Parliamentary Assembly
Assemblée parlementaire
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 11717
25 September 2008

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

Reply to Recommendation[1]: Recommendation 1805 (2007)
Committee of Ministers

1. The Committee of Ministers has taken note with great interest of Parliamentary Assembly Recommendations 1804 (2007) "State, religion, secularity and human rights" and 1805 (2007) "Blasphemy, religious insults and hate speech against persons on the ground of their religion". It has brought these recommendations, and Resolution 1510 (2006), to the attention of the governments of member states. The Committee of Ministers has, in addition, requested and received comments on Recommendations 1804 and 1805 (2007) from a number of committees. These comments are appended to this document.[2]

2. The Committee of Ministers is aware of the importance of religious and convictional facts within European society and refers in this connection to the commitment undertaken at the Third Summit of Heads of State and Government in Warsaw, to "encourage intercultural and inter-faith dialogue, based on universal human rights, as a means of promoting awareness, understanding, reconciliation and tolerance, as well as preventing conflicts and ensuring integration and the cohesion of society".

3. The action taken by the Committee of Ministers to follow up these commitments has focused on intercultural dialogue, including its religious dimension. Like the Assembly, the Committee of Ministers believes that inter-faith or interdenominational dialogue is not a direct matter for states or the Council of Europe and would, moreover, be regarded by religions as interference in their affairs. It reaffirms its belief in the shared European principle of the separation between governance and religion in the Council of Europe member states with due regard for the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). This principle, along with that of freedom of conscience and thought and the principle of non-discrimination, is an integral part of the concept of European secularity on which the Committee of Ministers bases its work on the religious dimension of intercultural dialogue.

4. Accordingly, and aware of the major potential of religious communities for contributing to the expansion of the values defended by the Council of Europe, and of the importance of appropriate co-operation with civil society players – including the media – in particular to identify and share relevant experiences and good practice, on 8 April 2008 the Committee of Ministers held, on an experimental basis, the first annual Council of Europe Exchange on the religious dimension of intercultural dialogue. In view of the key role played by education in combating ignorance, stereotypes and incomprehension and in building a democratic society, the Committee of Ministers decided to devote this Exchange to "Teaching religious and convictional facts. A tool for acquiring knowledge about religions and beliefs in education; a contribution to education for democratic citizenship, human rights and intercultural dialogue".

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1. Joint reply to Recommendations 1804 (2007) and 1805 (2007), adopted at the 1036th meeting of the Ministers' Deputies (16 September 2008).
2. Recommendations 1804 and 1805 (2007): Steering Committee for Human Rights (CDDH) (Appendix 1), Steering Committee for Culture (CDCULT) (Appendix 2), Steering Committee for Education (CDED) (Appendix 3);
Recommendation 1804 (2007): Steering Committee for Higher Education and Research (CDESR) (Appendix 4);
Recommendation 1805 (2007): European Committee on Crime Problems (CDPC) (Appendix 5); Steering Committee on the Media and New Communication Services (CDMC) (Appendix 6).

5. In the light of the conclusions of the General Rapporteur and the positive assessment of the 2008 Exchange,[3] the Committee of Ministers has agreed to foresee a continuation of work on the religious dimension of intercultural dialogue, focused on the core objective of the Council of Europe, through annual exchanges. These will be evaluated on a case-by-case basis and an assessment made of their impact. Other practical follow-up action will be considered in due course, especially with regard to the learning and teaching of intercultural skills, in the framework of the follow-up to be given to the White Paper on Intercultural Dialogue, launched at the 118th Session of the Committee of Ministers on 7 May 2008.

6. In addition to this initiative, the Committee of Ministers recalls that numerous activities, in particular by the Steering Committee for Education (CDED) and the Steering Committee for Higher Education and Research (CDESR), are related to the elaboration of new teaching methods and learning strategies that take account of religious diversity and the religious heritage of Europe, and seek to cultivate the religious dimension of intercultural education. The latter, for example, was the focus of the project entitled "The New Challenge of Intercultural Education: Religious Diversity and Dialogue in Europe" (2002-2006), which resulted, *inter alia*, in the preparation of a reference handbook on intercultural education for use by teachers. It has also led to a draft recommendation within the CDED, which is currently being revised to take account of recent achievements, namely the results of the 2008 Exchange, the White Paper on Intercultural Dialogue and the possibilities offered by the opening of the European Resource Centre on Education for Intercultural Understanding, Human Rights and Democratic Citizenship in Oslo ("European Wergeland Centre").

