



## Why Disrespectful Acts against Prophet Muhammad and the Quran Must Be Outlawed Worldwide: An Analysis of Legislation and Case Law (Part 1)

Eckhart Christopher Hopkinson

Independent Researcher, The Hopkinson Center for Truth and Facts, United States

[eckhart.christopher.hopkinson@outlook.com](mailto:eckhart.christopher.hopkinson@outlook.com)

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### **Abstract**

Controversies escalated significantly following the deliberate republication of Prophet Muhammad's cartoons by the French weekly magazine Charlie Hebdo in 2020. However, this article will prove that ridiculing and insulting are not instances of the right to freedom of speech and expression. It has been discussed that publishing the insulting cartoons does not qualify as a defense of the right to freedom of expression. European prosecutors have never allowed cases related to Prophet Muhammad cartoons or Quran burning to proceed to trial because they recognize that if these cases reached the courts, under their criminal laws, legal intervention would be necessary. Even if the court ruled it as free speech, the civil parties could appeal to the European Convention on Human Rights (ECHR), and it would have to restrict those actions according to para. 2 of Article 10 of the convention, as it has previously ruled in several similar cases. If the ECHR supports such actions, it would contradict previous rulings. It is evident from both a rational and moral standpoint that such actions are unjustifiable, and there is no requirement to consult the regulations of the courts in Europe or America. The approach of this article, however, aims to demonstrate that the disrespectful acts against Prophet Muhammad and the Quran should be globally outlawed. This is substantiated by examining previous worldwide courts, to illustrate that failure to prosecute such acts contradicts their principles, values, and prior judgments. According to this article, if cases involving Prophet Muhammad cartoons, Quran burnings, or related acts of disrespect were taken to court, they would not be legally recognized as free speech.

**Keywords:** Prophet Muhammad Cartoons, Quran Burning, Freedom of Speech, Case-Law, ECHR

### **1. Introduction (Media, Freedom of Speech and Historical Facts)**

In recent years in many cases the concept of the "freedom of speech" has been mixed up with mocking, hatred, and insulting. In some cases, the "freedom of speech" has been abused to distort the history and to spread biased viewpoints against the truth and against the historical facts. The term "freedom of speech" has been converted to an authorization for individuals and media to claim a right for themselves to express their desired viewpoints even if they are distorted histories or converted truths. In its more dangerous form, it has been used by media to induce their desired thoughts or a distorted history in the people minds. When someone expresses their opinion, it is not as critical as when a media expresses an idea. Individuals are responsible for their opinions, and if they are wrong or harmful, experts can refute them. However, when the media is spreading an opinion, it might be impossible to inform all the first addressees about the falseness or harmfulness of the news or opinion. So, there is a question: Is the Media allowed to distort historical facts in the cover-up of the freedom of speech? Historians believe that the distortion of historical facts is a serious crime, to the extent that Dr. Shrimali announced that every attempt

to “fabricate and distort history” is a terror of a different nature [1]. It is a matter of concern that the space for reason and debate is shrinking in the world and they are being replaced by the power of the media. Media commonly do not seek the truth but they are being supported by political groups for spreading biased news, ideas and opinions. The world has never witnessed such a disturbing trend. Those with little historical knowledge fabricate and impose their ideas. Stronger media can spread bigger lies to a larger extent for a larger number of addressees. If several Media along with each other decide to cover a lie along with each other for a long-time plan, they can put the lies in the minds of a generation. This is very dangerous. Also, the media’s impact and ability to put certain issues on the public agenda entails responsibilities and obligations. Among these is to respect the reputation and rights of others and their right to a private life.

Laws that impose restrictions on hate speech against religions are not applied equally to the various religions practiced in Europe and other countries. Such laws discriminate against different faiths or denominations. It is regrettable that the protections afforded by these legislations do not apply to all religions. Especially when the hate speech is toward Islam, the prosecutors tend to consider it as free speech. This has allowed the spread of potentially harmful misinformation and even severely hateful acts against Muslims. Prophet Muhammad cartoons and Quran burning in Europe are two kinds of such unequal treatments toward religions.

The European Convention on Human Rights (ECHR) has previously ruled that “abuse of freedom of expression is incompatible with democracy and human rights and infringes the rights of others” [2]. The right to dignity is at least as worthy of protection as the right to freedom of expression. The ECHR’s case-law has also laid down the limits to freedom of expression.

Since, there is not a universally agreed upon definition for what constitutes hate speech, it is little wonder that such legislation has let the hate speech against certain religious groups such as Muslims flourish. Some countries even by pretending to protect the free speech let the hate speech against Muslims become normalized. The insulting cartoons of the Prophet of Islam or even Quran burning are of such cases. Delineating the line between free speech and speech deemed insulting for the purpose of criminal prosecution can be regarded as an utterly subjective undertaking, with case law highlighting that some governments may be ill-equipped to make such determinations. Compounding the problem of these laws' arbitrariness is their selective application. While European authorities have at times appeared reluctant to go after anti-Islam firebrands spouting hatred, some of the academic staff engaging in legitimate debate about other religions are frequently targeted for prosecution.

It's important to note that the balance between freedom of expression and protecting against hate speech and false information is a subject of ongoing debate. In this paper, I refrain from engaging in such long discussions, and instead focus on analyzing the case-law to draw clear conclusions by examining the similarities and differences between the Prophet Muhammad cartoons or Quran burning and the established legal precedents. There are three key areas of decision making that are worth examining to provide a picture of the legal context of this era: international and European treaties and legislation; national legislation and enforcement in prominent European countries; enforcement decisions at the ECHR which has the power to overrule national decisions, and, therefore, its findings are important for all member countries.

## 2. History of the Cartoons of Prophet Muhammad: A Timeline

Table 1 shows a brief history of the controversial cartoons of Prophet Muhammad.

Table 1. A brief history and Timeline of the controversial cartoons of Prophet Muhammad.

Year	Cartoons Publishers
2002	The American newspaper Tallahassee Democrat published a defamatory cartoon of Prophet Muhammad. The newspaper received thousands of letters of protest demanding an apology for the misrepresentation of the Prophet Mohammad.
Sep 2005	The Danish daily Jyllands-Posten published 12 cartoons of Prophet Muhammad.
Jan 2006	Magazinet, a Christian newspaper in Norway, reprinted the cartoons.
Feb 2006	The Canadian publication Le Devoir publishes one of the cartoons.
Feb 2006	Alberta-based Western Standard magazine publishes eight of the original 12 cartoons.
Feb 2006	The French magazine Charlie Hebdo reprinted the Prophet Muhammad cartoons of the Jyllands-Posten and added several new cartoons by its own contributors.
Aug 2007	Several Swedish newspapers including Aftonbladet, Dagens Nyheter, Expressen, and Upsala Nya Tidning along with the Nerikes Allehanda, published derogatory drawings of Prophet Mohammad.
Feb 2008	Five major daily newspapers, 10 smaller papers, reprinted another set of cartoons. Denmark's leading newspapers and three European newspapers in Sweden, the Netherlands and Spain also reprinted the cartoons.
Nov 2011	Charlie Hebdo featured a cartoon of Prophet Muhammad on its cover.
Sep 2012	Charlie Hebdo again published a series of satirical cartoons of Prophet Muhammad.
Jan 2015	Charlie Hebdo published a special edition which again showed a cartoon of Prophet Muhammad.

May 2015	The American Freedom Defense Initiative, an anti-Muslim hate group held a "Draw the Prophet" event, in Garland, Texas. A \$10,000 award was offered for the winning cartoon [3]. The same group was responsible for billboards in Marion County depicting a cartoon of Prophet Muhammad [4].
Dec 2019	Dutch anti-Islam lawmaker Geert Wilders revived his plan to hold a contest for cartoons caricaturing the Prophet Muhammad. Wilders called on people to send in their Muhammad cartoons [5].
Sep 2020	Charlie Hebdo republished the cartoons of the Prophet Mohammad.

According to the survey of Danish journalism school (completed on 27th February, 2007), all or some of "Jyllands-Posten" cartoons were printed out in 143 newspapers in 56 countries [6]. In the following sections, we have demonstrated that the cartoons are defamatory and insulting and, based on legal precedent, they should be prohibited. What strikes the attention is the deliberate insistence and stubbornness in publishing defamatory cartoons of Prophet Muhammad. The question is why they try to do that again and again. It is the unlimited support of governments and prosecutors that enables them to continue repeating such insulting and disparaging acts. In the end, of course, Danish authorities declined to prosecute anybody in the cartoon affair. The rulings demonstrate that while Islam can be disparaged with impunity, conducting research about some other religions is subject to swift and hefty legal penalties.

### **3. What Type of Speech or Expressions are not Protected by Freedom of Expression Laws?**

Despite the broad freedom of expression guaranteed by the laws, there are some exceptions. In fact, the freedom of expression is not absolute and every system of law provides for some limitations on it. The right to freedom of expression extends to any medium, including written and oral communications, the media, public protest, broadcasting, artistic works, and commercial advertising. However, it carries with it special responsibilities, and may be restricted on several grounds. These limitations do not limit the freedom but define the cases that are not supported by this law. A few narrow categories of speech or expression are not protected. The main such categories are incitement, defamation, fraud, obscenity, child pornography, fighting words, hate speech, and threats. Provisions relating to the prohibition of hate speech and all forms of intolerance and discrimination on grounds such as race, religion and belief are to be found in most of the international instruments. In large part, the movement to circumscribe the bounds of free expression has its roots in three instruments of international law: the European Convention on Human Rights (ECHR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the International Covenant on Civil and Political Rights (ICCPR). Article 10 of the ECHR, for example, grants the freedom of expression to all, but the exercise of this right is conditioned on conformity with the restrictions necessary, *inter alia*, "for the protection of the reputation and rights of others." The CERD and ICCPR, which also purport to recognize the freedom of expression, go a step further. Article 4(a) of the CERD obligates signatories to make "all dissemination of ideas based on racial superiority or hatred" a punishable offense, while Article 20 of the ICCPR requires outlawing "any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence [7]." These are all the international legal provisions mandating the prohibition of disrespectful acts against Prophet Muhammad and the Quran.

### **4. Why Disrespectful Acts Against Prophet Muhammad and the Quran Constitute Hate Speech Towards Muslims?**

#### **4.1. Hate Speech toward Muslims**

For a long, Islamophobic demonstrations, films and literature aiming to vilify the Prophet Muhammad and the Holy Quran have been tolerated by United States and a few European states like Holland, Switzerland, France and Austria. The states officially sponsored such willful and planned acts despite knowing that they offend over a billion Muslims globally. Furthermore, the repeated calls for burning the Holy Quran on the pretext of "secular Western values" such as individual liberty and freedoms are now state-sponsored in some European nations such as Denmark and Sweden. Recently, racists and extremists once again abused democracy and freedom of expression to normalize hatred against one of Sweden's religious minorities by burning the Quran. It will be discussed later why I called them racists. The latest example of this is the Quran burning in Sweden outside Stockholm's central mosque in 2023. The Swedish police had granted a permit for the demonstration, after a Swedish court ruling that allowed it on the grounds of freedom of expression. The incident led to international protests. The other example is the Quran burning of the leader of the far-right Danish hard-line party with the government's permission in front of a mosque, as well as the Turkish Embassy in Copenhagen in 2023.

