls for violent or arbitrary measures against them; or
  2. assaults the human dignity of others by insulting, maliciously maligning, or defaming segments of the population,
- shall be punished with imprisonment from three months to five years.

(2) Whoever:

1. with respect to writings (Section 11 subsection (3)), which incite hatred against segments of the population or a national, racial or religious group, or one characterized by its folk customs, which call for violent or arbitrary measures against them, or which assault the human dignity of others by insulting, maliciously maligning or defaming segments of the population or a previously indicated group:
    - a) disseminates them;
    - b) publicly displays, posts, presents, or otherwise makes them accessible;
    - c) offers, gives or makes accessible to a person under eighteen years; or
    - (d) produces, obtains, supplies, stocks, offers, announces, commends, undertakes to import or export them, in order to use them or copies obtained from them within the meaning of numbers a through c or facilitate such use by another; or
  2. disseminates a presentation of the content indicated in number 1 by radio,
- shall be punished with imprisonment for not more than three years or a fine.

(3) Whoever publicly or in a meeting approves of, denies or renders harmless an act committed under the rule of National Socialism of the type indicated in Section 220a subsection (1), in a manner capable of disturbing the public peace shall be punished with imprisonment for not more than five years or a fine.

(4) Whoever publicly or in a meeting, violating the dignity of the victims, approves of the National Socialist rule by force and arbitrariness in a manner capable of disturbing the public peace shall be punished with imprisonment for not more than three years or a fine.

---

<sup>6</sup> Intertights19 : For an insult to be punishable under this law "the manner and content" of the insult must be such that an objective onlooker could reasonably apprehend that the insult would disturb the peace of those who share the insulted belief. (Court of Appeal of Celle, Neue Juristische Wochenschrift, 1986, p. 1275.) Moreover, to be convicted, an offender must intend or at least be aware that his or her action constituted an offence. In applying Section 166 to a work of art, the freedom of art as guaranteed by Article 5(3) of the Basic Law must be taken into account[6].

Although the Federal Constitutional Court has not issued a judgment dealing specifically with the freedom of art vis-a-vis the freedom of religious beliefs, various criminal courts have done so. For example, in a 1981 case, the Criminal Court of Appeal of Cologne held that a caricature with words of Maria and Josef, dealing with faecal issues and abortion, did not in all circumstances show hostility against Christians (Neue Juristische Wochenschrift 1982, p. 657). In a 1985 case, the Court of Appeal of Karlsruhe ruled that a printed article which dealt sarcastically with the Last Supper did not constitute an insult. (Neue Strafrechtszeitung 1986, pp. 363 ff.) In 1988, the Criminal Court of Bochum held that a leaflet, even if an insult, which addressed "the Vatican and fascism" and included caricatures, was not of a character to disturb the peace. In considering cases involving religious insult, German courts most likely would not prohibit such displays so long as the viewing was limited to adults who had been informed in advance of the nature and contents of the material.



(5) Subsection (2) shall also apply to writings (Section 11 subsection (3)) with content such as is indicated in subsections (3) and (4).

(5) In cases under subsection (2), also in conjunction with subsection (5), and in cases of subsections (3) and (4), Section 86 subsection (3), shall apply correspondingly.

***Criminal Code (1998), Section 166 - Insulting of Faiths, Religious Societies and Organizations Dedicated to a Philosophy of Life<sup>7</sup>***

(1) Whoever publicly or through dissemination of writings (Section 11 subsection (3)) insults the content of others' religious faith or faith related to a philosophy of life in a manner that is capable of disturbing the public peace, shall be punished with imprisonment for not more than three years or a fine.

(2) Whoever publicly or through dissemination of writings (Section 11 subsection (3)) insults a church, other religious society, or organization dedicated to a philosophy of life located in Germany, or their institutions or customs in a manner that is capable of disturbing the public peace, shall be similarly punished.

***Criminal Code (1998) Section 167 Disturbing the Practice of Religion***

(1) Whoever:

1. intentionally and in a gross manner disturbs a religious service or an act of a religious service of a church or other religious society located in Germany; or
2. commits insulting mischief at a place dedicated to the religious services of such a religious society,

shall be punished with imprisonment for not more than three years or a fine.

(2) Corresponding celebrations of an organization dedicated to a philosophy of life located in Germany shall be the equivalent of religious services.

***Criminal Code (1998) Section 167a Disturbing a Funeral Service***

Whoever intentionally or knowingly disturbs a funeral service shall be punished with imprisonment for not more than three years or a fine.

**Greece**

***Constitution, article 14***

1. Every person may express and propagate his thoughts orally, in writing and through the press in compliance with the laws of the State.

---

<sup>7</sup> Interrights19 : For an insult to be punishable under this law "the manner and content" of the insult must be such that an objective onlooker could reasonably apprehend that the insult would disturb the peace of those who share the insulted belief. (Court of Appeal of Celle, *Neue Juristische Wochenschrift*, 1986, p. 1275.) Moreover, to be convicted, an offender must intend or at least be aware that his or her action constituted an offence. In applying Section 166 to a work of art, the freedom of art as guaranteed by Article 5(3) of the Basic Law must be taken into account[6].

Although the Federal Constitutional Court has not issued a judgment dealing specifically with the freedom of art vis-a-vis the freedom of religious beliefs, various criminal courts have done so. For example, in a 1981 case, the Criminal Court of Appeal of Cologne held that a caricature with words of Maria and Josef, dealing with faecal issues and abortion, did not in all circumstances show hostility against Christians (*Neue Juristische Wochenschrift* 1982, p. 657). In a 1985 case, the Court of Appeal of Karlsruhe ruled that a printed article which dealt sarcastically with the Last Supper did not constitute an insult. (*Neue Strafrechtszeitung* 1986, pp. 363 ff.) In 1988, the Criminal Court of Bochum held that a leaflet, even if an insult, which addressed "the Vatican and fascism" and included caricatures, was not of a character to disturb the peace. In considering cases involving religious insult, German courts most likely would not prohibit such displays so long as the viewing was limited to adults who had been informed in advance of the nature and contents of the material.

2. The press is free. Censorship and all other preventive measures are prohibited.  
3. The seizure of newspapers and other publications before or after circulation is prohibited. Seizure by order of the public prosecutor shall be allowed exceptionally after circulation and in case of:

- \* a) an offence against the Christian or any other known religion.
- \* b) an insult against the person of the President of the Republic.
- \* c) a publication which discloses information on the composition, equipment and set-up of the armed forces or the fortifications of the country, or which aims at the violent overthrow of the regime or is directed against the territorial integrity of the State.
- \* d) an obscene publication which is obviously offensive to public decency, in the cases stipulated by law.

4. In all the cases specified under the preceding paragraph, the public prosecutor must, within twenty-four hours from the seizure, submit the case to the judicial council which, within the next twenty-four hours, must rule whether the seizure is to be maintained or lifted; otherwise it shall be lifted ipso iure. An appeal may be lodged with the Court of Appeals and the Supreme Civil and Criminal Court by the publisher of the newspaper or other printed matter seized and by the public prosecutor.

5. The manner in which full retraction shall be made in cases of inaccurate publications shall be determined by law.

6. After at least three convictions within five years for the criminal acts defined under paragraph 3, the court shall order the definitive ban or the temporary suspension of the publication of the paper and, in severe cases, shall prohibit the convicted person from practising the profession of journalist as specified by law. The ban or suspension of publication shall be effective as of the date the court order becomes irrevocable.

7. Press offences shall be subject to immediate court hearing and shall be tried as provided by law.

8. The conditions and qualifications requisite for the practice of the profession of journalist shall be specified by law.

9. The law may specify that the means of financing newspapers and periodicals should be disclosed.

#### ***Code pénal, Art.198 (Blasphème malveillant)***

1. Toute personne qui, de quelque manière que ce soit et dans une intention malveillante, offenserait Dieu Publiquement, encourt une peine d'emprisonnement pouvant aller jusqu'à deux ans. 2. Celui qui, en dehors du cas spécifié au par. 1, blasphèmerait en public, témoignant ainsi son manque de respect envers Dieu, encourt une peine d'emprisonnement pouvant aller jusqu'à trois mois.

#### ***Code pénal, Article 199. (Outrage à la religion).***

Celui qui, de quelque manière que ce soit et dans une mauvaise intention, offenserait en public l'Église orthodoxe d'Orient ou toute autre religion reconnue en Grèce, encourt une peine d'emprisonnement pouvant aller jusqu'à deux ans.

#### ***Code pénal, Article 200. (Perturbation d'une assemblée religieuse). –***

1. Celui qui, par malveillance, essaierait délibérément d'empêcher ou de perturber une assemblée religieuse, reconnue par l'État, pendant un office ou une cérémonie, encourt une peine d'emprisonnement pouvant aller jusqu'à deux ans. 2. La même peine est applicable à celui qui, dans une église ou un lieu consacré à des assemblées religieuses, reconnues par l'État, se livrerait à des actes inconvenants et offensants.

**Code pénal, Article 201. (Outrage aux morts). –**

Celui qui, de son propre chef, soit violerait une sépulture pour en retirer un mort, l'amputer de ses membres ou subtiliser ses cendres - en dehors de ceux qui y sont autorisés - soit se livrerait à des actes inconvenants et outrageants à l'égard des morts ou de leur sépulture, encourt une peine d'emprisonnement pouvant aller jusqu'à deux ans.

**Law 927/1979 “on punishing acts or activities aiming at racial discrimination” criminalizes:**

(a) to wilfully and publicly, either orally or by the press or by written texts or through pictures or any other means, incite to acts or activities which may result in discrimination, hatred or violence against individuals or groups of individuals on the sole grounds of the latter's racial or national origin or [by virtue of article 24 of Law 1419/1984] religion;

(...)

(c) to express publicly, either orally or by the press or by written texts or through pictures or any other means offensive ideas against any individual or group of individuals on the grounds of the latter's racial or national origin or religion.

**Hungary**

**Criminal Code §174/A**

« Whoever a) restricts another person by violence or by threats in his freedom of conscience b) prevents another person from freely exercising his religion by violence or threats, commits a crime, and is punishable by imprisonment extending to three years »

**Criminal Code §174/B**

punishes violence against a member of a national, ethnic, racial or religious group (and presumption of membership of such a group) with imprisonment

(1) The person who assaults somebody else because he belongs or is believed to belong to a national, ethnic, racial or religious group, or coerces him with violence or menace into doing or not doing or into enduring something, commits a felony and shall be punishable with imprisonment up to five years.

(2) lists aggravating factors such as use of arms.

**Criminal Code §269:**

incitement against a community: A person who incites to hatred before the general public against (a) the Hungarian nation; (b) any national, ethnic, racial group or certain groups of the population, shall be punishable for a felony offence with imprisonment up to three years. Proposed amendment to §269 to ensure punishment of racial expression – adopted by Hungarian Parliament, but judged unconstitutional by Constitutional Court in May 2004 - unamended article still valid.

**Criminal Code §269B:**

detailed list of symbols which are connected to ideas and events relating to the forceful seizure and dictatorial keeping of power, and therefore represent violence, hate against certain national, ethnic, or religious groups

**Law on misdemeanor, § 150 (Act LXIX.1999)**

« A fine not exceeding HUF 100.000 may be imposed on whoever causes a public scandal on premises designated for the purposes of the ceremonies of a registered church or desecrates

the object of religious worship or an object used for conducting the ceremonies on or outside the premises designated for the purposes of ceremonies »

## Ireland

### **Constitution, article 40, 6, 1°, i.<sup>8</sup>**

40. 6. 1° The State guarantees liberty for the exercise of the following rights, subject to public order and morality:-

i. The right of the citizens to express freely their convictions and opinions.

The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavour to ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State.

The publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law.