7. The establishment of this centre and the research, training and information dissemination activities that it will undertake, in co-operation with the Council of Europe, in the field of education for intercultural understanding, human rights and democratic citizenship, could satisfy a number of the expectations expressed by the Assembly in paragraphs 23.7 and 24.1 of its Recommendation 1804 (2007).[4]

8. The Committee of Ministers also reasserts its commitment to the freedom of expression and the freedom of thought, conscience and religion, which are fundamental freedoms enshrined in the ECHR and which lie at the very heart of democracy. Clearly, it acknowledges that it is sometimes necessary to reconcile these different freedoms and place restrictions upon them with due regard for the ECHR. Nonetheless the Committee of Ministers points out that, according to the case law of the European Court of Human Rights, in application of paragraph 2 of Article 10 of the ECHR, the right to freedom of expression enshrined therein is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb.

9. The Committee of Ministers encourages member states to closely monitor the constantly developing degree of protection of these freedoms, as seen in the enriching interpretation of the case law of the Court to reflect this in their national law and practice.

10. Some of the questions raised by the two Parliamentary Assembly recommendations regarding these restrictions and reconciliations have already been the subject of two thematic reports by the Steering Committee for Human Rights (CDDH) on the wearing of religious symbols in public areas and on "hate speech". These two reports identify principles based on the relevant case law of the European Court of Human Rights, with a view to providing guidance to the competent public authorities. With regard more specifically to the question of hate speech, the Committee of Ministers refers to the principles set out and the measures advocated in its Recommendation No. R (97) 20 on hate speech, which remain fully valid.

11. The Committee of Ministers would also draw attention to the Conference on Human Rights in culturally diverse societies – challenges and perspectives, to be held in The Hague on 12 and 13 November 2008, in which the Assembly is invited to participate, and which could afford an opportunity to reflect on other relevant issues, such as freedom of religion or belief, hate speech and the role of the state.

12. Lastly, the Committee of Ministers would like to thank the Assembly for the interest it has shown in the establishment of a comprehensive approach to non-discrimination at United Nations level. In this context, it welcomes the forthcoming signature of the Memorandum of Understanding between the Council of Europe and the Alliance of Civilisations by the Secretary General of the Council of Europe and the United Nations High Representative for the Alliance of Civilisations. The co-operation based on this agreement will further the respective objectives of both parties, including "the promotion and protection of democracy, human rights and the rule of law; the fight against all forms of discrimination on any ground; the equal dignity of every human

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3. See documents CM(2008)62 and TC-ID(2008)6 add.

4. See the Co-operation Agreement between the Government of the Kingdom of Norway and the Council of Europe with respect to the European Resource Centre on Education for Intercultural Understanding, Human Rights and Democratic Citizenship (document CM(2008)104, approved by the Ministers' Deputies on 9 July 2008 at their 1032nd meeting).

being and gender equality; inclusive and cohesive societies; the democratic governance of cultural diversity; intercultural dialogue, including its religious dimension, as well as intercultural exchange; and the strengthening of democratic citizenship and participation and the promotion of civil society".[5]

5. See the Draft Memorandum of Understanding between the Council of Europe and the Alliance of Civilisations (document CM(2008)76).

Appendix 1 – Comments of the Steering Committee for Human Rights (CDDH) on Parliamentary Assembly Recommendations 1804 (2007) and 1805 (2007)

1. The Steering Committee for Human Rights (CDDH) takes note with interest of the Parliamentary Assembly's Recommendations 1804 (2007) "State, religion, secularity and human rights" and 1805 (2007) "Blasphemy, religious insults and hate speech against persons on grounds of their religion", which both raise very topical and interconnected issues faced by European societies.

2. The CDDH wishes to draw the Assembly's attention to its ongoing work on human rights in a multicultural society. Within the framework of this activity, consideration has already been given to some of the issues tackled by the two aforementioned recommendations. An activity report as well as two separate reports on "hate speech" and the wearing of religious symbols in public areas have already been adopted and brought to the attention of the Assembly, which has taken them into account in the preparation of Recommendation 1805 (2007). Both thematic reports identify principles based on the relevant case law of the European Court of Human Rights with a view to providing guidance to the competent public authorities. A conference, bringing together government experts, civil society representatives and other relevant stakeholders, and at which the Assembly will be invited, is planned for 2008. Further issues, which could include freedom of religion and the role of the state, will be examined on that occasion. As part of this activity, the CDDH has also started considering the possibility of a political declaration by the Committee of Ministers, which could take up some of the issues raised on Recommendations 1804 (2007) and 1805 (2007). The Assembly will be kept informed of future developments of this activity.