While anything that hurts European royals or disagrees with Europe's official narrative of events would be banned or halted on the pretext of national security, hurting millions of Muslims by insulting their faith is considered

a symbol of freedom of expression. While other religious groups are protected by state laws, Muslims are easy targets of religious hatred [8]. Such attempts on an official level endorse anti-Islam and anti-Muslim sentiment and suggest that it is a regular practice to vilify and demonize Islam and its teachings.

#### **4.2. Muslims' Identity Tightly Linked to Prophet Muhammad and Quran**

It should be understood by non-Muslims that how tight the Muslims' identity is linked to Prophet Muhammad and Quran. The religion of Muslims is much more important for them than their ethnicity and the essence of their identity is constructed by their religion. My researches show that the identity of Muslims is interwoven with Prophet Muhammad and Quran. I could finally find a formula to show to non-Muslims the importance of the role of Prophet Muhammad and Quran in Muslims identity. This formula should be kept in mind that in the Muslims eyes:

*Prophet Muhammad=Islam=Quran=Muslims Identity*

However, the above formula cannot do justice to the Muslim feelings because the Prophet Muhammad, Quran and Islam are loved by Muslims more than themselves. According to Islam, Muhammad is God's prophet and the position he occupies in a religion of which he was the founder makes him "sacred" in a sense, like Abraham or Moses in the Jewish religion. The publication of the cartoons ridiculing the Prophet Muhammad represents contempt for the most fundamental beliefs of Muslims and has abused and overstepped the right to freedom of speech by taking it to a dangerous and irresponsible level in its disregard for the sensitivities, self-worth and dignity of the Muslim community [9]. It is not only a matter of love. It is interwoven with Muslims' identity, life goals, role model, scripture, eternity, etc. When someone disrespects Prophet Muhammad or Quran, this is automatically directed toward Muslims as an ethnic group because their insulting expression is directed at someone or something to which the other bears a possessive relation (a belief, a Prophet, a holy book, and so on). The contents of the Prophet Muhammad cartoons were calumny and sought to damage the Prophet Muhammad's reputation to third parties. The cartoons aim was denigration of Prophet Muhammad and we know that the characteristic aim of the insult is denigration.

There are several instances in case law, including rulings from courts such as the ECHR, where individuals have been convicted for mocking, defaming, or denigrating a person or group based on their sexual orientation or gender identity (see Lilliendahl v. Iceland [10]). The religious identity of Muslims should be similarly protected from mocking, defaming, or denigrating. Inextricably related to the question of human dignity is the question of religious dignity. The right to religious dignity includes the right not to be victimized, intimidated or provoked on grounds of one's religion or faith [9]. Since the Islamic identity for a Muslim is more important than their nationality, ethnicity, gender identity, and racial identity, the Prophet cartoons are undoubtedly liable to offend a great many people's religious sensibilities and they cause deep offence to devout Muslims. While the legislators intend to outlaw any kind of anti-Semitism activities, they should understand that such anti-Islamic activities are counterparts of anti-Semitism activities but with much more severity and impact on the reputation of the Muslims. Such activities not only violate the human rights of the Muslims and cannot be regarded as free speech, but also could promote a racist and antidemocratic agenda.

#### **4.3. Insulting Prophet Muhammad or the Quran: The Most Offensive Act Against Islam in the Eyes of Muslims**

Insulting Prophet Muhammad or the Quran is viewed as the most offensive and rights-violating act that can be committed against Islam in the eyes of Muslims. Both Prophet Muhammad and the Quran hold the utmost significance and reverence in Islamic faith and culture. Disrespect or derogatory remarks towards them are deeply hurtful and offensive to the Muslim community. Contrary to the statements in the judgment of the case of the *Wingrove v. United Kingdom* [11], disrespectful acts against Prophet Muhammad, Quran and other Islamic symbols cause substantial offence to all Muslims and this will not vary from time to time or from place to place.

##### **4.3.1. Prophet Muhammad**

Prophet Muhammad is highly venerated by Muslims. They believe that Muhammad is the last and final messenger and Prophet of God who received divine revelations. Muslims from all walks of life strive to follow his example. After the holy Qur'an, the sayings of the Prophet and descriptions of his way of life are the most important Muslim texts. Muslims believe that prophets are to show an example of how Muslims should live their life. They believe that Prophet Muhammad is the most revered of all men. Muslims from different sects all share these same

fundamental beliefs. They believe that Prophet Muhammad's character is pure, simple, and beautiful and he has an alluring personality that gives rise to feelings of love and veneration for him. Muslims also believe that Prophet Muhammad is the most perfect example of a human to walk the earth ever. They love him. They think of him as their beloved father. Prophet Muhammad is more beloved to them than their fathers, mothers, and children. Muslims consider Prophet Muhammad as the perfect role model. They are encouraged in Islam to follow Prophet Muhammad's footsteps and try to pattern their lives according to him. Allah has declared in the Quran (chapter 33, verse 21): "Indeed, in the Messenger of Allah (Prophet Muhammad) you have an excellent example, for whoever has hope in Allah and the Last Day, and remembers Allah often". He represented the 'prototype of human perfection' and was the best among God's creations. The (chapter 68, verse 4) of the Quran says: "And you [Muhammad] are surely on exalted quality of character". As a result, Muslims view his life and character as a superb model to be followed, both in social and spiritual aspects.

Some Muslims disagree with making pictures of the Prophet Muhammad because these pictures might encourage some people to worship the Prophet instead of Allah and they could inspire idolatry and also depicting him risks insulting him. It is because of Muslims' high respect for Prophet Muhammad. There are pictures of Prophet Muhammad dating from earlier times as well as the present day, however, in these cases the Prophet is depicted respectfully and without facial features. Some Muslims believe that there is no problem in such drawing.

#### 4.3.2. The Holy Quran

Quran is the sacred scripture of Islam, and is believed by Muslims to be God's final revelation to humankind. Within Islam, there is a strong conviction that the Quran's text has been preserved in its original form since the time of its revelation about 1,400 years ago. They also believe that Quran is the only holy book that has been kept undistorted and this is confirmed by its more than 1400-year history of unalteredness. Muslims consider the Quran the sacred word of God and view any intentional damage or show of disrespect towards it as deeply offensive. As such, Muslims see the burning of the Quran as a desecration of sacred scripture and an unacceptable act. A long list of leading historians and scholars agree that the Quran is the word of God (Allah) and it is protected from any change, corruption, and error [8]. Muslim believe that Quran remains still relevant and it serves as a guidebook to all humankind. They refer to thorough studies of the Holy Quran that reveal the prophecies and miraculous scientific facts. Muslims believe that disrespecting or burnings of the Quran are not mere ordinary Islamophobia incidents. They have made efforts to urge the countries worldwide to adhere to international law "which clearly prohibits any advocacy of religious hatred". Everyone who slightly knows Muslims can understand why mocking and insulting Prophet Muhammad or Quran is so offensive to them. The above explanations show that Prophet Muhammad and Quran construct Muslims' identity and any disrespectful acts such as cartoons, Quran burning, or any other form of such behaviors are considered a direct affront to the identity and dignity of Muslims. Indeed, if someone insults or mocks Prophet Muhammad or the Quran, it is more offensive for a Muslim than if they were insulted or mocked themselves.

#### 4.5. Disrespecting Prophet Muhammad or the Quran: A Violation of Every Muslim's Honor and Reputation

As the case-law shows, anti-Semitism and holocaust denial are the most cherished red line for courts worldwide. All applications submitted to ECHR about Holocaust denial have been invariably (and unanimously) dismissed as inadmissible [12]. In the case of *Faurisson v. France* [13], the ECHR stated that: "It was accountable and reasonable to consider the pamphlets displayed by the applicant as a defamatory attack against the Jewish community and against each individual member of this community. By describing the historical fact of the assassination of millions of Jews, as a lie and zionist swindle, the pamphlets in question not only gave a distorted picture of the relevant historical facts but also contained an attack on the reputation of all those who were described as liars or swindlers."

Due to the close link of the Prophet Muhammad and the Quran to the Muslim's identity, disrespecting the Prophet Muhammad and the Quran is indeed more offensive to the Muslim community than holocaust denial to the Jewish community. Thus, disrespecting Prophet Muhammad or the Quran should be considered as defamatory attack against the Muslim community and against each individual member of this community. These kinds of acts, not only gave a distorted picture of the relevant historical facts but also contained an attack on the reputation of all Muslims. Prophet Muhammad cartoons or the Quran burning are clearly publicly defaming a group of persons namely the Muslims and undeniably infringing the honor and reputation of the entire Muslim community.

In the following sections, the close link of Prophet Muhammad and the Quran to the Muslim's identity has been proved and clarified.

#### 4.4. Historical Facts about Prophet Muhammad

##### 4.4.1. Cartoons Interpretations

In 2005, the Danish newspaper Jyllands-Posten, published cartoons featuring Prophet Muhammad and attempted to convey their intended interpretations, which were aimed at distorting his image. All caricatures aimed at mocking Prophet Muhammad hold no value and are not worth discussing. However, some of the cartoons aim to bring into minds of the readers the opposite of the following facts: Prophet Muhammad's teachings are never responsible for terror, bombing and violence, he would never promise heaven and the virgins to the suicide bombers, and he never violated the women rights. The history never verifies the cartoons interpretations. Of course, to understand this a minimum knowledge of history is adequate. Nowhere in the Quran, history, or the biography of Prophet Muhammad can such teachings be found. The teachings of the Prophet Muhammad are full of invitation to peace, good manner, politeness, respecting human rights and helping human beings. He never violated the right of the Christians or Jews and always tried to make a peace treaty with them. He never was the first side to break his treaties. He never started a war even with his enemies. Prophet Muhammad, like Jesus and Moses, promised heaven to those who displayed good manners and righteousness. It is insane to attribute the suicide bombers to him. It is as unacceptable as attributing suicide bombers to the Jesus Christ. Prophet Muhammad supported women rights (both individual and social rights). One can just study his saying about women to understand that.

##### 4.4.2. Distortions of the History in the Published Cartoons

The Orientalist scholar W Montgomery Watt wrote: "Of all the world's great men, none has been so much maligned as Muhammad [14]." Norman Daniel, an eminent British historian at Edinburgh University remarks that "the use of false evidence to attack Islam was all but universal [15]". Prophet Muhammad character can be known through credible historical references rather than the distorted and biased information presented on social media by those lacking specialized knowledge or those inclined to share converted pictures of the Prophet or Islam to the people of the world. Surely, the shameful ill-founded deplorable low-level drawings have no place in such a scientific/historical discussion.