### **Defamation act. 1961, n°40**

Il partie : Sanctions pour l'impression ou la publication d'écrits obscènes ou blasphématoires: "

13.1 Toute personne qui compose, imprime ou publie un écrit blasphématoire ou obscène sera, en cas de condamnation de cela lors de la mise en accusation, passible d'une amende qui n'excèdera pas 500 livres ou d'un emprisonnement ou des travaux forcés pendant un temps qui n'excèdent pas sept ans. 13-2a - Dans tous les cas où une personne est condamnée pour avoir composé, publié ou imprimé un écrit blasphématoire, la Cour peut donner l'ordre de saisie et de transport et de conservation sous bonne garde, de la manière qui sera imposée par l'ordre, de toutes les copies de l'écrit en possession de cette personne ou de toute autre personne nommée dans cet ordre pour son application, la preuve sous serment ayant été préalablement fournie à la satisfaction de la Cour qui les copies dudit écrit sont en possession d'une telle personne au profit de la personne condamnée, 13.2b -En ce qui concerne l'exécution de l'ordre dont il est question au § a de cet article, tout membre de la Garda Síochána agissant au nom d'un tel ordre peut entrer, si nécessaire par la force, et chercher toutes les copies dudit écrit, dans chaque immeuble, maison ou tout autre endroit appartenant à la personne condamnée ou à toute autre personne nommée dans l'ordre et peut saisir et emporter et garder de la manière décrite dans un tel ordre toutes les copies de l'écrit qui y sont trouvées. 13.2c Si, dans n'importe quel cas de ce type, le verdict est cassé en appel, toutes les copies de l'écrit saisies conformément à un ordre tel que décrit au § a de cet article, sont rendues sans frais à la personne ou aux personnes à qui elles ont été prises. 13-2d - Quand, dans un tel cas il n'a pas été interjeté appel ou si la sentence est confirmée en appel, toutes les copies saisies en vertu d'un ordre tel que décrit au § a de cet article seront, sur demande d'un

---

<sup>8</sup> *Corway -v- Independent Newspapers (Ireland) Limited* [1999] 4 IR 484 : the Supreme Court stated that "... the implications of [the constitutional framework] for the crime of blasphemy would need to be worked out in legislation. It is difficult to see how the common law crime of blasphemy, related as it was to an established church and an established religion could survive in such a constitutional framework.... It would appear that the legislature has not adverted to the problem of adapting the common law crime of blasphemy to the circumstances of a modern state which embraces citizens of many different religions and which guarantees freedom of conscience and a free profession and practice of religion." The Supreme Court went on to find that "[in] this state of the law, and in the absence of any legislative definition of the constitutional offence of blasphemy, it is impossible to say of what the offence of blasphemy consists. As the Law Reform Commission has pointed out neither the actus reus nor the mens rea is clear. The task of defining the crime is one for the legislature, not for the courts. In the absence of legislation and in the present state of the law the Court could not see its way to authorising the institution of a criminal prosecution of blasphemy against the respondents."

membre de la Garda Séocbana à la Cour qui a donné un tel ordre, détruites de manière telle qu'une telle Cour pourra indiquer

***Prohibition of Incitement to Hatred Act, 1989, act to prohibit incitement to hatred on account of race, religion, nationality or sexual orientation, Section 2***

It shall be an offence for a person –

to publish or distribute written material,  
to use words, behave or display written material –  
in any place other than inside a private residence, or  
(ii) inside a private residence so that the words, behaviour or material are heard or seen by persons outside the residence,  
or  
to distribute, show or play a recording of visual images or sounds,

if the written material, words, behaviour, visual images or sounds, as the case may be, are threatening, abusive or insulting and are intended or, having regard to all the circumstances, are likely to stir up hatred.

In proceedings for an offence under subsection (1), if the accused person is not shown to have intended to stir up hatred, it shall be a defence for him to prove that he was not aware of the content of the material or recording concerned and did not suspect, and had no reason to suspect, that the material or recording was threatening, abusive or insulting.

In proceedings for an offence under subsection (1)(b), it shall be a defence for the accused person –  
to prove that he was inside a private residence at the relevant time and had no reason to believe that the words, behaviour or material concerned would be heard or seen by a person outside the residence, or

if he is not shown to have intended to stir up hatred, to prove that he did not intend the words, behaviour or material concerned to be, and was not aware that they might be, threatening, abusive or insulting.

***The Censorship of Films Act 1923***

provides for the withholding of a certificate from a blasphemous film

**Iceland**

***General Criminal Code, Article 124***

In case anyone disturbs the sanctity of cemeteries or becomes guilty of indecorous treatment of a corpse this will be subject to fines ... 1) or imprisonment for up to 6 months.

The same penalty shall be applied to the indecorous treatment of objects belonging to churches and to be used for ecclesiastical ceremonies.

1) Act 82/1998, Article 47.

***General Criminal Code, Article 125***

Anyone officially ridiculing or insulting the dogmas or worship of a lawfully existing religious community in this Country shall be subject to fines or [imprisonment for up to 3 months.] 1) Lawsuits shall not be brought except upon the instructions of the Public Prosecutor.

1) Act 82/1998, Article 48.

**General Criminal Code, Article 233a**

Anyone who does by means of ridicule, calumny, insult, threat or otherwise assault [a person or group of persons] 1) on account of their nationality, colour, [race, religion or sexual inclination] 1) shall be subject to fines ... 2) or imprisonment for up to 2 years.] 3)

1) Act 135/1996, Article 2. 2) Act 82/1998, Article 126. 3) Act 96/1973, Article 1.

**Italie**

**Code pénal, Article 402\* (Offense à la religion de l'État)**

\*[Invalide par la Cour constitutionnelle par arrêt du 20 novembre 2000, n. 508.]

Quiconque offense publiquement la religion de l'État est puni d'un emprisonnement jusqu'à un an»

**Code pénal, Article 403 (Offense à la religion de l'État par outrage aux personnes)**

Toute personne qui offense la religion de l'État en public, par outrage à celui qui la professe, est punie d'une peine d'un emprisonnement pouvant aller jusqu'à deux ans. Celui qui offense la religion de l'État par outrage envers un ministre du culte catholique est puni d'un emprisonnement de un à trois ans.

\*\* (invalidé par la Cour constitutionnelle par arrêt du 18 avril 2005, n° 168, « dans la mesure où il prévoit pour les insultes à la religion catholique par outrage à celui qui la professe ou à un ministre du culte la peine de l'emprisonnement jusqu'à deux ans et de un à trois ans respectivement, au lieu d'une peine réduite aux termes de l'article 406 du même code »).

**Code pénal, Article 404 (Offenses à la religion de l'État par outrage aux biens.)**

Toute personne qui, dans un lieu affecté au culte, ou dans un lieu public ou ouvert au public, offense la religion de l'État, par outrage aux biens culturels, ou consacrés au culte, ou nécessairement destinés à l'exercice du culte, est punie d'une peine d'emprisonnement de un à trois ans. Quiconque commet ce délit durant des offices religieux célébrés par un ministre du culte catholique dans un lieu privé est puni de la même peine.

\*\*\* (Le premier alinéa a été invalidé par la Cour constitutionnelle par arrêt n° 329 de 1997, « dans la mesure où il prévoit la peine de l'emprisonnement de un à trois ans au lieu d'une peine diminuée prévue à l'article 406 du code pénal »).

**Code pénal, Article 405 (Perturbations de cérémonies religieuses du culte catholique)**

Toute personne qui empêche ou trouble le déroulement d'offices, de cérémonies ou de pratiques religieuses du culte catholique, accomplis grâce à l'assistance d'un ministre de ce culte soit dans un lieu destiné au culte, soit dans un lieu public ouvert au public, est punie d'une peine d'emprisonnement pouvant atteindre deux ans. ' Si des actes de violence aux personnes ou de menace s'y ajoutent, la peine d'emprisonnement est de un à trois ans.

\*\*\*\* (Article invalidé par la Cour constitutionnelle par arrêt du 9 juillet 2002 n° 327 « dans la mesure où pour les troubles au déroulement des offices religieux catholiques prévoit des peines plus lourdes que celles réduites prévues à l'article 406 du code pénal pour les mêmes actes commis contre d'autres religions »).

**Code pénal, Article 406 (Délits contre les cultes reconnus par l'État)**

Toute personne qui commet un des délits prévus aux articles 403, 404 et 405 contre un culte reconnu par l'Etat est punie, conformément aux articles précités, mais la peine est diminuée.

**Code pénal, Article 724 (Blasphème et manifestations outrageantes à l'encontre des défunts)**

Toute personne qui, en public, blasphème, par des invective ou des injures, la Divinité, est punie d'une sanction administrative pécuniaire de cent mille à six cent mille lires. La même sanction est appliquée à celui qui manifeste publiquement par outrage à l'encontre des défunts

**Décret-loi n° 122 du 26 avril 1993 converti en loi n° 205 du 25 juin 1993 portant «Mesures urgentes en matière de discrimination raciale, ethnique et religieuse»**

Article 1. (Discrimination, haine ou violence pour motifs raciaux, ethniques, nationaux ou religieux). - 1. L'article 3 de la loi n° 654 du 13 octobre 1975 est remplacé par les dispositions suivantes: « Article 3. 1. Sauf si l'infraction constitue un délit plus grave et aux fins de la mise en oeuvre de l'article 4 de la convention, est punie: a) de trois ans d'emprisonnement maximum toute personne qui de quelque façon que ce soit, diffuse des idées fondées sur la supériorité ou la haine raciale ou ethnique, ou incite à commettre ou commet des actes de discrimination pour motifs raciaux, ethniques, nationaux ou religieux; b) d'un emprisonnement de six mois à quatre ans toute personne qui, de quelque façon que ce soit, incite à commettre ou commet des actes de violence ou de provocation à la violence pour des motifs racistes, ethniques, nationaux ou religieux; 2. (Supprimé par la loi). 3. Toute organisation, association, mouvement ou groupe ayant notamment pour finalités l'incitation à la discrimination ou à la violence pour motifs raciaux, ethniques, nationaux ou religieux est interdite. Toute personne qui participe à de telles organisations, associations, mouvements ou groupes, ou prête assistance à leur activité, est punie, du seul fait de sa participation ou de son assistance, d'un emprisonnement de six mois à quatre ans. Les personnes qui encouragent ou dirigent de telles organisations, associations, mouvements ou groupes sont punies, de ce seul fait, d'un emprisonnement d'un an à six ans.».

**Latvia**

**Criminal Code (1998) Section 150 - Violation of Equality Rights of Persons on the Basis of their Attitudes Towards Religion**

For a person who commits direct or indirect restriction of the rights of persons or creation of whatsoever preferences for persons, on the basis of the attitudes of such persons towards religion, excepting activities in the institutions of a religious denomination, or commits violation of religious sensibilities of persons or incitement of hatred in connection with the attitudes of such persons towards religion or atheism, the applicable sentence is deprivation of liberty for a term not exceeding two years, or community service, or a fine not exceeding forty times the minimum monthly wage.

**Criminal Code (1998) Section 151 - Interference with Religious Ritual**

For a person who commits intentional interference with religious rituals, if such are not in violation of law and are not associated with violation of personal rights, the applicable sentence is community service, or a fine not exceeding ten times the minimum monthly wage.

**Criminal Code (1998) Section 227 - Causing Danger to Public Safety, Order and the Health of Individuals While Performing Religious Activities**

For a person who commits organisation or leadership of such group as the activities of which, manifested as the preaching of religious doctrine and performing of religious rituals, are

associated with causing of harm to public safety and order, to the health of persons, or to the rights and interests protected by law of a person, or who commits participation in such acts, the applicable sentence is deprivation of liberty for a term not exceeding five years or a fine not exceeding one hundred times the minimum monthly wage.

## **Liechtenstein**

### ***Criminal Code, § 126 Aggravated criminal damage***

1) a person is liable to a term of imprisonment not exceeding two years or to a fine of up to 360 days, if he or she has committed aggravated criminal damage against:

1. an object, which is used for a service or worship in a church or by a religious society located on the territory;
2. a grave, any other burial place, a tombstone or a memorial to the dead, which is in a cemetery or in a place of worship (...)