Appendix 2 – Comments of the Steering Committee for Culture (CDCULT) on Parliamentary Assembly Recommendation 1804 (2007)

The CDCULT:

– endorses the Parliamentary Assembly's acknowledgement of religion as an important feature of European society and especially, civil society;

– congratulates the Parliamentary Assembly on reaffirming in Recommendation 1804 (2007) the generally accepted principle and European shared value of separation of church and state and on reiterating its previous view that "each individual's religion or option of having no religion is a strictly personal matter";

– acknowledges, as the Assembly does, the religious aspect to many of the problems contemporary society is faced with as well as the sometimes highly beneficial social role played by religions, while agreeing with the Assembly on the fact that interreligious and interdenominational dialogue is not a matter for states or for the Council of Europe and that governance and religion should not mix;[6]

– underlines the CDCULT's previously made contributions and its future readiness to help the Council of Europe devise a comprehensive strategy on intercultural and interreligious dialogue and welcomes the prospect of annual exchanges on the religious dimension of intercultural dialogue as proposed by the Committee of Ministers and which began on an experimental basis in 2008;

– underlines the importance of collecting empirical evidence in the form of case studies and good practices to allow for knowledge transfer and informed policy making on issues of intercultural and interreligious dialogue, as well as the importance of the role of civil society actors in this work, and of co-operation with them;

– underlines the key role of culture and cultural heritage as an essential space for cultivating intercultural dialogue by promoting tolerance and understanding of the "other" and informs the Parliamentary Assembly that several activities are being carried out by the Directorate of Culture and Cultural and Natural Heritage on specific aspects related to the protection of the religious heritage of member states (Armenia, Azerbaijan, Kosovo[7]).

Comments of the Steering Committee for Culture (CDCULT) on Parliamentary Assembly Recommendation 1805 (2007)

The CDCULT:

– congratulates the Parliamentary Assembly of the Council of Europe for reaffirming its commitment to the freedom of expression and the freedom of thought, conscience and religion, fundamental cornerstones of democracy;

– underlines, when facing cultural and religious diversity in Europe, the key role of ongoing structured and ad hoc societal dialogue based on respect and understanding;

– acknowledges the challenges implied in steady and best possible reconciliation between the freedom of expression and freedom of thought in multicultural societies and the challenges implied in striking a fair balance between the interests of individuals as members of a religious community in ensuring respect for their right to manifest their religion or their right to education, and the general public interest or the rights and interests of others;

– underlines the pertinence of existing Council of Europe and international instruments in support of such reconciliation and compromise;

– welcomes various recent international initiatives in support of contacts between Muslim and so-called Western societies and endorses the Assembly's proposal to extend these also to other religious and non-religious groups;

– underlines the unique potential for contact offered by cultural co-operation mechanisms and initiatives and would like to see overall acknowledgment of the potential of cultural spaces as spaces for dialogue;

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6. Admits that there are, traditionally, some accepted exceptions regarding the principle of separation of church and state.

7. All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

– commits to making the most of intergovernmental cultural co-operation for open and respectful dialogue and as a means of addressing the challenges of diversity, whilst at the same time underlining the political importance of perceiving and communicating diversity as a resource rather than a threat.

Appendix 3 – Comments of the Bureau of the Steering Committee for Education (CDED) on Parliamentary Assembly Recommendation 1804 (2007)

The Bureau of Steering Committee for Education (CDED):

Welcomes this new recommendation of the Parliamentary Assembly, which shows the importance of dialogue between religions and the state in a secular framework;

Reaffirms the importance of measures designed to promote better understanding between cultural and/or religious communities through school education, on the basis of the shared principles of ethics and democratic citizenship;

Also believes that schools play a major role in establishing a tolerant dialogue;

Informs the Committee of Ministers that the problems addressed in the recommendation were also dealt with in its project "The New Challenge of Intercultural Education: Religious Diversity and Dialogue in Europe" (2002-2006), which provided the opportunity, inter alia, to:

– make substantial progress in framing the concept, content and relevant learning methods of the religious dimension of intercultural education;