Prophet Muhammad's moral virtues like compassion, love, modesty, honesty, justice, patience, and forgiveness are historical facts and truths. These are facts of common knowledge. Muslims call Prophet Muhammad "the Prophet of Mercy" and the holy Quran says (chapter 21, verse 107): "We did not send you (Prophet Mohammed) except as a mercy for the entire world". There are significant contradictions between the portrayal of Prophet Muhammad in historical accounts and in the drawings. Therefore, when an image associates the Prophet, and consequently all Muslims, with terrorism, it is highly derogatory [16]. Table 2 presents historical facts about Prophet Muhammad and juxtaposes them with the distorted depictions of him found in cartoons or instances of hate speech in legal cases (none of them are based on mainstream historical sources).

Table 2. Historical Fact about Prophet Muhammad vs Defamations against him

Historical Facts	Defamatory Distortions of History
Prophet Muhammad actively worked to prevent wars and advocate for peace [17].	He was belligerent
Prophet Muhammad was very kind and polite toward women. Prophet Muhammad gave women honor and dignity equal to men [18].	He was oppressing women
Muhammad was the man of truth and fidelity, true in what he did, in what he spoke, in what he thought. He was pertinent, wise, sincere, when he did speak, always throwing light on the matter. Prophet Muhammad instructs his followers to seek knowledge, even as far as China [19].	He was unintelligent
The Quran verses and the narrations of the Prophet Muhammad are the most explicit commands concerning the treatment not only of civilians in war, but also animals and the environment. Based on these sources the Islam and Prophet Muhammad vehemently reject terrorism. Numerous verses and sayings of the Prophet Muhammad emphasize that killing innocent individuals is prohibited. Upon dispatching armies, he instructed: Do not act brutally. Do not exceed the proper bounds. Do not mutilate. Do not kill children or hermits. Do not kill old men, children, women or non-combatants. Do not kill the monks in monasteries. Do not kill the people who are sitting in places of worship. Do not cut down date and other trees, and do not tear down buildings [20].	He is linked with terrorism
Prophet Muhammad explicitly stated that Islam prohibits acts of terror. The Arabic and the translation of his saying are: "إِنَّ الْإِيمَانَ فَتَيْدٌ" "أَلْفَتَكَ", "the faith prevents terror" [21].	His teachings supports terrorism
Known as the truthful and the trustworthy, Muhammad modeled core virtues that defined his character and his behavior: truthfulness and integrity, trustworthiness, justice, benevolence, humility, kindness and patience [22].	He was violent and immoral
The Islamophobic depiction of Muhammad's marriage to Aisha as motivated by misplaced desire fits within a broader Orientalist depiction of Muhammad. This idea dates back to the crusades. According to the academic Kecia Ali: "Accusations of lust and sensuality were a regular feature of medieval attacks on the prophet's character and, by extension, on the authenticity of Islam" [23]. According to valid historical records, Aisha was either 19, 22, or 24 years old upon her consenting marriage to Prophet Muhammad [24][25].	He married Aisha when she was a minor

Reliable historical references show that Prophet Muhammad modeled key moral virtues integral to his character by practicing them tangibly [22]. Comparing mainstream historical sources' reports about Prophet Muhammad with the depictions in cartoons and anti-Prophet activities reveals that freedom of speech, has been misused as a cover-up for spreading outright lies and insulting cartoons about prophet Muhammad.

#### **4.4.3. Prophet Muhammad Prohibited any Acts of Terrorism**

A significant contributing factor to the distribution of distorted images of Prophet Muhammad is that governments, such as those that funded ISIS and support terrorist groups around the world, portray them as symbols of Islam despite Prophet Muhammad prohibiting any acts of terrorism, even when directed towards his adversaries [26][21]. By learning more about the Prophet Muhammad, people of conscience will discover that he was a prime example of tolerance and mercy [27].

#### **4.5. Muslims Feel Slighted or Wronged**

Although the insulting cartoon controversy did reveal some radical elements within Muslim communities, however, most Muslims reacted within the normal bounds of social mobilization and standard legal initiatives such as calling for prosecution of the cartoons [16]. The case-law which will be discussed in this article reveals that Muslim's asking for prosecutions not only was not radical, but also it was perfectly consistent with the prevailing trends toward convictions for provocative anti-Muslim speech or for Holocaust denial. Muslims have the right to feel hurt by the published cartoons. There are several reasons why Muslims feel slighted or wronged about disparaging cases about Prophet Muhammad or the Quran [16]:

- 1- Silence of legal prosecutors, courts, and media that prefer not to stand up and say these cartoons may constitute actionable hate speech.
- 2- The absence of prominent and numerous non-Muslim voices calling for prosecutions at the time.
- 3- Muslims may believe that they cannot get justice through the law, when the general European trend has actually been toward punishing other hate speech cases such as anti-Semitism and Holocaust denial.
- 4- Political biases in the judgement of determining whether an obvious defamatory insulting cartoon counts as hate speech or free speech.
- 5- Intense divergence between the law and the public opinion.

In the case of the Prophet cartoons, some incidents of violence happened but they were condemn by Muslims and the vast majority of Muslim responses were peaceful [28]. An interesting admirable behavior of the Muslims is that they do not let themselves insult Jesus in response. Prophet Muhammad told Muslims to respect the holy books of other religions and their great prophets Jesus, Moses, Abraham, and other Prophets. Muslims' tremendous reverence for Jesus, Mary, and other major Biblical figures could have sparked protests similar to the Danish cartoon controversy if such images were exhibited in the Muslim world.

#### **4.6. According to case-law**

The contemporary historical pattern shows that prosecutions for hate speech are not uncommon in the European legal context. There are several cases that the international courts have convicted the accused of charges like Holocaust denial. I do not want to enter the discussion if the Holocaust denial is hate speech or not but it is one of the most frequent cases tried by courts resulting in convictions. The ECHR has repeatedly emphasized that [29]: "Tolerance and respect for the equal dignity of all human beings constitute the foundation of a democratic and pluralist society. It follows that in principle it may be deemed necessary, in democratic societies, to sanction or even prevent all forms of expression which propagate, incite, promote or justify hatred based on intolerance (including religion), if it is ensured that the "formalities", "conditions", "restrictions" or "sanctions" imposed are proportionate to the legitimate aim pursued. It remains open to the competent authorities to adopt, in their capacity as guarantors of institutional public order, measures, even criminal ones, intended to react adequately and not excessively to such remarks [29]".

If the prosecutors and the courts believe that the statements doubting the gas extermination chambers are highly offensive to Holocaust survivors and to descendants of Holocaust victims and the restriction on freedom of expression is deemed necessary for the respect of the rights of others as many courts have held in numerous cases

[13], then the logical inference is that, denigrating and defamation of Prophet Muhammad or the Quran, which is extremely and vehemently offensive to Muslims, by comparison, should also be subject to a ban. The restriction on disrespectful acts against Prophet of Islam and the Quran is more necessary than Holocaust cases.

The necessity for restrictions on disrespectful acts against the Prophet of Islam and the Quran arises from two key reasons. First, the offense felt by Muslims when their Prophet or holy book is mocked or denigrated is often more profound than the offence felt by the descendants of Holocaust victims. That's because Muslims hold a deep reverence for Prophet Muhammad. They revere Prophet Muhammad as their immediate father and Shia Muslims hold faith in his intercession and have a strong belief that he can hear and bless them like a living person. Second, this offense is directed at the entirety of the Muslim community, making it a matter of broader concern than offenses felt by specific groups.

Thus, if the national or international courts conclude that restriction on freedom of expression is regarded necessary for the respect of the rights of others in other cases it should also be applied for expressions against Prophet Muhammad, holy Quran, and other Islamic symbols for the respect of the rights of Muslims. When the views expressed are regarded as "unwarranted and offensive attacks" against Muslims' religious beliefs, the law should justify restrictions on it. It is unacceptable from governments to allow anti-Islam protests in the name of freedom of expression.

## **5. Prophet Muhammad Cartoons: Free Speech, Hate Speech, Defamation, or Insult?**

In this section, it is proved that according to the case law the disrespectful conducts targeting Prophet Muhammad or Quran cannot be categorized as free speech, criticism, debate, or opinion; they squarely fall into the realm of insult, hate speech, and defamation.

### **5.1. Why Disrespectful Acts against Prophet Muhammad or Quran are not Free Speech?**

There are several relevant court decisions, legal prosecutions and convictions in international and domestic courts that are applicable to the Prophet Muhammad cartoons cases. It can be shown that international courts like ECHR and the domestic courts of many countries and states like France have prosecuted similar cases of incitement to racial or religious hatred. It has also been shown that cases similar to the Prophet Muhammad cartoons have been convicted even in Denmark and the highest national and international courts have upheld these convictions.

Article 10 of the Human Rights Act, along with many other laws, state that the public authorities may restrict the right of freedom of expression to prevent disorder or crime and to protect public safety, health or morals, and the rights and reputations of other people. An authority may be allowed to restrict your freedom of expression if, for example, you express views that encourage racial or religious hatred [30]. According to the case law, demeaning conduct directed against Prophet Muhammad or Quran are not free speech and should be restricted because they encourage religious hatred. The Prophet Muhammad cartoons, were not merely a depiction of the Prophet Muhammad, but a caricature of him. The caricatures were extremely derogatory. They fanned the flames of religious hatred, for example, by associating him, and by implication all Muslims, with terrorism.

### **5.2. Insult**

In this section it has been proved that Prophet Muhammad Cartoons, disrespecting him or disrespecting Quran are undoubtedly insulting and regrettable expressions that are considered hate speech and cannot be protected by the right of free speech. Here, it has been clarified what kinds of expressions are considered insults, mostly based on David Archard's work [31]. According to his work, the Prophet cartoons have all the key characteristics of an insult:

1. Insult does not have to be a speech act. An expressive art-work can insult.
2. It conveys a meaning that is disparaging of the other.
3. It has propositional content.
4. The propositional content of any insult need not be true and it can be strictly false. An insult can be in the form of a Calumny or slander that seeks to damage the other's reputation to third parties [32].
5. The insult is directed at someone and in respect of something to which the other bears a possessive relation such as a belief.
6. An insult may distort and warp what is true.



7. Pure insults are not a propositional assault but an attack on the other, which cannot convey any truth [32].
8. The characteristic aim of the insult is denigration.
9. Insults do not merely say that something is the case; they do so with the purpose of belittling the other.

The legal philosopher Andrew von Hirsch characterizes the ‘insult’ as an offensive wrongdoing, a behavior that denigrates persons, is derogatory or an affront to their respect [31]. Using this characterization of the insult as a guideline it becomes justifiable to limit certain expressive actions since they constitute insults rather than free speech. It can be simply proved that the publishing caricatures of Prophet Muhammad are a clear instance of insult. The published cartoons all have the key characteristics of insults. Table 3 displays the types of expressions that have been deemed insulting by the courts in case law.