### ***Criminal code para.128 Aggravated theft***

1) a person will be liable to a term of imprisonment not exceeding three years, if he or she committed theft:

1. during a fire, an inundation or in general, during a victim's distress, taking advantage of the victim's state of helplessness;

2. in a place of worship or of an object that is used for a service or worship in a church or by a religious society located on the territory (...)

### ***Criminal Code, Section 188 - disparaging of religious precepts***

Whoever publicly disparages or mocks a person or a thing, respectively, being object of worship or a dogma, a legally permitted rite, or a legally permitted institution of a church or religious society located on the territory in a manner capable of giving rise to a justified annoyance is liable to imprisonment for a term not exceeding six months or to a fine of up to 360 days.

### ***Criminal Code, Section 189 - disturbance of the practice of religion***

1. Whoever forcibly or threatening with force precludes or disturbs divine service or an act of divine service of a church or religious society located on the territory is liable to imprisonment for a term not exceeding two years

2. Whoever is up to mischief at a place destined for a legally permitted practice of religion or on the occasion of a legally permitted public divine service or a legally permitted act of divine service or with an object directly destined for a legally permitted divine service of a church or religious society located on the territory in a manner capable of giving rise to a justified annoyance is liable to imprisonment for a term not exceeding six months or to a fine of up to 360 days.

### ***Criminal code para. 190 Desecration of graves***

1) Whoever removes a body or any portion of human remains or the ashes of a deceased person from a place of burial or from any internment space, or whoever has abused or has altered the body or the ashes of a deceased person or has desecrated a deceased person's grave, shall be liable to a term of imprisonment not exceeding six months or to a fine of up to 360 days.



2) Whoever removes any ornamentation from a place of burial or from any internment space or memorial of a deceased person shall be liable to a term of imprisonment not exceeding three months or to a fine of up to 180 days.

***Criminal code para. 191 Willful interference in a funeral***

Whoever willingly disturbs a funeral service by making noise that causes distress or by other unsuitable behaviour shall be liable to a term of imprisonment not exceeding three months or to a fine of up to 180 days.

***Criminal Code, § 283 - Racial Discrimination***

I. A person shall be punished with imprisonment of up to two years if he or she

- 1) publicly incites hatred or discrimination against a person or a group of persons on the basis of race, ethnicity or religion;
- 2) publicly disseminates ideologies aimed at the systematic disparagement or defamation of members of a race, ethnicity or religion;
- 3) organizes, promotes, or participates in propaganda actions with the same objective;
- 4) publicly disparages or discriminates against a person or a group of persons on the basis of race, ethnicity or religion in a manner violating human dignity, by means of spoken words, writing, images, electronically transmitted symbols, gestures, physical violence or any other means;
- 5) publicly denies, grossly plays down the harm or attempts to justify genocide or other crimes against humanity, by means of spoken words, writing, images, electronically transmitted symbols, gestures, physical violence or any other means;
- 6) denies a service he or she provides that is meant for the general public to a person or a group of persons on the basis of race, ethnicity or religion;
- 7) participates as a member in an association whose activities consist of promoting and inciting racial discrimination.

II. A person shall be punished in the same manner, if the person

- 1) manufactures, imports, stores or distributes, for the purposes of further dissemination, documents, sound or image recordings, electronically transmitted symbols, depictions or other objects of this sort whose content is a racial discrimination within the meaning of paragraph I.
- 2) publicly recommends, exhibits, offers or presents them.

III. Paragraphs I and II do not apply if the propaganda material or the act serves the purpose of art or science, research or education, appropriate reporting on current events or history, or similar purposes.

**Lithuania**

***Constitution, Article 25***

- (1) Individuals shall have the right to have their own convictions and freely express them.
- (2) Individuals must not be hindered from seeking, obtaining, or disseminating information or ideas.
- (3) Freedom to express convictions, as well as to obtain and disseminate information, may not be restricted in any way other than as established by law, when it is necessary for the safeguard of the health, honour and dignity, private life, or morals of a person, or for the protection of constitutional order.
- (4) Freedom to express convictions or impart information shall be incompatible with criminal actions - the instigation of national, racial, religious, or social hatred, violence, or discrimination, the dissemination of slander, or misinformation.

(5) Citizens shall have the right to obtain any available information which concerns them from State agencies in the manner established by law.

***Constitution, Article 26***

- (1) Freedom of thought, conscience, and religion shall not be restricted.
- (2) Every person shall have the right to freely choose any religion or faith and, either individually or with others, in public or in private, to manifest his or her religion or faith in worship, observance, practice or teaching.
- (3) No person may coerce another person or be subject to coercion to adopt or profess any religion or faith.
- (4) A person's freedom to profess and propagate his or her religion or faith may be subject only to those limitations prescribed by law and only when such restrictions are necessary to protect the safety of society, public order, a person's health or morals, or the fundamental rights and freedoms of others.
- (5) Parents and legal guardians shall have the liberty to ensure the religious and moral education of their children in conformity with their own convictions.

***Constitution, Article 27***

A person's convictions, professed religion or faith may justify neither the commission of a crime nor the violation of law.

***Constitution, Article 43***

- (1) The State shall recognize traditional Lithuanian churches and religious organizations, as well as other churches and religious organizations provided that they have a basis in society and their teaching and rituals do not contradict morality or the law.
- (2) Churches and religious organizations recognized by the State shall have the rights of legal persons.
- (3) Churches and religious organizations shall freely proclaim the teaching of their faith, perform the rituals of their belief, and have houses of prayer, charity institutions, and educational institutions for the training of priests of their faith.
- (4) Churches and religious organizations shall function freely according to their canons and statutes.
- (5) The status of churches and other religious organizations in the State shall be established by agreement or by law.
- (6) The teachings proclaimed by churches and other religious organizations, other religious activities, and houses of prayer may not be used for purposes which contradict the Constitution and the law.
- (7) There shall not be a State religion in Lithuania.

***Criminal Code, § 170***

“Any person who by public statements orally, in writing or through mass media mocks, expresses contempt, incites hatred or discrimination against a group of people or an individual belonging to such group on account of their sex, sexual orientation, race, nationality, language, origin, social status, religion, conviction or belief, shall be punished by fine or restriction of freedom, or arrest, or imprisonment up to 2 years.

Any person who publicly incites violence or use of deadly physical force against a group of people or an individual belonging to such group on account of their sex, sexual orientation, race, nationality, language, origin, social status, religion, conviction or belief, or provides financial or other kind of material support for such acts, shall be punished by a fine or restriction of freedom, or arrest, or imprisonment up to 3 years.”

***Criminal code, § 171***

prohibition of disturbance of religious services or celebrations of state-recognised religious communities or associations; provides for punishment by public works, fine, restriction of freedom or arrest.

***The Law of the Republic of Lithuania of 18th November 1997 on the Supplementation of the Code of Administrative Violations by Articles 214(12), 214(13), the Abolition of Article 214(1) and Amendment of Articles 224, 259(1), 32033 introduced definitions of unlawful conduct related to public advocacy of national, racial or religious discord***

***Article 214(12). The Production, Storage or Distribution of Information Products Which Advocate National, Racial or Religious Discord***

The production or storage with a purpose of distribution and distribution of printed, visual, audio or other products, which advocate national, racial or religious discord, incurs a fine from 1000 to 10000 Litas either with confiscation of such products being produced, stored or distributed and of the means essentially used for production of such products, or without confiscation of the means of production.

***Article 214(13). The establishment of an organisation which advocates national, racial or religious discord or participation in activities of such an organisation***

The establishment of an organisation which advocates national, racial or religious discord or participation in activities of such an organisation, incurs a fine of between 3000 and 10000 Litas.

The same conduct performed by a person who had previously been punished by an administrative fine for the offences foreseen in Part 1 of this Article, incurs a fine from 10000 to 20000 Litas."

**Luxembourg**

***Code pénal, Article 144.***

Toute personne qui, par faits, paroles, gestes ou menaces, aura outragé les objets d'un culte, soit dans les lieux destinés ou servant habituellement à son exercice, soit dans des cérémonies publiques de ce culte, sera punie d'un emprisonnement de quinze jours à six mois et d'une amende de vingt-six francs à cinq cents francs.

***Code pénal, Article 145.***

Sera puni des mêmes peines celui qui, par faits paroles, gestes ou menaces, aura outragé le ministre d'un culte, dans l'exercice de son ministère.

S'il l'a frappé, il sera puni d'un emprisonnement de deux mois à deux ans et d'une amende de cinquante francs à cinq cents francs.

**Malta**

***Constitution, Section 2 [State Religion]***

(1) The religion of Malta is the Roman Catholic Apostolic Religion. (2) The authorities of the Roman Catholic Apostolic Church have the duty and the right to teach which principles are right

and which are wrong. (3) Religious teaching of the Roman Catholic Apostolic Faith shall be provided in all State schools as part of compulsory education.

***Criminal Code, §82A(1)***

Whosoever uses any threatening, abusive or insulting words or behaviour, or displays any written or printed material which is threatening, abusive or insulting, or otherwise conducts himself in such a manner, with intent thereby to stir up racial hatred or whereby racial hatred is likely, having regard to all the circumstances, to be stirred up shall, on conviction, be liable to imprisonment for a term from six to eighteen months. Racial hatred is defined in (2) as hatred against a group of persons in Malta defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.

***Press Act 1974, Article 6***

Whosoever by means of the publication or distribution in Malta of printed matter, or by means of any broadcast shall threaten, insult, or expose to hatred, persecution or contempt, a person or group of persons because of their race, creed, colour, nationality, sex, disability or national or ethnic origin shall be liable on conviction to imprisonment for a term not exceeding three months and to a fine.

**Moldova**

***Constitution (1994), Article 31 - Freedom of Conscience***

- (1) The freedom of conscience is guaranteed, and its manifestations should be in spirit of tolerance and mutual respect.
- (2) The freedom of religious worship is guaranteed and religious bodies are free to organize themselves according to their own statutes under the rule of law.
- (3) In their mutual relationships religious cults are forbidden to use, express or incite to hatred or enmity.
- (4) Religious cults are autonomous vis-a-vis the State and shall enjoy the latter's support, including that aimed at providing religious assistance in the army, in hospitals, prisons, homes for the elderly and orphanages.

***Constitution (1994), Article 32 - Freedom of Opinion and Expression***

- 1) All citizens are guaranteed the freedom of opinion as well as the freedom of publicly expressing their thoughts and opinions by way of word, image or any other means possible.
- 2) The freedom of expression may not harm the honor, dignity or the rights of other people to have and express their own opinions or judgments.
- 3) The law shall forbid and prosecute all actions aimed at denying and slandering the State or the people. Likewise shall be forbidden and prosecuted the instigations to sedition, war, aggression, ethnic, racial or religious hatred, the incitement to discrimination, territorial separatism, public violence, or other actions threatening constitutional order.

***Code Pénal, Article 346. Actions intentionnelles visant à alimenter la discorde ou la haine nationale, raciale ou religieuse***

Les actions intentionnelles, les appels publics lancés au moyen d'un mass-média écrit ou électronique, visant à alimenter la discorde ou la haine nationale, raciale ou religieuse, à porter atteinte à l'honneur et à la dignité nationale, ainsi que la restriction, directe ou indirecte, des droits des citoyens ou la création d'avantages, directs ou indirects, en faveur de certains

citoyens en fonction de leur appartenance nationale, raciale ou religieuse, sont punis d'une amende de 250 unités conventionnelles au plus ou de 3 ans d'emprisonnement au maximum.

***Press law, Article 4 The Freedom of Expression and the Limitation of Publicity***

(1) Periodicals and press agencies can publish, according to their own appreciation, any kind of materials and information, except:

a) materials that contains disrespect and defamation against the state and people, urge on war of aggression, national, racial or religious hatred, inciting discrimination, territorial separatism, public violence, as well as other manifestations that violate the present constitutional regime; (...)

**Monaco**

***Code pénal, article 238***

Toute personne qui aura, par parole ou gestes, outragé les objets d'un culte, soit dans les lieux destinés ou servant actuellement à son exercice, soit hors de ces lieux, mais à l'occasion des cérémonies religieuses, ou les ministres de ce culte dans leurs fonctions, sera puni d'une amende de 2400 francs à 75000 francs, et d'un emprisonnement de quinze jours à six mois.