– highlight the fact that taking account of the religious dimension of intercultural dialogue is of fundamental importance in fostering mutual understanding, tolerance and a culture of "living together";

– propose new teaching methods and learning strategies that take account of religious diversity in intercultural dialogue;

– present, in a book entitled "Religious diversity and intercultural education: a reference book for schools", a set of concepts and teaching approaches to make teachers aware of the religious dimension of intercultural education;

Underlines the importance to promote initial and further training of teachers mentioned in paragraph 24.1 and points out that the dissemination of the results of the project to member states with a view to promoting the use of the reference book by teachers and teacher trainers has already started with the organisation of regional debates on this theme, the first of which took place in Athens from 8 to 9 October 2007. The handbook has also been the basic reference text in two teacher training events co-organised with the Anna Lindh Foundation and has led to the elaboration of teaching material for religious diversity for use in countries on both sides of the Mediterranean. The handbook will be used in further training activities in the framework of the Council of Europe Pestalozzi programme for the training of education professionals;

Points out that a draft recommendation on "the religious dimension of intercultural education: principles, objectives and teaching approaches" which aims to raise awareness among those responsible for education policy in the member states has been approved by the Steering Committee for Education and submitted to the Committee of Ministers for adoption.

Appendix 4 – Comments of the Bureau of the Steering Committee for Higher Education and Research (CDESR) on Parliamentary Assembly Recommendation 1804 (2007)

The CDESR Bureau takes note of the Parliamentary Assembly Recommendation 1804 (2007) concerning "State, religion, secularity and human rights". The Bureau is of the opinion that the recommendation takes a disappointingly one-dimensional view of religion in not recognising that while many Europeans take a primarily sociological and historical view of religion, for many others religion represents an important reality of life that deeply influences their value system. A proper understanding of the role of religion in European societies must take account of both views and the complexity they represent. The Bureau also finds other points of the recommendation disappointing, and much of the wording lends itself to different interpretations.

While the CDESR Bureau thus wishes to put on records its reservations about the recommendation, it will, however, confine its comments to aspects of the recommendation that are directly relevant to higher education.

The CDESR fully acknowledges the role of education in overcoming ignorance, stereotypes and misunderstanding of religion and their leaders and is working towards more prominent role of higher education in this respect.

In order to develop a more prominent role of higher education in intercultural dialogue and democratic culture, the CDESR is involved in the following important activities:

– the CDESR has launched a project targeted towards promoting intercultural dialogue in higher education, recognising the primary role of universities as platforms for mobility of international students, on the one hand, and underlining their responsibility for developing intercultural competencies on the other hand. Intercultural competencies should include tolerance, respect for different cultures and religious beliefs. One of the expected results of this project will be a compendium of good practices of intercultural dialogue published and disseminated to all Council of Europe member states;

– the CDESR works towards introducing the fundamental values of the Council of Europe, in particular, democratic culture, into higher education policies. While the issue of democratic culture is different from intercultural dialogue, there is a clear link between the two: the conditions of a democratic society actively contribute to promoting intercultural dialogue, tolerance and respect for diversity, including religious diversity.

The CDESR is in favour of developing syllabuses, teaching methods and educational material for the study of the religious heritage of the Council of Europe member states, as stated in paragraph 23.7 of the recommendation. In addition to the involvement of religious leaders, this work should also draw on academic expertise. Much work is being done in this area in member states, and the CDESR Bureau is not of the opinion that a new institute is necessarily needed to strengthen these activities.

The CDESR wishes to underline that in line with the principle of university autonomy the responsibility for curricula development lies with higher education institutions. The academic mission can best be performed "when universities are morally and intellectually independent of all political or religious authority and economic power" (paragraph 7 of Recommendation 1762 (2006)).

This principle has a bearing on paragraph 24.1 of the recommendation, which in fact covers two different proposals without distinguishing clearly between them. The first proposal – that balanced teaching of religions and their present and past roles as a part of teacher training – meets with the approval of the CDESR, as does the proposal that human rights teaching be offered to religious leaders. However, the CDESR Bureau wishes to underline that, in keeping with the principles of university autonomy defended so well by the Parliamentary Assembly in Recommendation 1762 (2006), public authorities may promote such offers but cannot require that they be included in higher education curricula. While it fully identifies with the importance of human rights training, the CDESR Bureau also wishes to point out that the proposal that human rights training be required – rather than promoted or encouraged – for all religious leaders is problematic from a point of view of principles as well as from a practical point of view, since the appointment of religious leaders is entirely within the competence of religious communities and since their education ranges – depending on the religious community or denomination concerned – from academic training in institutions enjoying institutional autonomy in line with Parliamentary Assembly Recommendation 1762 (2006) to training that is entirely non-formal.