Table 3. The types of expressions that have been deemed insulting by the courts in case law

<b>Bonnet v. France [33]</b>
He was convicted by the French courts for the offence of proffering a <b>public insult</b> of a racial nature. The Paris Criminal Court ruled that the misappropriation of the front page of the 30 March 2016 issue of the weekly magazine Charlie Hebdo had been aimed at making fun of the Jewish community, by joking about the genocide of which its people had been victims and about their suffering, through particularly outrageous and contemptuous depictions. The ECHR upheld the judgment.
<b>Norwood v. United Kingdom [34]</b>
The applicant was charged with an aggravated offence under section 5 of the Public Order Act 1986 of displaying, with hostility towards a racial or religious group, any writing, sign or other visible representation which is threatening, abusive or <b>insulting</b> , within the sight of a person likely to be caused harassment, alarm or distress by it. He was convicted of the offence by Oswestry Magistrates' Court, and fined GBP 300.
<b>W.P. and others v. Poland [35]</b>
The objectives of the association had been <b>insulting</b> and discriminating against members of the ethnic minority (citizens of Jewish origin) and therefore should not enjoy the protection of Article 11 (freedom of assembly and association) of the ECHR. What is more, the ideas advocated by the applicants could be seen as reviving anti-Semitic sentiments.
<b>Féret v. Belgium [36]</b>
The ECHR considered that incitement to hatred did not necessarily require the calling of a specific act of violence or another criminal act. Attacks on persons committed through <b>insults</b> , ridicule or defamation aimed at specific population groups or incitement to discrimination, as in this case (slogans against Islamification of Belgium), sufficed for the authorities to give priority to fighting hate speech when confronted by the irresponsible use of freedom of expression which undermined people's dignity, or even their safety.
<b>Vejdeland and Others v. Sweden [37]</b>
The applicant was convicted for distributing in an upper secondary school approximately 100 leaflets considered by the courts to be offensive to homosexuals. The ECHR reiterates that inciting to hatred does not necessarily entail a call for an act of violence, or other criminal acts. Attacks on persons committed by <b>insulting</b> , holding up to ridicule or slandering specific groups of the population can be sufficient for the authorities to favor combating racist speech in the face of freedom of expression exercised in an irresponsible manner.
<b>Jersild V. Denmark [38]</b>
He interviewed racists which made abusive and derogatory remarks about immigrants and ethnic groups in Denmark. As regards the reputation or rights of others the ECHR recalls the actual contents of the program which included statements about immigrant workers which were highly <b>insulting</b> . There is no doubt that the remarks in respect of which the racists were convicted were more than insulting to members of the targeted groups and did not enjoy the protection of Article 10.
<b>M'bala M'bala v. France [39]</b>
The ECHR notes that the domestic courts convicted the applicant for proffering a <b>racial insult</b> . They found that he had mocked symbols of the Jewish religion. A form of expression that was both <b>insulting</b> and contemptuous vis-à-vis all persons of Jewish origin or faith, such that the charge of <b>insult</b> is made out.
<b>E. S. v. Austria [40]</b>
She was convicted for disparaging religious doctrines and for defamatory remarks relating to the Prophet Muhammad. The permissible limits of criticism were exceeded where criticism ended and <b>insults</b> or mockery of a religious belief or person of worship began. The interference with the applicant's freedoms under Article 10 of the ECHR had therefore been justified.
<b>Galliano v. France [41]</b>
He was found guilty of "public <b>insults</b> " based on origin, religion, race or ethnicity by the Paris criminal Court (racist and anti-Semitic rants at people in a Paris bar).
<b>A. v. Norway [42]</b>
He had been convicted for several comments, posted on a Facebook against dark-skinned people, Muslims, and Islam. The statement is both <b>insulting</b> and hateful. With reference to previous case law, the Agder Court of Appeal judgment holds that it is statements of a qualifiedly insulting nature that are covered by section 185 of the Penal Code, such as serious degradation of a group's human dignity or statements calling for or supporting integrity violations.
<b>Otto-Preminger-Institute v. Austria [43]</b>
The Otto-Preminger Institute (OPI), showed a satirical film presented a demeaning portrayal of God, the Virgin Mary and Jesus Christ. The film targeted Christian creed in a caricatural mode. The ECHR held that the measures were based on section 188 of the Austrian Penal Code, which is intended to suppress behavior directed against objects of religious veneration that is likely to cause "justified indignation". It follows that the courts purpose was to protect the right of citizens not to be <b>insulted</b> in their religious feelings by the public expression of views of other persons.
<b>Wingrove v. United Kingdom [11]</b>
He wrote the script for, and directed the making of, a video work whose content was the indecent depiction of Jesus Christ and St. Teresa that would outrage the feelings of Christians. The ECHR noted that the aim of the interference was to protect against the treatment of a religious subject in such a manner "as to be calculated (that is, bound, not intended) to outrage those who have an understanding of, sympathy towards and support for the Christian story and ethic, because of the contemptuous, reviling, <b>insulting</b> , scurrilous or ludicrous tone, style and spirit in which the subject is presented".

It's unfortunate that in modern democratic societies, insulting others or distorting the truth to slander individuals and harm their reputation is often protected under the guise of free speech when it targets specific groups, while such protections seem to be limited when the targets are different. In the following lines, the same phrases from the courts judgments in the case law have been employed to demonstrate the relevance of the court decisions to the case of the Prophet Muhammad cartoons. According to the case-law presented in Table 3, the cartoons published by Charlie Hebdo or Jyllands-Posten, which aimed to mock the Muslim community through particularly outrageous and contemptuous depictions of the Prophet Muhammad, should have been convicted by the courts for the offence of proffering a public insult of a racial nature. They should have been charged with an

aggravated offence of displaying, with hostility towards a racial or religious group, any writing, sign or other visible representation which is threatening, abusive or insulting, within the sight of a person likely to be caused harassment, alarm or distress by it.

The objectives of the cartoonists and the publishers had been insulting and discriminating against members of the ethnic minority (citizens of Muslim origin) and therefore should not enjoy the protection of freedom of expression. What is more, the ideas advocated by them could be seen as reviving anti-Muslim sentiments. As regards the reputation or rights of Muslims, the abusive and derogatory depictions about their Prophet or disrespectful acts against their holy book are highly insulting. There can be no doubt that such exercises are more than insulting to members of the targeted group (Muslims) and do not enjoy the protection of Article 10. Mocking symbols of the Muslim religion is a form of expression that is both insulting and contemptuous vis-à-vis all persons of Muslim origin or faith, such that the charge of proffering racial insult should be made out. Disparaging religious doctrines through defamatory depictions relating to the Prophet Muhammad exceed the permissible limits of criticism so that criticism is ended and insults or mockery of a religious belief or person of worship is begun. The case law shows that serious degradation of a group's human dignity such as demeaning the portrayal of the Prophet of God who is followed by Muslims is considered both insulting and hateful. The cartoons targeting Islamic creed in a caricatural mode should be banned to suppress behavior directed against objects of religious veneration that is likely to cause "justified indignation" and to protect the right of citizens not to be insulted in their religious feelings by the public expression of views of other persons. Indecent depictions of Prophet Muhammad or Quran that would outrage the feelings of Muslims should be subject to legal prosecution to protect against the treatment of a religious subject in such a manner to outrage those who have an understanding of, sympathy towards and support for the Islamic ethics, because of the contemptuous, reviling, insulting, scurrilous or ludicrous tone, style and spirit in which the subject is presented. The case law shows that in cases similar to the offending cartoons of Prophet Muhammad, the interference with the offenders' freedoms under Article 10 of the ECHR is justified.

### 5.3. Hate Speech

UN Strategy and Plan of Action on Hate Speech defines the term hate speech as any kind of communication in speech, writing or behavior, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, color, descent, gender or other identity factor [44]. Contemporary historical pattern shows that prosecutions for hate speech are not uncommon in the European legal context. Some jurisdictions have outlawed Holocaust denial while others have not [16]. Table 4 shows what kind of expressions are considered hate speech in the case law.

Table 4. Hate speech in the case law

<b>Féret v. Belgium [36]</b>
The ECHR considered that incitement to <b>hatred</b> did not necessarily require the calling of a specific act of violence or another criminal act. Attacks on persons committed through insults, ridicule or defamation aimed at specific population groups or incitement to discrimination, as in this case, sufficed for the authorities to give priority to fighting <b>hate speech</b> when confronted by the irresponsible use of freedom of expression which undermined people's dignity, or even their safety.
<b>Atamanchuk v. Russia [45]</b>
He made remarks about non-Russian groups' ethnic characteristics. The ECHR noted that his prosecution, based on the relevant provisions of the Criminal Code concerning <b>hate speech</b> , had been "prescribed by law". The Court concluded that a particular statement constitutes an expression which cannot claim the protection of Article 10 or which may be punished by way of criminal proceedings, for instance, under the legislation pertaining to " <b>hate speech</b> " as in the present case.
<b>Lilliendahl v. Iceland [10]</b>
He wrote comments, expressing his disgust and using derogatory words for homosexuality. The ECHR considers it clear that the comments in issue, viewed on their face and in substance, fell under the ' <b>hate speech</b> '. As discussed in the Supreme Court's judgment, Article 233(a) of the General Penal Code penalizes publicly mocking, defaming, denigrating or threatening a person or group of persons for certain characteristics, including their sexual orientation or gender identity.
<b>Hedegaard v. Denmark [46]</b>
The basis for Hedegaard's prosecution was an interview in 2009 in which he made controversial statements about Islam. He was convicted of <b>hate speech</b> under the Article 266b of the Danish Penal Code, and fined 5,000 kroner.
<b>A. v. Norway [42]</b>
Agder Court of Appeal held that the statement is both insulting and <b>hateful</b> . <b>Hateful statements</b> towards people as a religious group may, depending on the circumstances, be covered by section 185 of the Penal Code. The relevant statement is deriding and promotes <b>hate</b> and contempt towards Muslims in Norway.
<b>Zemmour v. France [29]</b>
He made statements against Islam and Muslims. He was convicted by French Domestic Courts for inciting discrimination and religious <b>hatred</b> , and sentenced to pay a fine of EUR 3 000.
<b>Nekschot v. Netherlands [47]</b>
He was arrested for drawing cartoons deemed offensive to Muslims. Nekschot was charged for eight cartoons that "attribute negative qualities to certain groups of people," and, as such, are insulting and constitute the crimes of discrimination and <b>hate</b> according to articles 137c and 137d of the Dutch Penal Code.