***Loi n° 1.299 du 15 juillet 2005 sur la liberté d'expression publique. Bulletin officiel, 2005-07-22, n° 7713, pp. 1426-1436, article 16***

Sont punis de cinq ans d'emprisonnement et de l'amende prévue au chiffre 4 de l'article 26 du code pénal, ou de l'une de ces deux peines seulement, ceux qui, par l'un des moyens énoncés à l'article précédent, ont directement provoqué, dans le cas où cette provocation n'aurait pas été suivie d'effet, à commettre l'une des infractions suivantes :

1° les atteintes volontaires à la vie, les atteintes volontaires à l'intégrité de la personne et les agressions sexuelles ;

2° les vols, les extorsions et les destructions, dégradations et détériorations volontaires dangereuses pour les personnes ;

3° les actes de terrorisme ou l'apologie de tels actes.

Sont punis des mêmes peines ceux qui, par l'un des moyens énoncés à l'article 15, provoquent à la haine ou à la violence à l'égard d'une personne ou d'un groupe de personnes à raison de leur origine, de leur appartenance ou de leur non appartenance à une ethnie, une nation, une race ou une religion déterminée, ou à raison de leur orientation sexuelle, réelle ou supposée.

En cas de condamnation pour l'un des faits prévus au précédent alinéa, peut en outre être ordonné l'affichage ou la diffusion, aux frais du condamné, de la décision prononcée, en tout ou partie ou sous la forme d'un communiqué. Cet affichage ou cette diffusion ne peut comporter l'identité de la victime qu'avec son accord ou celui de son représentant légal ou de ses ayants droit.

**Loi n° 1.299 du 15 juillet 2005 sur la liberté d'expression publique. Bulletin officiel, 2005-07-22, n° 7713, pp. 1426-1436, article 24**

La diffamation commise envers les particuliers, par les mêmes moyens, est punie d'un emprisonnement d'un mois à un an et de l'amende prévue au chiffre 3 de l'article 26 du code pénal, ou de l'une de ces deux peines seulement.

La diffamation commise par les mêmes moyens envers une personne ou un groupe de personnes à raison de leur appartenance, réelle ou supposée, ou de leur non appartenance à une ethnie, une nation, une race ou une religion déterminée, ou à raison de leur orientation sexuelle, réelle ou supposée, est punie d'un emprisonnement d'un mois à un an et de l'amende prévue au chiffre 3 de l'article 26 du code pénal, ou de l'une de ces deux peines seulement.

En cas de condamnation pour l'un des faits prévus au présent article, peut en outre être ordonné, dans les conditions prévues à l'article 16, l'affichage ou la diffusion, aux frais du condamné, de la décision prononcée, en tout ou partie ou sous la forme d'un communiqué.

**Loi n° 1.299 du 15 juillet 2005 sur la liberté d'expression publique. Bulletin officiel, 2005-07-22, n° 7713, pp. 1426-1436, article 25**

L'injure commise, par les mêmes moyens, envers les corps ou les personnes désignées par les articles 22 et 23 de la présente loi, est punie d'un emprisonnement de six jours à six mois et de l'amende prévue au chiffre 3 de l'article 26 du code pénal, ou de l'une de ces deux peines seulement.

L'injure commise de la même manière envers les particuliers, lorsqu'elle n'a pas été précédée de provocation, est punie d'un emprisonnement de six jours à deux mois et de l'amende prévue au chiffre 2 de l'article 26 du code pénal, ou de l'une de ces deux peines seulement.

L'injure commise, par les mêmes moyens, envers une personne ou un groupe de personnes à raison de leur origine ou de leur appartenance, réelle ou supposée, ou de leur non appartenance à une ethnie, une nation, une race ou une religion déterminée, ou à raison de leur orientation sexuelle, réelle ou supposée, est punie d'un emprisonnement de six jours à six mois et de l'amende prévue au chiffre 3 de l'article 26 du code pénal, ou de l'une de ces deux peines seulement.

En cas de condamnation pour l'un des faits prévus au présent article, peut en outre être ordonné, dans les conditions prévues à l'article 16, l'affichage ou la diffusion, aux frais du condamné, de la décision prononcée, en tout ou partie ou sous la forme d'un communiqué.

**Loi n° 1.299 du 15 juillet 2005 sur la liberté d'expression publique. Bulletin officiel, 2005-07-22, n° 7713, pp. 1426-1436, article 43**

Les diffamations ou injures envers un fonctionnaire public, un dépositaire ou agent de l'autorité publique, un citoyen chargé d'un service ou d'un mandat public, temporaire ou permanent, un ministre d'un culte rémunéré par l'Etat, ou un témoin à raison de sa déposition, ne sont poursuivies que sur sa plainte ou sur la plainte, suivant les cas, du Ministre d'Etat, de l'Archevêque, du Directeur des Services Judiciaires ou du Maire.

**Loi n° 1.299 du 15 juillet 2005 sur la liberté d'expression publique. Bulletin officiel, 2005-07-22, n° 7713, pp. 1426-1436, article 44**

Dans le cas de diffamation ou d'injure envers les particuliers, la poursuite n'a lieu que sur la plainte de la personne diffamée ou injuriée.

Toutefois, la poursuite peut être exercée d'office par le ministère public lorsque la diffamation ou l'injure a été commise envers une personne ou un groupe de personnes à raison de leur origine ou de leur appartenance ou de leur non appartenance à une ethnie, une nation, une race ou une religion déterminée, ou à raison de leur orientation sexuelle réelle ou supposée.

**Montenegro<sup>9</sup>**

**Constitution, article 43**

Any incitement or encouragement of national, racial, religious and other inequality and incitement and fomenting of national, racial, religious and other hatred or intolerance shall be unconstitutional and punishable.

**Criminal Code, Article 161 - Infringement of freedom of confession of religion and performance of religious rites**

(1) Anyone who prevents or restricts freedom of confession or performance of religion, shall be sentenced to a fine or imprisonment not exceeding two years.

(2) Sentenced to the punishment referred to in Paragraph 1 of this Article shall also be anyone who prevents or disturbs performance of religious rites.

(3) Anyone who coerces others to declare their religious beliefs shall be sentenced to a fine or imprisonment not exceeding one year.

(4) A person acting in an official capacity who commits the act referred to in Paragraphs 1 to 3 of this Article shall be sentenced to imprisonment not exceeding three years.

**The Netherlands**

**Criminal Code, article 137c**

1. Any person who verbally or by means of written or pictorial material gives intentional public expression to views insulting to a group of persons on account of their race, religion or convictions, their heterosexual or homosexual preferences or physical, mental or intellectual disability, shall be liable to a term of imprisonment not exceeding one year or to a fine of the third category.

2. If the offence is committed by a person who acts in a professional or habitual manner or by two or more persons who act in unison, a term of imprisonment of not more than two years will be imposed or a fine of the fourth category.

This provision entered into force on the 16<sup>th</sup> of July 1934. It has not been changed since November 2003. The renewed provision entered into force on the 1<sup>st</sup> of February 2004.

---

<sup>9</sup> Independent Montenegro is not yet a full member of the Council of Europe.

***Criminal Code, article 137d***

1. Any person who verbally or by means of written or pictorial material publicly incites hatred against or discriminating of other persons or violence against the person or the property of others on account of their race, religion, convictions, sex, heterosexual or homosexual preference or physical, mental or intellectual disability, shall be liable to a term of imprisonment not exceeding one year or to a fine of the third category.
2. If the offence is committed by a person who acts in a professional or habitual manner or by two or more persons who act in unison, a term of imprisonment of not more than two years will be imposed or a fine of the fourth category.

This provision entered into force on the 16th of July 1934. It has not been changed since November 2003. The renewed provision entered into force on the 1st of February 2004.

***Criminal Code, article 137e***

1. Any person who for reasons other than the provision of factual information:
  - a. makes public an utterance which he knows or can reasonably be expected to know is insulting to a group of persons on account of their race, religion or convictions, heterosexual or homosexual preference, or physical, mental or intellectual disability, or which incites hatred against or discrimination of other persons or violence against the person or property of others on account of their race, religion or convictions, heterosexual or homosexual preference or physical, mental or intellectual disability;
  - b. distributes any object which he knows or can reasonably be expected to know contains an utterance, or has in his possession any such object with the intention of distributing it or making the said utterance public;shall be liable to a term of imprisonment not exceeding six months or to a third-category fine. (i)
2. If the offence is committed by a person who acts in a professional or habitual manner or by two or more persons who act in unison, a term of imprisonment of not more than one year will be imposed or a fine of the fourth category.
3. If the offender commits any of the offences defined in this Article in the course of his profession within five years of a previous conviction for such an offence having become final, he may be disqualified from pursuing that profession.

This provision entered into force on the 16th of July 1934. It has not been changed since November 2003. The renewed provision entered into force on the 1st of February 2004.1.

***Criminal Code, Article 146***

A person by whom, by creating disorder or by making noise, either a lawful public gathering intended to profess a religion or a belief, or a lawful ceremony for the professing of a religion or a belief, or a lawful funeral service is intentionally disturbed, is liable to a term of imprisonment of not more than two months or a fine of the second category.

This provision entered into force on the 1st of September 1886. It has not been changed since 1984.

***Criminal Code, Article 147***

A term of imprisonment of not more than three months or a fine of the second category shall be imposed upon:

- (1) a person who publicly, either orally or in writing or by image, offends religious sensibilities by malign blasphemies;
- (2) a person who ridicules a minister of religion in the lawful execution of his duties;



(3) a person who makes derogatory statements about objects used for religious celebration at a time and place at which such celebration is lawful. (v)

**Criminal Code, article 147a**

1. A person who disseminates, publicly displays or posts written matter or an image containing statements that offend religious sensibilities by reason of their malign and blasphemous nature, or who has such in stock to be disseminated, publicly displayed or posted, is liable to a term of imprisonment of not more than two months or a fine of the second category, where he knows or has serious reason to suspect that the written matter or the image contains such statements.
2. The punishment in section 1 is also applicable to a person who, with like knowledge or like reason to suspect, publicly utters the contents of such written matter.

This provision entered into force on the 16th of July 1934. It has not been changed since 1984.

**Criminal Code, Article 429bis**

A person who, in a place visible from a public road, places or fails to remove words or images that offend religious sensibilities by reason of their malign and blasphemous nature is liable to a term of detention of not more than one month or a fine of the second category.

This provision entered into force on the 1st of December 1932. It has not been changed since 1984.

**Additional information**

Fine of the 1 <sup>st</sup> category	€ 335,-
Fine of the 2 <sup>nd</sup> category	€ 3350,-
Fine of the 3 <sup>rd</sup> category	€ 6700,-
Fine of the 4 <sup>th</sup> category	€ 16750,-
Fine of the 5 <sup>th</sup> category	€ 67000,-
Fine of the 6 <sup>th</sup> category	€ 670000,-

(Article 23, 4<sup>th</sup> paragraph, Penal Code)

**Norway**

**Criminal Code, §135a**

Any person who wilfully or through gross negligence publicly utters a discriminatory or hateful expression shall be liable to fines or imprisonment for a term not exceeding three years. An expression that is uttered in such a way that is likely to reach a large number of persons shall be deemed equivalent to a publicly uttered expression, cf. section 7, n°2. The use of symbols shall also be deemed to be an expression. Any person who aids and abets such an offence shall be liable to the same penalty.

A discriminatory or hateful expression here means threatening or insulting anyone, or inciting hatred or persecution of or contempt for anyone because of his or her

- a) skin colour or national or ethnic origin,
- b) religion or life stance, or
- c) homosexuality, lifestyle or orientation »

***Criminal Code, §138***

Any person who causes or is accessory to causing the unlawful prevention or interruption of a public function, public religious meeting, ecclesiastical act, public instruction or teaching in schools, an auction or a public meeting called for a common purpose, shall be liable to fines or imprisonment for a term not exceeding six months.