Appendix 5 – Comments of the European Committee on Crime Problems (CDPC) on Parliamentary Assembly Recommendation 1805 (2007)

1. Following the adoption by the Parliamentary Assembly of Recommendation 1805 (2007) on "Blasphemy, religious insults and hate speech against persons on grounds of their religion", the Committee of Ministers decided to communicate it to the European Committee on Crime Problems (CDPC), for information and possible comments. The CDPC examined the above recommendation and decided to contribute to the response of the Committee of Ministers by providing the following comments:

2. The CDPC agreed upon the paramount importance for any democratic society of the freedom of expression and the freedom of thought, conscience and religion, enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms, as underlined by the Parliamentary Assembly.

3. Taking into account that the degree of protection of these freedoms is constantly developing notably through the enriching interpretation by the European Court of Human Rights in its case law, member states should follow closely this development and progressively reflect it in their national law and practice.

4. Regarding paragraphs 17.2 and 17.4 of the recommendation, the CDPC was of the view that the responsibility for implementing the recommendations contained in paragraph 17.2 would not be limited to national Ministries of Justice only, but would also involve other competent national bodies.

5. Similarly, elaboration of practical guidelines for ensuring that national law and practice allow for open debates on matters relating to religion, penalise hate speech and prohibit acts disturbing public order would require the collaboration of relevant competent steering committees of the Council of Europe, in particular the Steering Committee on Human Rights (CDDH).

6. With the above in mind, the CDPC expressed its readiness to contribute, within its fields of competence, to the elaboration of such practical guidelines, if decided by the Committee of Ministers.

Appendix 6 – Comments of the Steering Committee on the Media and New Communication Services (CDMC) on Parliamentary Assembly Recommendation 1805 (2007)

The Steering Committee on the Media and New Communication Services (CDMC) shares the view that, in multicultural societies, it is often necessary to reconcile freedom of expression and freedom of thought, conscience and religion as indicated in Recommendation 1805 (2007) of the Parliamentary Assembly of the Council of Europe on "Blasphemy, religious insults and hate speech against persons on the ground of their religion".

The CDMC also agrees that in some instances, it may be necessary to place restrictions on these freedoms but that, under the European Convention of Human Rights, any such restrictions must be prescribed by law, necessary in a democratic society and proportionate to the legitimate aims pursued. In this context, states enjoy a margin of appreciation given that national authorities may need to adopt different solutions taking account of the specific features of each society; this margin is subject to the supervision of the European Court of Human Rights.[8]

The CDMC welcomes the work of different Council of Europe bodies on intercultural dialogue and human rights in a multicultural society, dealing *inter alia* with questions of blasphemy, religious insults and hate speech against persons on the ground of their religion. The CDMC is following this work with great interest and looks forward to the adoption of the White Paper on Intercultural Dialogue, which will, no doubt, make a significant contribution to discussions on the subject.

The CDMC would nonetheless recall that, according to the case law of the European Court of Human Rights, subject to paragraph 2 of Article 10 of the European Convention on Human Rights, the right to freedom of expression consecrated therein is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb.[9]

As regards the question of hate speech, the CDMC considers that Recommendation No. R (97) 20 of the Committee of Ministers on "hate speech" sufficiently covers questions regarding hate speech disseminated through the media, and does not see a need to rewrite it at this stage. It does acknowledge, however, the desirability of enhancing the visibility and impact of the standards set out therein.

8. Cf. in this context for example the judgments of the European Court of Human Rights *Kokkinakis v. Greece* (1993) in which the Court pointed out that those who choose to exercise the freedom to manifest their religion, irrespective of whether they do so as members of a religious majority or a minority, cannot reasonably expect to be exempt from all criticism. However, it also stated that in extreme cases the effect of particular methods of opposing or denying religious beliefs can be such as to inhibit those who hold such beliefs from exercising their freedom to hold and express them.

On the question of the state's margin of appreciation in restricting freedom of expression to safeguard morals or religious feelings of others see *Otto-Preminger-Institute v. Austria* (1994) §50.

9. Cf. for example *Handyside v the United Kingdom* (1976), §49.