According to the case law, inciting to hatred does not necessarily entail a call for an act of violence, or other criminal acts. Attacks on persons committed by insulting, defamation, holding up to ridicule or slandering specific groups of the population (such as Muslims) or incitement to discrimination, as in this case (cartoons against Islam or disrespecting Quran), is sufficient for the authorities to give priority to fighting hate speech when confronted by the irresponsible use of freedom of expression which undermined people's (Muslim's) dignity, or even their safety. From an examination of the case law, it can be concluded that publicly mocking, defaming, and denigrating Prophet of Islam or Quran (through derogatory acts, statements, depictions, or drawings) fall under the hate speech and should be penalized. Also, the cartoons that attribute negative qualities to Prophet of Islam and Islamic creed constitute the crimes of hate speech and should be prosecuted.

## 5.4. Defamation and Disparagement

### 5.4.1. Defamation Case law

Defamation involves making false statements about someone or something with the intent to harm their reputation. It can be in spoken (slander) or written (libel) form and can be directed at individuals, organizations, or even entire communities. Defamation is not protected by the right of free expression because it is speech that directly harms another member of society. In defamation cases, a fine balance must be struck between guaranteeing the fundamental right to freedom of expression and protecting a person's honor and reputation. To prove defamation, one typically needs to show that the statement is false, damaging, unprivileged, and published to a third party. It is a civil or criminal offense, depending on the jurisdiction, and can result in legal action. In some instances, even negligent factual errors may lead to lawsuits. Table 5 reviews some of defamation cases in the case law.

Table 5. Defamation, Slander, and Libel in the case law.

<b>Lilliendahl v. Iceland [10]</b>
He was indicted in 2016 under Article 233(a) of the General Penal Code which penalizes publicly mocking, <b>defaming</b> , denigrating or threatening a person or group of persons for certain characteristics, including their sexual orientation or gender identity. In 2017, the Supreme Court convicted him, fining him 100,000 Icelandic krónur (800 EUR).
<b>Garaudy v. France [48]</b>
He was charged with publishing racially <b>defamatory</b> statements and inciting to racial or religious hatred or violence. The Paris Court of Appeal found Mr. Garaudy guilty of disputing the existence of crimes against humanity, public <b>defamation</b> of a group of people namely the Jewish community and incitement to discrimination and racial hatred. In declaring the defendant guilty of the offences of publicly <b>defaming</b> a group of persons on the ground of their origin, their membership or non-membership of a particular ethnic group, nation, race or religion and of incitement to hatred or violence against them, the Court of Appeal found that all the elements of the offences –in terms of both the actus reus and the mens rea– had been made out: The real purpose of such a work was to accuse the victims of the Holocaust of falsifying history. ECHR held that disputing the existence of crimes against humanity was, therefore, one of the most severe forms of racial <b>defamation</b> of Jews and of incitement to hatred of them.
<b>Jersild V. Denmark [38]</b>
The courts of Appeal upheld the convictions and the sentence to pay a fine imposed on Mr. Jersild for aiding and abetting the three youths in exposing <b>defamatory</b> remarks about immigrants in Denmark.
<b>Langballe v. Denmark [49]</b>
Right-wing Danish MP Jesper Langballe has pleaded guilty to <b>defamation</b> after writing in a newspaper article against Islam.
<b>M'bala M'bala v. France [39]</b>
The Paris court found Mr M'bala M'bala, guilty on a charge of proffering a public insult directed at a person or group of persons on account of their origin or of belonging, or not belonging, to a given ethnic community, nation, race or religion, specifically in this case persons of Jewish origin or faith. The Court of Cassation, adding that it was for the courts below to take note of any extrinsic circumstances which gave the remarks at issue an insulting or <b>defamatory</b> meaning, even if they did not have such a nature in themselves, and which were capable of revealing their true meaning, found that the Court of Appeal had legally justified its decision.
<b>Faurisson v. France [13]</b>
The author reiterated his previous personal conviction that there were no homicidal gas chambers for the extermination of Jews in Nazi concentration camps. The Human Rights Commission held that it was neither arbitrary nor unreasonable to consider the pamphlets displayed by the applicant as a <b>defamatory</b> attack against the Jewish community and against each individual member of this community.
<b>E. S. v. Austria [40]</b>
She was convicted for disparaging religious doctrines and for her <b>defamatory</b> remarks relating to the Prophet Muhammad. The Supreme Court held that she had not aimed to contribute to a serious debate about Islam, but merely to <b>defame</b> Muhammad by accusing him of a specific preference, in order to show that he was not a worthy subject of worship. The court found that the applicant had not contributed to a debate of general interest because she had made her allegation primarily in order to <b>defame</b> Muhammad.
<b>Pastörs v. Germany [50]</b>
The District Court convicted him for violating the memory of the dead and of the intentional <b>defamation</b> of the Jewish people. The Court held that Mr. Pastörs had intentionally stated untruths in order to <b>defame</b> the Jews and the persecution that they had suffered.
<b>Vejdeland and Others v. Sweden [37]</b>
ECHR held that attacks on persons committed by insulting, holding up to ridicule or <b>slandering</b> specific groups of the population can be sufficient for the authorities to favor combating racist speech in the face of freedom of expression exercised in an irresponsible manner. They were formulated in a way that was offensive and <b>disparaging</b> for homosexuals as a group and in violation of the duty under Article 10 to avoid as far as possible statements that are unwarrantably offensive to others thus constituting an assault on their rights, and without contributing to any form of public debate which could help to further mutual understanding.
<b>Carl Jóhann Lilliendahl v. Iceland [10]</b>
The Supreme Court found that the words constitute prejudicial <b>slander</b> and <b>disparagement</b> of those against whom they are employed and the applicant's comments were "serious, severely hurtful and prejudicial", and weighing up the competing rights at play, ruled that it was justified and necessary to curb his freedom of expression in order to counteract prejudice, hatred and contempt and protect the rights of social groups which have historically been subjected to discrimination.
<b>Mrs Elisabeth Sabaditsch-Wolff (E. S.) v. Austria [40]</b>
The Vienna Regional Criminal Court convicted her for <b>disparaging</b> religious doctrines pursuant to § 188 of the Criminal Code. The Austrian Courts found her guilty of publicly <b>disparaging</b> an object of veneration of a domestic church or religious society- namely Muhammad, the Prophet of Islam- in a manner

capable of arousing justified indignation. The Court of Appeal held that her statements showed her intention to unnecessarily <b>disparage</b> and deride Muslims. The permissible limits of criticism were exceeded where criticism ended and insults or mockery of a religious belief or person of worship began. The ECHR held that the domestic courts discussed the permissible limits of criticism of religious doctrines versus their <b>disparagement</b> , and found that the applicant's statements had been likely to arouse justified indignation in Muslims. The applicant's statements in substance accused Muhammad, and in that respect lacked a sufficient factual basis; they were <b>disparaging</b> towards Muhammad and therefore had not contributed to an objective public debate.
<b>Williamson v. Germany</b> [51]
The Regional Court found that Mr. Williamson's denial and downplaying of the genocide perpetrated against the Jews had <b>disparaged</b> the dignity of the Jewish victims and had been capable of severely disturbing the public peace in Germany.
<b>Otto-Preminger-Institute v. Austria</b> [43]
The <b>disparagement</b> of God, Christ, Mary and the Eucharistic ceremony was reinforced by the general character of a film as an attack on Christian religion. This was not counterbalanced by the fact that a small minority of persons might be able to interpret the film in a positive way, having regard to the logical context of the disparaging remarks which could be seen as criticism of historic facts and of religious practices. The regional Court held that the public projection of the film, in which <b>disparaged</b> images of God, Christ, and Mary with corresponding manners of expression are presented and in which the Eucharist is ridiculed, came within the definition of the criminal offence of <b>disparaging</b> religious precepts as laid down in section 188 of the Penal Code.

According to case law, it can be concluded that publishing racially defamatory cartoons or statements and incitement of racial or religious hatred or violence against Muslims should be subject to legal penalties. Public defamation of a group of people, namely the Muslim community, and incitement to discrimination and racial hatred must be excluded from the scope of freedom of expression. The defamatory cartoons against Prophet Muhammad or disrespectful acts against him or Quran are considered as defamatory attack against the Muslim community and against each individual member of this community. The same applies to the defamation of the Muslim people and intentionally stated untruths in order to defame Prophet Muhammad or Muslims.

#### 5.4.2. European Courts Oppose Prophet Muhammad Defaming

Case law shows that the European courts have previously ruled that insulting and defamatory remarks relating to Prophet Muhammad are not free speech [40]. The courts ruled that expressions not intended to contribute to a serious debate about Islam but rather aimed at defaming Prophet Muhammad by accusing him of a specific preference in order to demonstrate that he is not a worthy subject of worship fall outside the realm of freedom of expression. The brief conclusion derived from the case law is that defaming Prophet Muhammad or Quran exceeds the permissible limits of freedom of expression. An important issue that has not been adequately addressed in the case of *E. S. v. Austria* [40] is the fact that the alleged accusations attributed to Prophet Muhammad are not primarily based on truth. *E. S.* was not an expert in history, and her attempts to spread false information about Prophet Muhammad constitute an act of defamation. In a genuine discussion, she should have taken into account historical records and articles that clearly indicate Aisha's age at the time of her marriage was 19, 22, or 24 [24][25]. Her expressions do not constitute free speech; rather, they represent a distortion of the truth, spreading falsehoods and defaming the Prophet Muhammad.

#### 5.5. Criticism

Table 6 lists cases in which the courts did not classify the exercises as forms of justifiable criticism.

Table 6. Cases where courts did not classify certain exercises as criticism.

<b>G. Soulas and others v. France</b> [52]
Following the publication of a book about immigration and Islam, the applicants were convicted for inciting hatred and violence against Muslim communities from northern and central Africa. The Paris tribunal de grande found the writer and the manager of the publishing house guilty of the offense of incitement to discrimination, hatred or violence against a person or a group of persons because of their origin or their membership or non-membership of a race, a nation, an ethnic group or a religion, on the basis in particular of articles 23 and 24 paragraph 6 of the law of July 29, 1881. The ECHR held that the interference was necessary in a democratic society, because the remarks made were aimed at a large group of people, <b>exceeded the limit of admissible criticism</b> , and were in no way based on proven facts.
<b>Lilliendahl v. Iceland</b> [10]
The ECHR reasoned that the comments against the homosexuality <b>had little to no relevance to criticism</b> of the municipal council's decision and that their prejudicial content was by no means necessary for the applicant to engage in the ongoing public discussion and found that that the Supreme Court gave relevant and sufficient reasons for the applicant's conviction.
<b>Garaudy v. France</b> [48]
ECHR held that as the domestic courts have shown, far from confining himself to political or ideological <b>criticism</b> of Zionism and the State of Israel's actions, or undertaking an objective study of revisionist theories and merely calling for "a public and academic debate" on the historical event of the gas chambers, as he alleges, the applicant actually subscribe to those theories and systematically denies the crimes against humanity perpetrated by the Nazis against the Jewish community. The interference was necessary in a democratic society within the meaning of Article 10§2 of the Convention.
<b>Hedegaard v. Denmark</b> [46]
The basis for Hedegaard's prosecution was an interview in which he made controversial statements about Islam. Although he was acquitted, the Danish Supreme court also made a special point of ruling that the substance of his statements, namely the <b>public criticism of Islam</b> , is a violation of Article 266b.
<b>M'bala M'bala v. France</b> [39]
The Government added that he had already been convicted for a racial insult: the plenary Court of Cassation had found that a statement he had made against Jews <b>did not fall within the free criticism of religion</b> contributing to a debate of general interest, but constituted an insult, targeting a group of people on account of their origin, the prohibition of which was a necessary restriction on freedom of expression in a democratic society.
<b>E. S. v. Austria</b> [40]
Vienna Court of Appeal concluded that the Muslims would find the applicant's statements wrong and offensive. Her statements showed her intention to unnecessarily disparage and deride Muslims. <b>The permissible limits of criticism were exceeded</b> where <b>criticism ended and insults or mockery of a religious belief or person of worship began</b> . The interference with the applicant's freedoms under Article 10 of the Convention had therefore been justified. The courts discussed the <b>permissible limits of criticism</b> of religious doctrines versus their disparagement, and found that the applicant's statements had been

likely to arouse justified indignation in Muslims.