***Criminal Code, § 142<sup>10</sup>***

Any person who by word or deed publicly insults or in an offensive or injurious manner shows contempt for any creed whose practice is permitted in the realm or for the doctrines or worship of any religious community lawfully existing here, or who is accessory thereto, shall be liable to fines or to detention or imprisonment for a term not exceeding six months.

A prosecution will only be instituted when the public interest so requires.

**Poland*****Constitution, Article 13 - Political pluralism***

Political parties and other organisations whose programmes are based upon totalitarian methods and the modes of activity of nazism, fascism and communism, as well as those whose programmes or activities sanction racial or national hatred, (...) shall be forbidden.

***Constitution - Article 35 - Identity of national and ethnic minorities***

The Republic of Poland shall secure to Polish citizens belonging to national or ethnic minorities the freedom to maintain and develop their own language, to maintain customs and traditions and to develop their own culture. National and ethnic minorities shall have the right to establish educational and cultural institutions, institutions designed to protect religious identity, as well as to participate in the resolution of matters connected with their cultural identity.

***Criminal Code (1997) Article 194. Offences against Freedom of Conscience and Religion***

Whoever restricts another person from exercising the rights vested in the latter, for the reason of this person affiliation to a certain faith or their religious indifference shall be subject to a fine, the criminality of restriction of liberty or the criminality of deprivation of liberty for up to 2 years.

***Criminal Code (1997) Article 195.***

§ 1. Whoever maliciously interferes with a the public performance of a religious ceremony of a church or another religious association with regulated legal status shall be subject to a fine, the criminality of restriction of liberty or the criminality of deprivation of liberty for up to 2 years.

§ 2. The same punishment shall be imposed on anyone who maliciously interferes with a funeral, mourning ceremonies or rites.

---

<sup>10</sup> Interights19: However, this provision has not been applied by the courts since 1936, when an author, Arnulf Øverland was acquitted under this provision. More recently, several Muslim leaders brought a lawsuit against the Norwegian publisher of "Satanic Verses", but withdrew it, apparently in recognition of the fact that they had virtually no chance of success.

Indeed, In Norway, the abolition of Section 142 is being debated. The removal of that section from the criminal code is suggested in a report commissioned by the Norwegian Department of Culture in 1993 entitled "New Threats against Freedom of Information in the Nordic Countries - Diagnosis and Suggestions". The Report suggests that "this law implies an unacceptable encroachment on freedom of expression."

***Criminal Code (1997) Article 196.***

Anyone found guilty of offending religious feelings through public calumny of an object or place of worship is liable to a fine, restriction of liberty or a maximum two-year prison sentence.

Article 256

***Criminal Code (1997) Article 256 -Promotion of fascism or other totalitarian system.***

Offence is committed by anyone who promotes fascist or other totalitarian system of state or incites hatred based on national, ethnic, race or religious differences or for reason of lack of any religious denomination

***Criminal Code (1997) Article 257 - Publicly insulting group of people or an individual person by reason of their national, ethnic or racial affiliation..***

Offence is committed by anyone who publicly insults a group within the population or a particular person because of his national, ethnic, race or religious affiliation or because of his lack of any religious denomination or for these reasons breaches the personal inviolability of another individual : Imprisonment for up to 3 years.

***Broadcasting Act of December 29, 1992***

Article 18 (par 2) states that the Programmes or other broadcasts shall respect the religious beliefs of the public and especially the Christian system of values.

**Portugal**

***Criminal Code (Law n°65/98 of September 2, 1998), Article 240 – Racial or religious discrimination***

2. Anyone who, in a public assembly, in a writing purported to be divulged or by any means of mass communication

a) provokes acts of violence against a person or a group of persons because of his race, colour, ethnic or national origin or religion; or

b) defames or insults a person or group of persons because of his race or ethnic or national origin or religion, specially through the negation of war crimes or of crimes against peace and humanity;

intending to incite to racial or religious discrimination or to encourage it, is punishable with imprisonment from 6 months to 5 years.

***Criminal Code, Article 251 – slander because of religious belief***

1 Anyone who publicly offends or derides a person because of his religious belief or function, in a way adequate to breach the peace, is punishable with imprisonment up to 1 year or a fine up to 120 days.

2 The same penalty applies to anyone who desecrates a place or object of cult of religious veneration in a way adequate to breach the peace.

***Criminal Code, Article 252 – impeachment, perturbation or slander of an act of cult***

Anyone who publicly vilifies or derides an act of cult or religion is punishable with imprisonment up to 1 year or with a fine up to 120 days.

**Romania*****Constitution, article 30***

(1) Freedom of expression of thoughts, opinions or beliefs and freedom of any creation by words, in writing, in pictures, by sounds or other means of communication in public are inviolable.

(2) Any defamation of the country and the nation, any instigation to a war of aggression, to national, racial, class or religious hatred, any incitement to discrimination, territorial separatism or public violence, as well as any obscene conduct contrary to morality shall be prohibited by law .

***Criminal Code, article 246***

(1) The hindrance or the disruption of the freedom of exercising of any religion that is organised and functions according to the law is punished with one to six months jail sentence or with day-fine.

(2) The same criminality is given for the deed of forcing a person by constraint, to participate in the religious service of any religions or to perform a religious act connected with the exercise of a religion

***Criminal Code, article 247***

The desecration by any means of a grave, a monument or a funerary urn of a dead body is punished with strict jail sentence from one to five years or with day-fines »

***Law no. 489/2006 regarding the religious freedom and the general regime of religions in Romania***

It guarantees, in articles 1 and 2, the freedom of thought, conscience and religion, according to the Constitution and the international treaties to which Romania is a party; it sets forth that no one can be prevented from gaining or exercising rights recognized by the said law, nor can one be constrained, followed or put into a state of inferiority due to one's faith or affiliation to a group, religious association or religion, for exercising the religious freedom under the conditions provided by this law. It also provides that the religious freedom includes the liberty of any person to manifest one's faith individually or collectively, private or in public, by religion, education, religious practices and performance of rites, as well as the liberty of changing one's faith and that the freedom of displaying one's faith cannot be the object of any type of restraints other than those provided by law which constitute as necessary measures in a democratic society for public security, order protection, health, public morality or protection of the rights and fundamental liberties of the human being.

***Law n°48 16 January 2002 for approval of Government Ordinance n.137/2000 regarding the prevention and punishment of every form of discrimination, article 17***

Article 19 « According to this ordinance, it is a minor offence, unless the deed falls under the criminality of the criminal law, any conduct displayed in public, with a character of nationalist-chauvinist propaganda, of investigation to racial or national hatred, or that type of behaviour with the purpose or aiming for affecting the dignity or creating an atmosphere of intimidation, hostile, degrading, humiliating or outrageous, directed against a person, a group of people or a

community and connected with their affiliation to a certain race, nationality, ethnic group, religion, social or non-favoured category or their beliefs, sex or sexual orientation .

***Emergency ordinance n.31 from 13 march 2002 regarding the ban of the organisations and symbols with fascist, racist or xenophobe character and of the promotion of the religion of the people guilty of committing crimes against peace and humanity.***

Article 1 For the prevention and control of the incitement to national, racial, or religious hatred, to discrimination and the perpetration of crimes against peace and humanity, the present ordinance regulates the ban of the of the organisations and symbols with fascist, racist or xenophobe character and of the promotion of the religion of the people guilty of committing crimes against peace and humanity.

It allows the disseminating, selling or manufacturing (or depositing for the purpose of disseminating) of the mentioned symbols, as well as their public use only if these are for the purpose of art, science, research or education.

***Law on Radio and Television Broadcasting (1992), Art. 2:***

(1) Prohibits broadcasts that are prejudicial to an individual's "dignity, honour, private life or public image." (2) Prohibits "defamation of the country and of the nation, instigation to a war of aggression, national, racial, class or religious hatred, incitement to discrimination, territorial separatism, or public violence." Art. 39: Violations of Art. 2 (1) are punishable by up to five years imprisonment and of Article 2(2) by up to seven years imprisonment.

**Russian Federation**

***Constitution(Adopted 12 December 1993), Article 13***

5. The establishment and activities of public associations whose goals and activities are aimed at the forcible changing of the basis of the constitutional order and at violating the integrity of the Russian Federation, at undermining its security, at creating armed units, and at instigating social, racial, national and religious strife shall be prohibited.

***Constitution, Article 19***

2. The State guarantees the equality of human and civil rights and freedoms regardless of sex, race, nationality, language, origin, material an official status, place of residence, attitude to religion, convictions, membership of public associations, or of other circumstances. All forms of limitations of human rights on social, racial, national, language or religious grounds shall be prohibited.

***Constitution, Article 29***

2. Propaganda or agitation, which arouses social, racial, national or religious hatred and hostility shall be prohibited. Propaganda of social, racial, national, religious or linguistic supremacy shall also be prohibited.

***Federal Law on the freedom of conscience and religious associations (26 September 1997, as amended in 2002), Article 3(6)***

6. The prevention of exercise of rights to the freedom of conscience and faith, including that associated with violence against person, the intentional hurting of feelings of citizens in connection with their attitude to religion, the propaganda of religious supremacy, the destruction of or damage to the property or a threat of committing such actions shall be prohibited and

prosecuted in accordance with the Federal Law. Conducting public events, putting up texts and images that may hurt the religious feelings of citizens close to projects of religious worship shall be prohibited.

***Federal Law on the basic guarantees of electoral rights and right to participate in referendum of the citizens of the Russian Federation (12 June 2002, as amended in 2006) Article 56 - Limitations during conducting the election campaign and agitation on the questions of referendum***

... Agitation, which arouses social, racial, national or religious hostility, humiliating national dignity, propagating exclusiveness, superiority or deficiency of citizens on grounds of their attitude towards religion, or on social, racial, national, religious or language grounds, and also agitation, during the conduction of which there are propagated and publicly demonstrated Nazi attributes or symbols, or attributes and symbols which are similar to Nazi attributes and symbols to the extent where they may be confused, shall be prohibited ...

***Penal Code (16 June 1996, as amended in 2006) Article 148 - Obstruction of the exercise of the right of liberty of conscience and religious liberty***

Illegal obstruction of the activity of religious organisations or of the performance of religious rites shall be punishable by a fine in the amount of up to 200 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for the period of up to one year, compulsory works for a term of up to one year, or arrest for a term of up to three months.

***Penal code, Article 239 - Organisation of groups which encroach on the person and the rights of citizens***

penalises the setting up of a religious or voluntary association whose activities involve violence against citizens or inducement to commit other unlawful acts, specifically those linked to the incitement of racial discord and enmity, and the leading of such a group, taking part in its activities or propagating of aforementioned actions.

***Criminal Code, Article 282 Arousing hatred or hostility, and humiliating of the human dignity***

penalises any actions directed at instigating national, racial or religious hatred, belittling national dignity, as well as the propagation of exclusiveness, superiority or deficiency of citizens because of their attitude to a religion, or their national or racial affiliation, if such behaviour is committed in public or using mass media.

***Criminal Code, Article 282.1 - Organisation of extremist community***

penalises the organisation of extremist community, i.e. organised group for preparing or committing, on the grounds of ideological, political, racial, national or religious hatred or hostility, or on the grounds of hatred or hostility towards any social group, such crimes, in particular, as illegal obstruction of the activity of religious organisations or of the performance of religious rites, arousing racial, national or religious hatred or hostility (articles 148 and 282 of the Penal Code), and penalises also the leading of such a group and taking part in it.

**Code on Administrative Violations (30 December 2001, as amended in 2006) Article 5.26 - Breach of the law on the freedom of conscience, freedom of religion and religious associations**

provides administrative responsibility (fine) for obstruction of the exercise of the right of freedom of conscience and religious freedom, including adoption of religious or other beliefs or rejection of them, entry to a religious association or secession from one; for hurting the religious feelings of citizens or desecration of their venerated objects, signs and emblems of the world-view nature.

**Saint-Marin**

**Criminal Code (1974) Article 260 Vilipendio della religione**

Chiunque profana i simboli, di una religione non contraria al buon costume, ne profana gli oggetti di culto o di venerazione ovvero pubblicamente ne schernisce gli atti di culto è punito con la prigionia di primo grado.

La stessa pena si applica alle offese recate all'onore ed al prestigio di un ministro di culto nell'esercizio o per causa dell'esercizio delle sue funzioni.

Si applica la prigionia di secondo grado a chi profana le sacre Reliquie di San Marino.

**Criminal Code (1974) Article 261 Violazione della libertà religiosa**

Chiunque con violenza o minaccia impedisce a taluno di professare una fede religiosa, di farne propaganda ovvero di partecipare al culto pubblico o privato di essa, è punito con la prigionia di secondo grado.

**Criminal Code (1974) Article 262 Turbativa di funzioni religiose**

Chiunque impedisce o turba l'esercizio di funzioni, cerimonie o processioni religiose che si compiono con l'assistenza di un ministro del culto, è punito con la prigionia di primo grado.

Se il fatto è commesso con violenza o minaccia, la pena è aumentata di un grado.

**Criminal Code (1974) Contravvenzione : Art. 267 Bestemmia o oltraggio contro i defunti**

E' punito con la riprensione o con la multa a giorni di primo grado chiunque pubblicamente bestemmia.

Alla stessa pena soggiace chi pubblicamente profferisce espressioni oltraggiose contro i defunti e si procede a querela dei prossimi congiunti.

**Ancien code pénal article 325 (abrogé 1974)**

Chiunque con parole o con gesti ponga in derisione, o vilipenda in qualsivoglia modo una cerimonia della religione cattolica romana, è punito colla prigionia da uno a tre mesi, o colla multa da 50 a 100 lire, salva la pena maggiore, qualora il vilipendio degenerasse nella perturbazione contemplata nell'articolo precedente, od in altro piu' grave reato.

**Serbia**

**Criminal Code Article 134:**

Whoever provokes or fans national, racial or religious hatred, discord or intolerance among the nations and national minorities living in the Federal Republic of Yugoslavia will be punished by imprisonment of 1 to 5 years. If such an offence has been committed by coercion, maltreatment, threat to safety, exposure to derision of national, ethnic or religious symbols,

damage of belongings of others, desecration of shrines, memorials and graves, the perpetrator will be punished by a prison term of 1-8 years.

Whoever commits this offence by the abuse of official position or powers or if, as a consequence of these offences, disorders, violence or other serious consequences have occurred for the life in common of nations and national minorities living in the FRY, the perpetrator will be punished by imprisonment of 1 to 8 and/or 1 to 10 years.

***Charter of human and minority rights and civil liberties Article 51 Prohibition of Instigation to Racial National and Religious Hatred***

Any advocacy and promotion of national, racial, religious or other inequality as well as any incitement to and fomenting of national, racial, religious and other hatred shall be prohibited and punishable.

***UNMIK/Regulation n. 2000/4 on the prohibition against inciting to national, racial, religious or ethnic hatred, discord or intolerance; 1 February 2000, Section 1 – Inciting to National, Racial, Religious or Ethnic Hatred, Discord or Intolerance***

1.1 Whoever publicly incites or publicly spreads hatred, discord or intolerance between national, racial, religious, ethnic or other such groups living in Kosovo which acts are likely to disturb public order shall be punished by a fine or by imprisonment not exceeding five years or both.

1.2 If the acts referred to in section 1.1 of the present regulation were committed systematically or by taking advantage of one's position or authority or if disorder, violence or other grave consequences resulted from those acts, the period of imprisonment may be extended to a term not exceeding eight years.

1.3 Whoever publicly incites or publicly spreads hatred, discord or intolerance between national, racial, religious, ethnic or other such groups living in Kosovo which acts are likely to disturb public order through coercion, jeopardizing of safety, exposing to derision of national, racial, ethnic or religious symbols, damaging belongings of another, or desecrating monuments or graves, shall be punished by imprisonment for a term not exceeding eight years.

1.4 If the acts referred to in section 1.3 of the present regulation were committed systematically or by taking advantage of one's position or authority or if disorder, violence or other grave consequences resulted from those acts, the period of imprisonment may be extended to a term not exceeding ten years.

**Slovakia**

***New Criminal Code (L. 300/2005), § 423 - Defamation of the nation, race and belief***

(1) Whoever publicly vilifies:

- a) any nation, its language, any race or an ethnic group or
  - b) a group of persons because of their belief or that they are without belief,
- is sentenced of imprisonment up to one year.

(2) Sentenced of imprisonment up to three years is offender if he/she commits an act as stated in (1)

- a) together with 2 other persons at least,
- b) in connection of foreign power or a foreign actor,
- c) as a public authority or
- d) during a crisis situation.



***New Criminal Code (L. 300/2005), § 424 Incitement to national, racial and ethnic hatred (≠ religious ?)***

(1) Any person who publicly

a. threatens an individual or a group of individuals, because of their nation, nationality, race or ethnic group or for colour of their skin of restricting their rights and freedoms, or any person who makes such a restriction, or

b. incites to hatred against a nation or a race, or to the restriction of rights and freedoms of the members of a nation or race

shall be liable to a term of imprisonment not exceeding three years.

(2) The same sentence as referred to in paragraph 1. shall be imposed on any person who associates or assembles with others with a view to committing the offence referred to in paragraph 1.

(3) The offender shall be liable to a term of imprisonment if one year to three years if he/She commits the offence referred to in paragraph 1 or 2

a) in association with a foreign power or foreign official/agent;

b) in the capacity as a public official, or

c) during a crisis situation.

**Slovenia**

***Constitution, Article 63 Prohibition against Incitement to Discrimination and to Intolerance and Prohibition against Incitement to Violence and War***

All incitement to ethnic, racial, religious or other discrimination, as well as the inflaming of ethnic, racial, religious or other hatred or intolerance, shall be unconstitutional.

All incitement to violence or to war shall be unconstitutional.

***Religious freedom act (adopted on 2 February 2007), Article 3 § 1***

All incitement to religious discrimination, inflaming of religious hatred and intolerance is prohibited.

***Criminal Code, Article 300 – Stirring up hatred, Strife or Intolerance based on Violation of the principle of equality***

1. Whoever provokes or stirs up ethnic, racial or religious hatred, strife or intolerance or disseminates ideas on the supremacy of one race over another or provides aid in any manner for racist activity or denies, diminishes the significance of , approves of or advocates genocide, shall be punished by imprisonment of up to two years.

2. If the offence under the preceding paragraph has been committed by coercion, maltreatment, endangering of security, desecration of national, ethnic or religious symbols, damaging of the movable property or another, desecration of monuments or memorial stones or graves, the perpetrator shall be punished by imprisonment of up to five years.

3. Materials and objects bearing messages from the first paragraph of this Article and all devices intended for their manufacture, multiplication and distribution shall be confiscated or their use disabled in an appropriate manner.

***Mass media Act (entered into force on 26 May 2001), Article 8 § 1 – Prohibition of incitement to inequality and intolerance***

The dissemination of programming that encourages national, racial, religious, sexual or any other inequality or violence and war, or incites national, racial, religious, sexual or any other hatred and intolerance shall be prohibited.

***Mass media Act, Article 47 § 3 – Advertisements***

Advertising may not:

prejudice respect for human dignity;

incite discrimination on the grounds of race, sex or ethnicity, or political or religious intolerance;

encourage behaviour damaging the public health or safety or the protection of the environment and the cultural heritage;

give offence on the grounds of religious or political beliefs

damage the consumers' interests.

***Mass Media Act, Article 74 § 1***

1. All publishers of radio and television stations shall have under equal conditions the right to make a short report on all important events and other events accessible to the public, with the exception of religious ceremonies.

***Mass Media Act, Article 129, § 1.1 – penalty provisions***

A fine ranging from 250.000 tolar to 20.000.000 tolar for an infringement shall be imposed upon a publisher if

- through advertisements via its mass medium it harms human dignity, incites discrimination on the grounds of race, sex or ethnicity, or political or religious intolerance, encourages behaviour endangering public health or safety or the protection of the environment and the cultural heritage, gives offence on the grounds of religious or political beliefs or damage the consumers' interests

**Sweden**

The general law of blasphemy was abolished in 1949 and a narrower crime of religious insult was abolished in 1970.

***Criminal Code Chapter 29 Section 2***

In assessing criminal value, the following aggravating circumstances shall be given special consideration in addition to what is applicable to each and every type of crime : (...) 7. "whether a motive for the crime was to aggrieve a person, ethnic group or some other similar group of people by reason of race, colour, national or ethnic origin, religious belief or other similar circumstance."

***Criminal Code Chapter 16 Section 8***

A person who, in a disseminated statement or communication, threatens or expresses contempt for a national, ethnic or other such group of persons with allusion to race, colour, national or ethnic origin, or religious belief shall, be sentenced for agitation against a national or ethnic group to imprisonment for two years or, if the crime is petty, to a fine (L 1988 :835)

## Suisse

### **Code Pénal, Article 261 Atteinte à la liberté de croyance et des cultes**

Celui qui, publiquement et de façon vile, aura offensé ou bafoué les convictions d'autrui en matière de croyance, en particulier de croyance en Dieu, ou aura profané les objets de la vénération religieuse,

celui qui aura méchamment empêché de célébrer ou troublé ou publiquement bafoué un acte cultuel garanti par la constitution,

celui qui, méchamment, aura profané un lieu ou un objet destiné à un culte ou à un acte cultuel garantis par la constitution,

sera puni de l'emprisonnement pour six mois au plus ou de l'amende.

### **Code Pénal, Article 261bis - Discrimination raciale**

Celui qui, publiquement, aura incité à la haine ou à la discrimination envers une personne ou un groupe de personnes en raison de leur appartenance raciale, ethnique ou religieuse;

celui qui, publiquement, aura propagé une idéologie visant à rabaisser ou à dénigrer de façon systématique les membres d'une race, d'une ethnie ou d'une religion;

celui qui, dans le même dessein, aura organisé ou encouragé des actions de propagande ou y aura pris part;

celui qui aura publiquement, par la parole, l'écriture, l'image, le geste, par des voies de fait ou de toute autre manière, abaissé ou discriminé d'une façon qui porte atteinte à la dignité humaine une personne ou un groupe de personnes en raison de leur race, de leur appartenance ethnique ou de leur religion ou qui, pour la même raison, niera, minimisera grossièrement ou cherchera à justifier un génocide ou d'autres crimes contre l'humanité<sup>11</sup>;

celui qui aura refusé à une personne ou à un groupe de personnes, en raison de leur appartenance raciale, ethnique ou religieuse, une prestation destinée à l'usage public, sera puni de l'emprisonnement ou de l'amende.

Cet article a été introduit par l'article 1er de la LF du 18 juin 1993, en vigueur depuis le 1er janv. 1995 (RO 1994 2887 2889; FF 1992 III 265).

## Turkey

### **Constitution, article 24**

« Chacun a droit à la liberté de conscience, de croyance et de conviction religieuse. Les prières, les rites et les cérémonies religieux sont libres à condition de ne pas violer les dispositions de l'article 14. Nul ne peut être contraint de participer à des prières ou à des cérémonies et rites religieux ni de divulguer ses croyances et convictions religieuses ; nul ne peut être blâmé ni inculpé à cause de ses croyances ou convictions religieuses (...) »

### **New Criminal Code (2004-2005), article 125**

(1) A person who makes an allegation of an act or concrete fact about another person's honour, reputation, dignity or prestige shall be sentenced to imprisonment for a term of three months to

---

<sup>11</sup> Le 9 mars 2007, le Tribunal de police de Lausanne a condamné le président du Parti des travailleurs turcs à 90 jours-amende avec sursis et à une amende de 3000 francs pour avoir nié le génocide arménien. Il s'agit de la première condamnation de ce type au sens de l'article 261 bis.

two years or a judicial fine will be imposed. In order to punish the insults in the absence of the victim the act should have been witnessed by at least three persons.