Otto-Preminger-Institute v. Austria [43]

The public projection of the film, in which images of God, Christ, and Mary were disparaged and in which the Eucharist was ridiculed, was done in a scope and manner likely to disturb the feelings of average people, in particular the majority of believing Christians. **This was not counterbalanced** by the fact that a small minority of persons might be able to interpret the film in a positive way, having regard to the logical context of the disparaging remarks which could be seen as **criticism** of historic facts and of religious practices.

As evidenced by the case law, incitement to discrimination, hatred or violence against a person or a group of persons because of their membership or non-membership of a religion, exceeds the limit of admissible criticism. Cartoons against Prophet Muhammad had no relevance to criticism of Islam and that their prejudicial content was by no means necessary for the cartoonists to engage. Controversial statements about Islam that are not grounded in proven facts and exceed the limits of permissible criticism constitute a violation of the law. As per established legal rulings, disrespecting Prophet Muhammad or desecrating Quran do not fall within the free criticism of religion contributing to a debate of general interest, but constitutes an insult, targeting a group of people on account of their religion, the prohibition of which is a necessary restriction on freedom of expression in a democratic society. Any kind of artistic expression such a drawing which disparages images of God, Prophet Muhammad, Christ, Mary, and Quran, in which the religious symbols are ridiculed, done in a scope and manner likely to disturb the feelings of average people, does not fall into the realm of freedom of expression. Based on prior court decisions, this is not counterbalanced by the fact that a small minority of persons might be able to interpret them in a positive way, having regard to the logical context of the disparaging contents which can be seen as criticism of historic facts and of religious practices.

In cases of disparaging and deriding Muslims, the permissible limits of criticism are exceeded where criticism ends and insults or mockery of a religious belief or person of worship begins. The courts have discussed the permissible limits of criticism of religious doctrines versus their disparagement, and found that such exercises had been likely to arouse justified indignation in Muslims. The interference with such exercises under Article 10 of the Convention can therefore be justified.

## 5.6. Debate

### 5.6.1. Absence of Valuable Contributions in the Debate

Table 7 displays the cases that had not contributed to a debate of general interest.

Table 7. The case law about not contributing to a debate of general interest.

Le Pen v. France [53]
He was fined 10,000 euros for “incitement to discrimination, hatred and violence towards a group of people because of their origin or their membership or non-membership of a specific ethnic group, nation, race or religion”, on account of statements he had made about Muslims in France in an interview with Le Monde daily newspaper. Lausanne District Court found him guilty of the offence under Article 261 bis § 4 of the Swiss Criminal Code, holding in particular that his motives appeared to be racist and nationalistic and that his <b>statements did not contribute to the historical debate</b> .
Atamanchuk v. Russia [45]
The ECHR found that it was questionable whether his ensuing discourse, making sweeping remarks against non-Russian ethnic groups, had followed any particular logic vis-à-vis the initial topic or indeed <b>whether it had contributed to any public debate</b> . In this context it is questionable whether the content of the applicant’s article was “ <b>capable of contributing to the public debate</b> ” on the relevant issue or that its “principal purpose” was to do so.
Vejdeland and Others v. Sweden [37]
The distributed leaflets in a secondary school considered by the courts to be offensive to homosexuals. The Supreme Court held that the leaflets were formulated in a way that was offensive and disparaging for homosexuals as a group and in violation of the duty under Article 10 to avoid as far as possible statements that are unwarrantably offensive to others thus constituting an assault on their rights, and <b>without contributing to any form of public debate</b> which could help to further mutual understanding.
Bonnet v. France [33]
Regarding the offence of proffering a public racial insult, the judges of the Paris Criminal Court considered that the misappropriation of the front page of the 30 March 2016 issue of the weekly magazine Charlie Hebdo had been aimed at making fun of the Jewish community. The ECHR was therefore of the opinion that the cartoon and the message it conveyed <b>could not be regarded as contributing to any debate</b> of public interest and that, even if Article 10 were to apply, the cartoon fell within a category which was afforded reduced protection under that provision of the Convention.
M'bala M'bala v. France [39]
The plenary Court of Cassation had found, that a statement he had made against Jews <b>did not fall within the</b> free criticism of religion <b>contributing to a debate of general interest</b> , but constituted an insult, targeting a group of people on account of their origin, the prohibition of which was a necessary restriction on freedom of expression in a democratic society.
E. S. v. Austria [40]
The Vienna Regional Criminal Court stated that anyone who wished to exercise their rights under Article 10 of the Convention was subject to duties and responsibilities, such as refraining from making statements which hurt others without reason and therefore <b>did not contribute to a debate of public interest</b> . The Supreme Court held that she <b>had not aimed to contribute to a serious debate</b> about Islam, but merely to defame Muhammad by accusing him of a specific preference, in order to show that he was not a worthy subject of worship. The court found that <b>the applicant had not contributed to a debate of general interest</b> because she had made her allegation primarily in order to defame Muhammad. On the basis of the Regional Court’s findings that the applicant’s statements qualified as value judgments, the Supreme Court held that <b>they had not been a contribution to a serious debate</b> . The ECHR held that the applicant’s statements in substance accused Muhammad, and in that respect lacked a sufficient factual basis; they were disparaging towards Muhammad and therefore <b>had not contributed to an objective public debate</b> . The ECHR noted that the domestic courts explained extensively why they considered that the applicant’s statements had been capable of arousing justified indignation, on the grounds that they <b>had not been made in an objective manner aimed at contributing to a debate of public interest</b> , but could only be understood as having been aimed at demonstrating that Muhammad was not a worthy subject of worship. The ECHR endorsed this assessment. The domestic courts found that the applicant had subjectively labelled Muhammad with some sexual preferences and had failed to neutrally inform her audience of the historical background, which consequently <b>had not allowed for a serious debate</b> on that issue. The ECHR considers that the impugned statements <b>were not phrased in a neutral manner aimed at making an objective contribution to a public debate</b> but amounted to a generalization without a factual basis. By considering them as going <b>beyond the permissible limits of an objective debate</b> and classifying them as an abusive attack on the

Prophet of Islam, which was capable of stirring up prejudice and putting religious peace at risk, the domestic courts concluded that the facts at issue contained elements of incitement to religious intolerance.
A. v. Norway [42]
Agder Court of Appeal held that the comment and the context in which it is made (insulting comments, posted on Facebook against dark-skinned people, Muslims, and Islam) <b>cannot be regarded as part of a public debate</b> within the freedom of expression.
Otto-Preminger-Institute v. Austria [43]
ECHR held that as is borne out by the wording itself of Article 10 para. 2, whoever exercises the rights and freedoms enshrined in the first paragraph of that Article, undertakes "duties and responsibilities". Amongst them - in the context of religious opinions and beliefs - may legitimately be included an obligation to avoid as far as possible expressions that are gratuitously offensive to others and thus an infringement of their rights, and which therefore <b>do not contribute to any form of public debate</b> capable of furthering progress in human affairs. The Austrian courts <b>did not consider that its merit</b> as a work of art <b>or as a contribution to public debate</b> in Austrian society outweighed those features which made it essentially offensive to the general public within their jurisdiction. The wholesale derision of religious feeling outweighed any <b>interest the general public</b> might have in information or the financial interests of persons wishing to show the film. For these reasons, the court held that there has been no violation of Article 10 of the Convention.
Arab European League's (AEL) v. Netherlands [54]
Arab European League (AEL) was fined 2,500 euros (\$3,200) in 2010, for publishing a cartoon which suggested the Holocaust was made up or exaggerated by Jews. The appeals judges agreed with prosecutors that <b>the cartoon was more offensive than could be justified by the debate</b> . The court in the western city of Arnhem held that the cartoon, published on the website of the AEL in 2006, was "unnecessarily hurtful."

In accordance with legal precedent, it should be noted that the cartoons against Prophet Muhammad were more offensive than could be justified by the debate. They were "unnecessarily hurtful." The wholesale derision of religious feeling outweighed any interest the general public might have in information or the financial interests of persons wishing to draw or publish the cartoons. However, after publishing the inferior defamatory cartoons of Prophet Muhammad the cartoonists and the publishers started their intellectual pretension. They claimed that their aim is to debate. However, the question is: Does the act of publishing cartoons that make false allegations against Prophet Muhammad and mock him in a rude manner qualify as a meaningful debate? The Charlie Hebdo attack of 2015 prompted a display of solidarity among the people. The Charlie Hebdo editors seized this opportunity to portray themselves and the magazine as champions of free speech and debate. However, it's important to note that the insulting cartoons in question had little to do with free speech or genuine debate. They lacked minimum basic historical and religious knowledge to start or to engage in a debate about Islam and Prophet Muhammad. As a result, they chose to resort to defamation by publishing those cartoons. However, they are quite talented in abusing the terms "freedom of speech", "freedom of expression, "debate" to divert people's attention away from those derogatory cartoons. Such disrespectful acts against Prophet of Islam or Quran are unwarrantably offensive to Muslims constituting an assault on their rights without contributing to any form of public debate which could help to further mutual understanding. In conformity with legal jurisprudence, such derogatory Statements or drawings against Muslims do not fall within the free criticism of religion contributing to a debate of general interest, but constitutes an insult, targeting a group of people on account of their religion, the prohibition of which was a necessary restriction on freedom of expression in a democratic society. The terms "work of art" or "contribution to public debate" (which we have provided evidence that proves these claims are not the case) do not outweigh those features which made it essentially offensive to the general public.

In line with judicial decisions, it can be concluded that regarding the offence of proffering a public racial insult, the cartoons of Prophet of Islam had been aimed at making fun of the Muslim community. In accordance with case law, the European courts could hold the opinion that the cartoons and the message they conveyed could not be regarded as contributing to any debate of public interest and that, even if Article 10 were to apply, the cartoons fell within a category which was afforded reduced protection under that provision of the Convention.