(2) If the act is committed by means of a voiced, written or visual message addressing the victim, the perpetrator shall be sentenced to the criminalities set out above.

(3) If the offence of defamation is committed:

a) Against a public official or a person performing a public service and the allegation is connected with his public status or the public service he provides

b) due to expression, changing, efforts for expansion of one's religious, political, social, philosophical beliefs, thoughts and opinions, one's compliance with the rules and prohibitions of his religion,

c) Through mentioning the holy values of the religion the person is a member of, the minimum length of the criminality cannot be less than one year.

(4) Where the defamation is committed explicitly, the criminality shall be increased by one sixth; if it is committed through the press and media, then the criminality shall be increased by one third.

### ***Code pénal, Article 216- De l'incitation du peuple à la haine et à l'hostilité et de l'humiliation***

(1) Quiconque incite publiquement une partie de la population à la haine et à l'hostilité par le biais de discriminations raciales, régionales, ou sur la base de l'appartenance religieuse ou de la classe sociale, à l'encontre d'une autre partie du peuple, est puni d'une peine d'emprisonnement d'un an jusqu'à trois ans, si l'acte cause un danger clair et direct pour le public.

(2) Quiconque humilie une partie de la population due aux différences sociales, religieuses, sexuelles ou régionales, est passible de six mois à un an de prison.

(3) L'humiliation ouverte d'une personne en raison de ses valeurs religieuses est passible de six mois à un an de prison si le délit peut menacer la paix sociale.

### ***Criminal Code (2004-2005), article 301***

1. A person who publicly denigrates Turkishness, the Republic or the Grand National Assembly of Turkey, shall be punishable by imprisonment of between six months and three years.

2. A person who publicly denigrates the Government of the Republic of Turkey, the judicial institutions of the State, the military or security organizations shall be punishable by imprisonment of between six months and two years.

3. In cases where denigration of Turkishness is committed by a Turkish citizen in another country the punishment shall be increased by one third.

4. Expressions of thought intended to criticize shall not constitute a crime.<sup>12</sup>

<sup>12</sup> Article 301 of the Turkish Criminal Code contains dispositions aimed at regulating the possible restrictions to freedom of speech mentioned in Article 26 of the Constitution. These Article 301 dispositions are quite general though, and leave a wide spectre of possible interpretations. As in the Constitution, it is not religion, but Turkishness, which is used in this article as a justification for limitations of freedom of speech. Until its reform in 2003, the Turkish criminal code contained a blasphemy paragraph, Article 175, § 3-4: "Quiconque insulte Allah, l'une des religions, l'un des prophètes, l'une des sectes ou l'un des livres sacrés, ou bien vilipende ou outrage une personne en raison de ses croyances, du fait de sa pratique des obligations religieuses ou de son observation des interdits religieux (...) sera puni d'une peine d'emprisonnement de 6 mois à un an et d'une amende lourde de 5 000 à 25 000 livres turques. La peine est doublée lorsque l'acte incriminé prévu dans le troisième alinéa du présent article est commis par voie de publication." In the present Turkish criminal code there is no separate blasphemy law, even though Article 125 paragraph (b) and (c) prohibits violating a person's honour because of his/her religious beliefs, way of worship etc. Summarizing the above observations, it seems that among the three elements of the Turkish identity, two of them, Turkishness and Islamic tradition, may be instrumental in limiting freedom of expression. In this light, a brief survey of the Turkish government's recent policy with regards to freedom of expression will cast light on practical implications of the ongoing identity negotiation in Turkey.

***Law on radio and television, n° 3984 (1994), Article 4***

Radio and television broadcasting shall be made, within the concept of a public utility, in Turkish. [...] Moreover, public and private radio and television institutions may broadcast in various languages and dialects traditionally used by Turkish citizens in their daily lives.

The following principles shall be observed:

b.) No broadcasting which leads the society to violence, terror, ethnic discrimination; or incites masses to hatred and antagonism based on class, race, language, religion; or brings about feelings of hatred in the society.

d.) Masses shall not be accused and offended on grounds of language, race, color, gender, political opinion, philosophical belief, religion, sect and the like.

s.) All elements of program services shall respect the dignity of the human being and fundamental human rights.

v.) Broadcasts shall neither encourage the use of violence, nor shall they be of a nature, which provokes feelings of racist hatred.

**Ukraine**

***Constitution, Article 37***

The establishment and activity of political parties and public associations are prohibited if their programme goals or actions are aimed at the liquidation of the independence of Ukraine, the change of the constitutional order by violent means, the violation of the sovereignty and territorial indivisibility of the State, the undermining of its security, the unlawful seizure of state power, the propaganda of war and of violence, the incitement of inter-ethnic, racial, or religious enmity, and the encroachments on human rights and freedoms and the health of the population.

Political parties and public associations shall not have paramilitary formations.

The creation and activity of organizational structures of political parties shall not be permitted within bodies of executive and judicial power and executive bodies of local self-government, in military formations, and also in state enterprises, educational establishments and other state institutions and organisations.

The prohibition of the activity of associations of citizens is exercised only through judicial procedure.

***Law on the Freedom of Conscience and Religious Organizations (1991) Article 4. Equal Rights of Citizens Regardless of Their Attitude towards Religion***

Citizens of Ukraine shall be equal before the law and shall enjoy equal rights in all spheres of economic, political, social, and cultural life regardless of their attitude towards religion. A citizen's attitude towards religion shall not be indicated in official documents.

Any direct or indirect limitation of rights, any establishment of direct or indirect preferences for citizens depending on their attitude towards religion, as well as incitement of enmity and hate related thereto, or the offence of citizen's feelings shall result in the liability established by law.

No one may evade the performance of constitutional duties for the reason of religious convictions. The substitution of one duty for another duty for the reason of convictions shall be allowed only in the cases provided for by the legislation of Ukraine.

***Criminal Code, Article 67. Circumstances aggravating punishment***

1. For the purposes of imposing a punishment, the following circumstances shall be deemed to be aggravating:

(1) repetition of an offense or recidivism; □(2) the commission of an offense by a group of persons upon prior conspiracy (paragraph 2 or 3 of Article 28); □(3) the commission of an offense based on racial, national or religious enmity and hostility; □(4) the commission of an offense in connection with the discharge of official or public duty by the victim; □(5) grave consequences caused by the offense; □(6) the commission of an offense against a minor, an elderly or helpless person; □(7) the commission of an offense against a woman who, to the knowledge of the culprit, was pregnant; □(8) the commission of an offense against a person who was in a financial, official or other dependence on the culprit; □(9) the commission of an offense through the use of a minor, a person of unsound mind or mentally defective person; □(10) the commission of an especially violent offense; □(11) the commission of an offense by taking advantage of a martial law or a state of emergency or other extraordinary events; (12) the commission of an offense by a generally dangerous method; □(13) the commission of an offense by a person in a state of intoxication resulting from the use of alcohol, narcotic, or any other intoxicating substances;

2. Depending on the nature of an offense committed, a court may find any of the circumstances specified in paragraph 1 of this Article, other than those defined in subparagraphs (2), (6), (7), (9), (10), and (12), not to be aggravating, and should provide the reasons for this decision in its judgment.

3. When imposing a punishment, a court may not find any circumstances, other than those defined in paragraph 1 of this Article, to be aggravating.

4. If any of the aggravating circumstances is specified in an article of the Special Part of this Code as an element of an offense, that affects its treatment, a court shall not take it into consideration again as an aggravating circumstance when imposing a punishment

***Criminal Code, article 161 Violation of citizens' equality based on their race, nationality or religious preferences***

1. Wilful actions inciting national, racial or religious enmity and hatred, humiliation of national honour and dignity, or the **insult of citizens' feelings** in respect to their religious convictions, and also any direct or indirect restriction of rights, or granting direct or indirect privileges to citizens based on race, colour of skin, political, religious and other convictions, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics, – shall be punishable by a fine up to 50 tax-free minimum incomes, or correctional labour for a term up to two years, or restraint of liberty for a term up to five years, with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

2. The same actions accompanied by violence, deception or threats, and also committed by an official, – shall be punishable by correctional labour for a term up to two years, or imprisonment for a term up to five years.

3. Any such actions as provided for by paragraph 1 or 2 of this Article, if committed by an organized group of persons, or where they caused death of people or other grave consequences, – shall be punishable by imprisonment for a term of two to five years.

***Criminal Code, Article 178. Damage of religious architecture or houses of worship***

Damage or destruction of a religious architecture or a house of worship, - □shall be punishable by a fine up to 300 tax-free minimum incomes, or imprisonment for a term of one to three years.

***Criminal Code, Article 179. Illegal retention, desecration or destruction of religious sanctities***

Illegal retention, desecration or destruction of religious sanctities, - □ shall be punishable by a fine up to 200 tax-free minimum incomes, or imprisonment for a term up to three years.

***Criminal Code, Article 180. Preclusion of religious ceremonies***

1. Illegal preclusion of religious ceremonies, where it frustrated or was likely to frustrate a religious ceremony, - □ shall be punishable by a fine up to 50 tax-free minimum incomes, or arrest for a term up to six months, or restraint of liberty for a term up to two years.
2. Forcing a clergyman, by violence or psychological pressure, into officiating, shall be punishable by a fine up to 50 tax-free minimum incomes, or arrest for a term up to six months, or restraint of liberty for a term up to two years.

***Criminal Code, Article 181. Trespass against health of persons under pretence of preaching or ministering***

1. Organizing or leading a group, which operates under pretence of preaching or ministering accompanied with the impairment of health of people or sexual dissipation, shall be punishable by restraint of liberty for a term up to three years, or imprisonment for the same term.
2. The same actions accompanied with involvement of minors in activities of the group, - □ shall be punishable by imprisonment of three to five years.

***Article 3 of the Law of Ukraine On Mass Media***

prohibits using mass media for rousing racial, national, religious hatred.

**United Kingdom**

***SCOTLAND (HL- Law Commission, 2003)***

39. The last reported prosecution for blasphemy in Scotland was in 1843. Some writers have argued that blasphemy may no longer be a crime in Scotland (see, for example, G. Gordon, *The Criminal Law of Scotland*, W. Green (2nd ed., 1978) p. 998). In any event, since Scottish law, unlike English law, requires a personal interest in a matter before there can be any private prosecution, and since the state is unlikely to want to prosecute for blasphemy, a prosecution, even if technically possible, is unlikely to occur. At present Scotland has no special provisions to deal with religious offences that are not found in English law. Indeed some extant English provisions, such as section 2 of the Ecclesiastical Courts Jurisdiction Act 1860, have no counterpart in Scotland. However, concern over sectarianism in Scotland has led to calls for new legislation. On 20 February 2003 the Scottish parliament passed a Criminal Justice (Scotland) Bill which included a section on religious prejudice, originally introduced by Donald Gorrie MSP. The section reads as follows:

***20 February 2003 Criminal Justice Act 59A Offences aggravated by religious prejudice***

- (1) This section applies where it is -
  - (a) libelled in an indictment; or
  - (b) specified in a complaint,and, in either case, proved that an offence has been aggravated by religious prejudice.
- (2) For the purposes of this section, an offence is aggravated by religious prejudice if -

(a) at the time of committing the offence or immediately before or after doing so, the offender evinces towards the victim (if any) of the offence malice or ill-will based on the victim's membership (or presumed membership) of a religious group, or of a social or cultural group with a perceived religious affiliation: or

(b) the offence is motivated (wholly or partly) by malice and ill-will towards members of a religious group, or of a social or cultural group with a perceived religious affiliation, based on membership of that group.

(3) Where this section applies, the court must take the aggravation into account in determining the appropriate sentence.

(4) Where the sentence or disposal in respect of the offence is different from that which the court would have imposed had the offence not been aggravated by religious prejudice, the court must state the extent of and the reasons for that difference.

(5) For the purposes of this section, evidence from a single source is sufficient to prove that an offence is aggravated by religious prejudice.