The cartoons or other similar denigrating activities against Prophet of Islam lack sufficient factual basis and do not aim to contribute to a serious debate about Islam, but merely to defame Muhammad by accusing him of a specific preference, in order to show that he was not a worthy subject of worship. According to case law, such expressions are capable of arousing justified indignation. They are going beyond the permissible limits of an objective debate and are classified as an abusive attack on the Prophet of Islam that contain elements of incitement to religious intolerance and are capable of stirring up prejudice and putting religious peace at risk the prohibition of which is a necessary restriction on freedom of expression in a democratic society

### 5.6.2. Is Debating about Islam or Prophet Muhammad Prohibited?

Debating about Islam or Prophet Muhammad is not inherently prohibited. However, it's essential to approach such discussions with respect and sensitivity towards the beliefs and values of others (Muslims), while also ensuring that the debate is based on factual basis and denigration is avoided. It's important to exercise this right with mindfulness and understanding, while also avoiding any denigration or infringements on the rights of Muslims. While the debate itself is not prohibited, engaging in hate speech, defamation, disparagement, or in disrespectful expressions is not condoned and may have legal consequences in some cases. Always one should be mindful of cultural and legal norms when engaging in discussions about sensitive topics. For example, the very notion of

connecting bombs with the religion of Islam, with the very acknowledgment of Islam, where it proposes that there is no God but God and the last messenger of God sent to this earth was the Prophet Mohammed who invites people to live a life of righteousness and compassion towards others, connecting that with a bomb, that's a very immature and uncivilized way of starting a debate and discussion [55].

### 5.7. Opinion

The case law presented in Table 8 illustrates that the activities related to racial or religious hatred, denigration of religious symbols, abusive attacks on religion, and exercises that result in infringements on the rights of others are not construed as expressions of opinion.

Table 8. Case laws illustrating that not every expression is regarded as an opinion.

<b>G. Soulas and others v. France [52]</b>
The ECHR notes that several passages in the book present a negative image of the targeted communities. The style is sometimes polemical, and the presentation of the effects of immigration turns into catastrophism. The Court reiterates that it is of the utmost importance to combat racial discrimination in all its forms and manifestations. This approach is enshrined in several international instruments other than the Convention, for example the United Nations International Covenant on Civil and Political Rights (Article 20-2), or General Recommendation No. 15-42 of the Committee for the elimination of racial discrimination, according to which <b>"the prohibition of the dissemination of any idea based on racial superiority or hatred is compatible with the right to freedom of opinion and expression (...)"</b> . Finally, Article 4 of the United Nations International Convention on the Elimination of All Forms of Racial Discrimination obliges States parties to criminalize all acts of racism, in particular the dissemination of ideas based on superiority or racial hatred and racist propaganda activities, and to ban racist organizations.
<b>Faurisson v. France [13]</b>
The Human Rights Committee held that by describing the historical fact of the assassination of millions of Jews, a fact which was even admitted by the applicant himself, as a lie and Zionist swindle, the pamphlets in question not only gave a distorted picture of the relevant historical facts but also contained an attack on the reputation of all those who were described as liars or swindlers. The State party emphasizes that the text of the Law of 13 July 1990 reveals that the offence of which the author was convicted is defined in precise terms and is based on objective criteria, so as to <b>avoid the creation of a category of offences linked merely to expression of opinions</b> . In other words, <b>the Law of 13 July 1990 does not punish the expression of an opinion, but the denial of a historical reality universally recognized</b> . The adoption of the provision was necessary in the State party's opinion, not only to protect the rights and the reputation of others, but also to protect public order and morals. The Human Rights Committee has considered that the restriction on the author's freedom of expression was indeed provided by law i.e. the Act of 13 July 1990.
<b>E. S. v. Austria [40]</b>
The Supreme Court held that in cases where the impugned statements <b>not only offended or shocked, or expressed a "provocative" opinion, but had also been considered an abusive attack on a religious group</b> – for example an abusive attack on the Prophet of Islam, as in the applicant's case – a criminal conviction might be necessary to protect the freedom of religion of others. ECHR held that it is not compatible with Article 10 of the Convention to <b>package incriminating statements in the wrapping of an otherwise acceptable expression of opinion</b> and deduce that this renders statements exceeding the permissible limits of freedom of expression passable. Therefore, the ECHR considers that the domestic courts did not overstep their wide margin of appreciation in the instant case when convicting the applicant of disparaging religious doctrines. Accordingly, there has been no violation of Article 10 of the Convention.
<b>A. v. Norway [42]</b>
The comment and the context in which it is made (insulting comments, posted on Facebook against dark-skinned people, Muslims, and Islam) cannot be regarded as part of a public debate within the freedom of expression. <b>The statement contains no objective opinions related to religious faith or dogmas in Islam</b> . A. was convicted of violation of section 185 subsection 1 first sentence, cf. subsection 2 of the Penal Code, and sentenced to pay a fine of NOK 12000 alternatively to serve 18 days in prison.
<b>Marais v. France [56]</b>
The Paris Criminal Court decided that (regarding doubting the existence of gas chambers) the section 24 bis of the 1881 law subjects <b>the exercise of the freedom of expression and opinion to restrictions</b> which are necessary in a democratic society for the protection of the reputation or rights of others and for public safety within the meaning of Article 10 paragraph 2 of the convention. The ECHR held that the interference had therefore been proportionate to the legitimate aim pursued and had been "necessary in a democratic society".
<b>Otto-Preminger-Institute v. Austria [43]</b>
ECHR held that as is borne out by the wording itself of Article 10 para. 2, whoever exercises the rights and freedoms enshrined in the first paragraph of that Article (art. 10-1) undertakes "duties and responsibilities". Amongst them - <b>in the context of religious opinions</b> and beliefs - may legitimately be included an obligation to avoid as far as possible expressions that are gratuitously offensive to others and thus an infringement of their rights, and which therefore do not contribute to any form of public debate capable of furthering progress in human affairs. Considering also the terms in which the decisions of the Austrian courts were phrased, the Court accepts that the impugned measures pursued a legitimate aim under Article 10 para. 2, namely "the protection of the rights of others".
<b>İ.A. v. Turkey [57]</b>
ECHR held that the present case concerns not only comments that offend or shock, or a <b>"provocative" opinion</b> , but also an abusive attack on the Prophet of Islam. The Court therefore considers that the measure taken in respect of the statements in issue was intended to provide protection against offensive attacks on matters regarded as sacred by Muslims. In that respect it finds that the measure may reasonably be held to have met a "pressing social need".
<b>Zemmour v. France [29]</b>
The ECHR considers, as noted by the domestic courts, and contrary to what the applicant contended before it by asserting that he confined himself to expressing his <b>critical opinion</b> on the Islamist phenomenon in the French suburbs, that his remarks, presented as the result of a "historical and theological analysis", in fact contained negative and discriminatory assertions likely to stir up a rift between the French and the Muslim community as a whole. As they have argued, the use of aggressive terms expressed without nuance to denounce a "colonization" of France by "Muslims" had discriminatory aims and <b>not for the sole purpose of sharing with the public a relative opinion</b> to the rise of religious fundamentalism in the French suburbs. In these circumstances, and in the light of Article 17, the Court considers that the applicant's remarks do not fall within a category of speech enjoying enhanced protection under Article 10 of the Convention, and concludes that there has been no violation of Article 10 of the Convention. Mr Zemmour was convicted for inciting discrimination and religious hatred, and sentenced to pay a fine of EUR 3000.

How can this kind of extraordinary disrespectful mocking of a Prophet in cartoons be an opinion? They contain no objective opinions related to religious faith or dogmas in Islam. They have libeling and defamatory contents that do not fall under the right to freedom of speech. Based on prior court decisions, since such cartoons present a negative image of the targeted communities (Muslims), the prohibition of the dissemination of such idea based on racial or religious superiority or hatred is compatible with the right to freedom of opinion and expression. According to the case law, the Law does not punish the expression of an opinion, but the denial of a historical reality such as the noble character of Prophet Muhamad which is universally recognized. The adoption of the provisions is

necessary, not only to protect the rights and the reputation of others, but also to protect public order and morals. The disrespectful activities against Prophet of Islam or Quran not only offend or shock, or express a “provocative” opinion, but also are considered an abusive attack on a religious group -for example an abusive attack on the Prophet of Islam and Muslims- and a criminal conviction is necessary to protect the freedom of religion of others [40]. Such activities exceed the permissible limits of freedom of expression passable and convicting the offender of disparaging religious doctrines, accordingly, does not result in a violation of Article 10 of the ECHR [40]. The context of religious opinions and beliefs falls within the “duties and responsibilities” outlined in Article 10, paragraph 2 of ECHR for which an obligation is legitimately included to avoid as far as possible expressions that are gratuitously offensive to others and thus an infringement of their rights, and which therefore do not contribute to any form of public debate capable of furthering progress in human affairs [43]. The abusive attack on the Prophet of Islam is not regarded as an opinion and proportionate measures should be taken to protect against offensive attacks on matters regarded as sacred by Muslims. In accordance with legal precedent, the use of aggressive expressions without nuance is driven by discriminatory aims rather than solely for the purpose of sharing a relative opinion with the public. Just like the case law related to the denial or doubt of the existence of gas chambers (which typically fall under laws related to Holocaust denial), doubting or denying the noble character of Prophet Muhammad and the sanctity of Quran should prompt legal measures to place restrictions on the exercise of freedom of expression and opinion which are necessary in a democratic society for the protection of the reputation or rights of others (Muslims) and for public safety within the meaning of Article 10 paragraph 2 of the convention.

### 5.8. Satire, Humour and Artistic Freedom

Based on previous ECHR rulings, the freedom of artistic expression is included in the broad content of freedom of expression and thus subject to the provisions of paragraph 2 of Article 10 of the convention and it can be restricted on grounds of public morals [58]. Table 9 shows the judgments in cases involving satire, humour, and artistic freedom.

Table 9. Judgments in cases related to satire, humor, and artistic freedom.