(6) In subsection (2)(a)-

"membership" in relation to a group includes association with members of that group: and

"presumed" means presumed by the offender.

(7) In this section, "religious group" means a group of persons defined by reference to their-

(a) religious belief or lack of religious belief;

(b) membership of or adherence to a church or religious organisation;

(c) support for the culture and traditions of a church or religious organisation; or

(d) participation in activities associated with such a culture or such traditions"

## **ENGLAND AND WALES**

Although there is no legislation by Parliament creating the offence of blasphemy, it is under the common law in England and Wales an offence to utter or publish blasphemous words and writings, but the scope of that offence has been narrowed in the last 150 years.

### ***Blasphemy – Common Law Offence – Law Commission (2002)***

18. Blasphemy (and blasphemous libel) is a common law offence with an unlimited criminality. The content of the current law is obscure, but in Appendix 3 we endeavor to set it out in detail. In 1981 the Law Commission observed that it was "hardly an exaggeration to say that whether or not a publication is a blasphemous libel can only be judged *ex post facto*".<sup>[20]</sup> In 1985 it recommended its repeal.<sup>[21]</sup>

19. Two elements of the law are clear. First, the offence is one of strict liability. That is to say, intent to commit an act of blasphemy is irrelevant; all that matters is whether the accused did in fact publish the material that is the subject of prosecution. Secondly, the offence protects only the Church of England. It was clear to us from the correspondence we received, however, that the law is perceived by many to have a much wider and more general application.

20. No blasphemy case has been prosecuted in England and Wales since the passage of the Human Rights Act 1998 (incorporating elements of the European Convention on Human Rights), but it is a reasonable speculation that as a consequence of that legislation any prosecution for blasphemy today—even one which met all the known criteria—would be likely to fail or, if a conviction were secured, would probably be overturned on appeal (if not by the House of Lords then by the European Court of Human Rights) on grounds either of



discrimination, of denial of the right to freedom of expression, or of the absence of certainty. Such an outcome would, in effect, constitute the demise of the law of blasphemy.

#### Other Common Law Offences

21. The Religious Offences Bill proposed the repeal of "any distinct offence of disturbing a service" and "any religious offence of striking a person in a church or churchyard". These proposals replicate the wording in the draft Bill proposed by the Law Commission in its 1985 report (p3.4), which also summarizes the offences as follows: "The precise breadth of the common law is difficult to gauge. There are very broad statements in Hawkins' Pleas of the Crown to the effect that "all irreverent behaviour" in churches and churchyards has been regarded as criminal. More specifically there is authority, by no means strong, for the propositions that it is an offence at common law - (a) to disturb a priest of the established Church in the performance of divine worship, and also, it seems, to disturb Methodists and Dissenters when engaged in their "decent and quiet devotions"; and (b) to strike any person in a church or churchyard". The Law Commission recommended the repeal of these offences, which have "not been used at all in modern times, and have been entirely superseded by statutory offences".

### ***The Public Order Act, 1986***

This Act It defined racial hatred as 'hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins'. By s 18 of the 1986 Act, it is an offence for a person to use threatening, abusive or insulting words or behaviour; it is also an offence to display any material which is threatening, abusive or insulting if the defendant does so with intent to stir up racial hatred or if in the circumstances racial hatred is likely to be stirred up. Corresponding offences exist in relation to publishing or distributing written material, theatrical performances, and broadcasting. The 1986 Act did not extend to incitement to religious hatred.

### ***Racial and Religious Hatred Act 2006 An Act to make provision about offences involving stirring up hatred against persons on racial or religious grounds.***

The Racial and Religious Hatred Act 2006 inserts a new part 3A into the 1986 Public Order Act; part 3A is entitled 'Hatred against persons on religious grounds'. Religious hatred means 'hatred against a group of persons defined by reference to religious belief or lack of religious belief' (s 29A). The primary offence (s 29B) is to use *threatening* words or behaviour or to display any written material that is *threatening*, if the defendant thereby intends to stir up religious hatred. It is also an offence (s 29C) to publish or distribute written material which is threatening, if the defendant thereby intends to stir up religious hatred. Offences of this kind have been created in respect of theatrical performances (s 29D), broadcasting (s 29F) etc. There is also an offence of possessing inflammatory material (with a view to publication, distribution etc) which is *threatening* if the defendant intends religious hatred to be stirred up thereby. An important restriction on proceedings for these offences is that no prosecution for these offences may be instituted except with the consent of the Attorney-General (s 29L(1)).

### ***Racial and Religious Hatred Act 2006, § 29B - Use of words or behaviour or display of written material***

(1) A person who uses threatening words or behaviour, or displays any written material which is threatening, is guilty of an offence if he intends thereby to stir up religious hatred.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the written

material is displayed, by a person inside a dwelling and are not heard or seen except by other persons in that or another dwelling.

(3) A constable may arrest without warrant anyone he reasonably suspects is committing an offence under this section.

(4) In proceedings for an offence under this section it is a defence for the accused to prove that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the written material displayed, would be heard or seen by a person outside that or any other dwelling.

(5) This section does not apply to words or behaviour used, or written material displayed, solely for the purpose of being included in a programme service.

### ***Racial and Religious Hatred Act 2006, § 29C - Publishing or distributing written material***

(1) A person who publishes or distributes written material which is threatening is guilty of an offence if he intends thereby to stir up religious hatred.

(2) References in this Part to the publication or distribution of written material are to its publication or distribution to the public or a section of the public.

### ***Racial and Religious Hatred Act 2006, § 29D - Public performance of play***

(1) If a public performance of a play is given which involves the use of threatening words or behaviour, any person who presents or directs the performance is guilty of an offence if he intends thereby to stir up religious hatred.

(2) This section does not apply to a performance given solely or primarily for one or more of the following purposes-

- (a) rehearsal,
- (b) making a recording of the performance, or
- (c) enabling the performance to be included in a programme service;

but if it is proved that the performance was attended by persons other than those directly connected with the giving of the performance or the doing in relation to it of the things mentioned in paragraph (b) or (c), the performance shall, unless the contrary is shown, be taken not to have been given solely or primarily for the purpose mentioned above.

(3) For the purposes of this section-

- (a) a person shall not be treated as presenting a performance of a play by reason only of his taking part in it as a performer,
- (b) a person taking part as a performer in a performance directed by another shall be treated as a person who directed the performance if without reasonable excuse he performs otherwise than in accordance with that person's direction, and
- (c) a person shall be taken to have directed a performance of a play given under his direction notwithstanding that he was not present during the performance;

and a person shall not be treated as aiding or abetting the commission of an offence under this section by reason only of his taking part in a performance as a performer.

(4) In this section "play" and "public performance" have the same meaning as in the Theatres Act 1968.

(5) The following provisions of the Theatres Act 1968 apply in relation to an offence under this section as they apply to an offence under section 2 of that Act-

section 9 (script as evidence of what was performed),

section 10 (power to make copies of script),

section 15 (powers of entry and inspection).

***Racial and Religious Hatred Act 2006, § 29E - Distributing, showing or playing a recording***

(1) A person who distributes, or shows or plays, a recording of visual images or sounds which are threatening is guilty of an offence if he intends thereby to stir up religious hatred.

(2) In this Part "recording" means any record from which visual images or sounds may, by any means, be reproduced; and references to the distribution, showing or playing of a recording are to its distribution, showing or playing to the public or a section of the public.

(3) This section does not apply to the showing or playing of a recording solely for the purpose of enabling the recording to be included in a programme service.

***Racial and Religious Hatred Act 2006, 29F - Broadcasting or including programme in programme service***

(1) If a programme involving threatening visual images or sounds is included in a programme service, each of the persons mentioned in subsection (2) is guilty of an offence if he intends thereby to stir up religious hatred.

(2) The persons are-

- (a) the person providing the programme service,
- (b) any person by whom the programme is produced or directed, and
- (c) any person by whom offending words or behaviour are used.

***Racial and Religious Hatred Act 2006, 29G - Possession of inflammatory material***

(1) A person who has in his possession written material which is threatening, or a recording of visual images or sounds which are threatening, with a view to-

- (a) in the case of written material, its being displayed, published, distributed, or included in a programme service whether by himself or another, or
- (b) in the case of a recording, its being distributed, shown, played, or included in a programme service, whether by himself or another,

is guilty of an offence if he intends religious hatred to be stirred up thereby.

(2) For this purpose regard shall be had to such display, publication, distribution, showing, playing, or inclusion in a programme service as he has, or it may be reasonably be inferred that he has, in view.

***Racial and Religious Hatred Act 2006, § 29H - Powers of entry and search***

(1) If in England and Wales a justice of the peace is satisfied by information on oath laid by a constable that there are reasonable grounds for suspecting that a person has possession of written material or a recording in contravention of section 29G, the justice may issue a warrant under his hand authorising any constable to enter and search the premises where it is suspected the material or recording is situated.

(2) If in Scotland a sheriff or justice of the peace is satisfied by evidence on oath that there are reasonable grounds for suspecting that a person has possession of written material or a recording in contravention of section 29G, the sheriff or justice may issue a warrant authorising any constable to enter and search the premises where it is suspected the material or recording is situated.

(3) A constable entering or searching premises in pursuance of a warrant issued under this section may use reasonable force if necessary.

(4) In this section "premises" means any place and, in particular, includes-

- (a) any vehicle, vessel, aircraft or hovercraft,
- (b) any offshore installation as defined in section 12 of the Mineral Workings (Offshore Installations) Act 1971, and
- (c) any tent or movable structure.

### ***Racial and Religious Hatred Act 2006, § 29I - Power to order forfeiture***

(1) A court by or before which a person is convicted of-

- (a) an offence under section 29B relating to the display of written material, or
- (b) an offence under section 29C, 29E or 29G,

shall order to be forfeited any written material or recording produced to the court and shown to its satisfaction to be written material or a recording to which the offence relates.

(2) An order made under this section shall not take effect-

- (a) in the case of an order made in proceedings in England and Wales, until the expiry of the ordinary time within which an appeal may be instituted or, where an appeal is duly instituted, until it is finally decided or abandoned;
- (b) in the case of an order made in proceedings in Scotland, until the expiration of the time within which, by virtue of any statute, an appeal may be instituted or, where such an appeal is duly instituted, until the appeal is finally decided or abandoned.

(3) For the purposes of subsection (2)(a)-

- (a) an application for a case stated or for leave to appeal shall be treated as the institution of an appeal, and
- (b) where a decision on appeal is subject to a further appeal, the appeal is not finally determined until the expiry of the ordinary time within which a further appeal may be instituted or, where a further appeal is duly instituted, until the further appeal is finally decided or abandoned.

(4) For the purposes of subsection (2)(b) the lodging of an application for a stated case or note of appeal against sentence shall be treated as the institution of an appeal.

### ***Racial and Religious Hatred Act 2006, § 29J - Protection of freedom of expression***

Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.

***NORTHERN IRELAND (HL-Law Commission, 2002)***

38. Blasphemy was part of the common law of Ireland. In an 1842 judgment Sir Edward Sugden<sup>[157]</sup> refers to the successful prosecution in 1703 of Thomas Emlyn, a Unitarian minister who had written a book arguing that Jesus Christ was not the equal of God the Father. This appears to have been the first reported blasphemy prosecution in Irish law. The law would seem to have protected the beliefs of the Church of Ireland<sup>[158]</sup>. It is therefore arguable that the crime did not survive the disestablishment of the Church of Ireland by the Irish Church Act 1869. There was no reported blasphemy prosecution in the period between 1855 and the creation of the independent state of Ireland. In Northern Ireland, which inherited Irish common law, there has, to date, been no prosecution for blasphemy. However, in Northern Ireland incitement to religious hatred is a criminal offence under the Public Order (NI) Order 1987, although it is rarely prosecuted. From enquiries we made, it would seem that this might be due to the fact that it was difficult to show the necessary intention to incite religious hatred, a disinclination to prosecute sectarian cases, or a feeling that the number of cases that could potentially be prosecuted was so large as to make individual prosecutions potentially invidious—or a combination of all three.