<p><b>Otto-Preminger-Institute v. Austria [43]</b></p> <p><b>Artistic freedom</b> cannot be unlimited. The <b>limitations on artistic freedom</b> are to be found, firstly, in other basic rights and freedoms guaranteed by the Constitution (such as the freedom of religion and conscience), secondly, in the need for an ordered form of human coexistence based on tolerance, and finally in flagrant and extreme violations of other interests protected by law. In the present case the disparagement of God, Christ, Mary and the Eucharistic ceremony was reinforced by the general character of the film as an attack on Christian religion. It was done in a scope and manner likely to disturb the feelings of average people, in particular the majority of believing Christians. The Court of Appeal considered that <b>artistic freedom</b> was necessarily limited by the rights of others to freedom of religion and by the duty of the State to safeguard a society based on order and tolerance. <b>The freedom of art</b> under Article 17a of the Basic Law on the General Rights of Citizens could not be invoked as this freedom was limited by other fundamental rights such as the right to religious freedom and by the necessity of a social order based on tolerance and respect for legally protected values. The film is intended to be provocative and aimed at the Church, but due to the multiple and sustained violation of legally protected interests, the basic right of <b>artistic freedom</b> in this case have to come second. While Sec. 188 of the Penal Code did not in itself restrict the freedom of art, there was in the present case such an intensive interference with religious feelings by the provocative anti-Christian attitude of the film that it outweighed the freedom of art. The Supreme Court held that if <b>a work of art</b> impinges on the freedom of religious worship guaranteed by Article 14 of the Basic Law, that may constitute an abuse of the freedom of artistic expression and therefore be contrary to the law.</p>
<p><b>Harry Taylor v. United Kingdom [59]</b></p> <p>He was convicted of leaving obscene material (grossly offensive religious images) in a multi-faith room, depicting figures from Christianity and Islam, often in sexual poses causing harassment and alarm. While he insisted that the images were meant as <b>satire</b>, the court found him guilty of causing religiously aggravated intentional harassment, alarm or distress. The prosecutor told that some of his cartoons went far beyond exercising freedom of expression and the Court jurors were acting as the “conscience of our society”.</p>
<p><b>Dieudonné M'bala M'bala v. France [60]</b></p> <p><b>The right to humour</b> has certain limits, and in particular that of respect for the dignity of the human person. By using an object ridiculing a symbol of Judaism in a <b>comedy</b> show, the defendant excessively overstepped the permissible limits of the <b>right to humour</b>. The applicant cannot claim, in the particular circumstances and having regard to the whole context that he acted as an <b>artist</b> with an entitlement to express himself using <b>satire, humor</b> and provocation. But he has degraded the portrayal of Jewish deportation victims under cover of a <b>comedy</b> show. The Court is of the view that this was a demonstration of hatred and anti-Semitism, supportive of Holocaust denial. It is unable to accept that the expression of an ideology which is at odds with the basic values of the Convention, namely justice and peace, can be assimilated to a form of <b>entertainment</b>, however <b>satirical</b> or provocative, which would be afforded protection by Article 10 of the Convention. The right of <b>artistic creation</b> with a comic aim, essential though they may be in a democratic society, are not limitless, particularly where respect for human dignity is at stake, as it was in the present case, and where theatrical acts give way to a demonstration which is no longer in the nature of a performance. The ECHR emphasizes that the blatant display of a hateful and anti-Semitic position disguised as an <b>artistic production</b> is as dangerous as a fully-fledged and sharp attack.</p>
<p><b>Alain Bonnet v. France [33]</b></p> <p>The Court of Appeal upheld his conviction (for cartoons targeting the Jewish community), rejecting his arguments that the Jewish community had not been targeted and that the offending cartoon fell within the register of <b>art, humor</b> and politics.</p>
<p><b>Josef Felix Müller and others v. Switzerland [58]</b></p> <p>The Appellate Court is unconvinced by the appellants’ contention that the paintings are <b>symbolical</b>. What counts is their face value, their effect on the observer, not some abstraction utterly unconnected with the visible image or which glosses over it. The important thing is not the <b>artist’s meaning</b> or purported meaning but the objective effect of the image on the observer. It should be noted that even someone insensible to obscenity is capable of realizing that it may disturb others. Federal Court held that the <b>artistic license</b> relied on by the appellant cannot in any way alter that conclusion in the instant case. Expert opinion as to the <b>artistic merit</b> of the work in issue is therefore irrelevant at this stage. After emphasizing the correlation between necessity and social needs, the ECHR deduced that the interference in the <b>artistic creativity</b> of the applicants was necessary and hence proportionate. ECHR held that <b>artists</b> and those who promote their work are certainly not immune from the possibility of limitations as provided for in paragraph 2 of Article 10 (art. 10-2).</p>

According to the case law (Otto-Preminger-Institute v. Austria [43]), artistic freedom is not unlimited. The limitations on artistic freedom are found in other basic rights and freedoms guaranteed by the Constitution, such as freedom of religion and conscience, the need for an ordered form of human coexistence based on tolerance, and in



flagrant and extreme violations of other interests protected by law. Disrespectful artworks against the Prophet of Islam, Quran, Jesus, or Saint Mary should be necessarily limited by the rights of others to freedom of religion and by the duty of the State to safeguard a society based on order and tolerance. They cause intensive interference with religious feelings by the provocative anti-Islam or anti-Christian attitudes that outweigh the freedom of art. Such artworks constitute an abuse of the freedom of artistic expression and therefore are contrary to the law.

As emphasized in case of *M'bala M'bala v. France* [60], the right to humour has also certain limits, and in particular that of respect for the dignity of the human person. Ridiculing the symbols of Islam, goes beyond the acceptable boundaries of the right to humor and excessively oversteps the permissible limits of the right to humour. Degrading the portrayal of Prophet Muhammad or Quran under cover of the comedy, satire, or artistic expression is a demonstration of hatred and anti-Muslimism, supportive of Islamophobia. Those who violate the reputation and rights of others cannot hide behind the pretext of comedy or satire.

Based on previous legal judgment in case of *Bonnet v. France* [33], the claims that the controversial Prophet Muhammad cartoons did not aim at the Muslim community and that they fall into the realms of art, humor, and politics are not legitimate. According to *Müller and others v. Switzerland* [58], the claims that the Prophet Muhammad drawings are symbolical does not change anything. What counts is their face value, their effect on the observer, not some abstraction utterly unconnected with the visible image or which glosses over it. Furthermore, the important thing is not the artist's meaning or purported meaning but the objective effect of the image on the observer. The artists and those who promote their work are certainly not immune from the possibility of limitations as provided for in paragraph 2 of Article 10.

### 5.9. Mockery, Ridiculing, Denigration, and Character Assassination

The terms "Mockery," "Ridiculing," and "Denigration" indicate different forms of expressing disrespect. These words are often used to describe actions that belittle or scorn someone or something. In Table 10, we can observe a record of the cases involving such terms.

Table 10. List of the cases related to mockery, ridiculing, and denigration.

<b>Carl Jóhann Lilliendahl v. Iceland</b> [10]
He was indicted in 2016 under Art. 233a of General Penal Code which penalizes publicly <b>mocking</b> , defaming, <b>denigrating</b> or threatening a person or group of persons for certain characteristics, including their sexual orientation or gender identity.
<b>Dieudonné M'bala M'bala v. France</b> [60]
Court of Appeal held that the fact of <b>making a mockery</b> of the deportation and extermination of the Jews by the Nazis in the Second World War, through speech, the yellow star – medium for the word “Jew” – and the symbol of the candlestick handed over by a “deportee” to a specialist in Holocaust denial, had constituted vis-à-vis all persons of Jewish origin or faith a form of expression that was both insulting and contemptuous, such that the charge of insult was made out. The ECHR held that the courts found that he had <b>mocked</b> symbols of the Jewish religion. By inviting an individual known for his negationist ideas to be awarded by an actor representing a caricature of a Jewish deportee and by using an object <b>ridiculing</b> a symbol of Judaism, the defendant excessively overstepped the permissible limits of the right to humour. In particular, the court has no doubt that the offending sketch in the applicant's show had a strong anti-Semitic content.
<b>E. S. v. Austria</b> [40]
Her statements showed her intention to unnecessarily disparage and deride Muslims. The permissible limits of criticism were exceeded where criticism ended and insults or <b>mockery</b> of a religious belief or person of worship began. The interference with the applicant's freedoms under Article 10 of the Convention had therefore been justified.
<b>Vladimir Atamanchuk v. Russia</b> [45]
Offensive language may fall outside the protection of freedom of expression if it amounts to “wanton <b>denigration</b> ”. Regarding the language used, the Court considers that it was such as to “offend, shock or disturb”. The Court concluded that a particular statement constitutes an expression which cannot claim the protection of Article 10 or which may be punished by criminal proceedings, for instance, under the legislation pertaining to “hate speech” as in the present case.
<b>Carl Jóhann Lilliendahl v. Iceland</b> [10]
He was indicted under Article 233(a) of the General Penal Code which penalizes publicly <b>mocking</b> , defaming, <b>denigrating</b> or threatening a person or group of persons for certain characteristics, including their sexual orientation or gender identity. The Supreme Court found that the words constitute prejudicial slander and disparagement of those against whom they are employed. This was aggravated by the applicant's expression of disgust at such conduct and orientation. His conduct thus falls under Article 233(a) of the General Penal Code.
<b>Mr Daniel Féret v. Belgium</b> [36]
Attacks on persons committed through insults, <b>ridicule</b> or defamation aimed at specific population groups or incitement to discrimination, as in this case, sufficed for the authorities to give priority to fighting hate speech when confronted by the irresponsible use of freedom of expression which undermined people's dignity, or even their safety.
<b>Vejdeland and Others v. Sweden</b> [37]
Attacks on persons committed by insulting, holding up to <b>ridicule</b> or slandering specific groups of the population can be sufficient for the authorities to favor combating racist speech in the face of freedom of expression exercised in an irresponsible manner.
<b>Alain Bonnet v. France</b> [33]
The ECHR found that various elements of the offending cartoon had been aimed directly at the Jewish community. The use of symbols which undeniably referred to the extermination of Jews during the Second World War and the question “Shoah, where are you?” had sought to <b>ridicule</b> that historical event and cast doubt on its reality. The cartoon and the message it conveyed could not be regarded as contributing to any debate of public interest.
<b>Otto-Preminger-Institute v. Austria</b> [43]
The Regional Court held that the public projection of the film, in which disparaged images of God, Christ, and Mary with corresponding manners of expression are presented and in which the Eucharist is <b>ridiculed</b> , came within the definition of the criminal offence of disparaging religious precepts as laid down in section 188 of the Penal Code.

In accordance with judicial rulings (Lilliendahl v. Iceland [10]), the law penalizes publicly mocking, defaming, denigrating Islamic symbols such as Prophet of Islam, Quran, and Muslims, because Muslims, like followers of other religions, are a group of individuals who share certain religious and cultural characteristics. The fact of making a mockery of the Prophet of Islam or Quran, constitutes vis-à-vis all persons of Muslim origin or faith a form of expression that is both insulting and contemptuous, such that the charge of insult can be made out (similar to M'bala M'bala v. France [60]). Mocking symbols of the Islam religion, representing a caricature of Prophet Muhammad, or ridiculing a symbol of Islam, they all excessively exceed the permissible limits of the right to humor. In such cases, the permissible limits of criticism are exceeded where criticism ends and insults or mockery of a religious belief or person of worship such as Prophet Muhammad begins (E. S. v. Austria [40]). Insults, ridicule or defamation aimed at specific population groups (such as Muslims) or incitement to discrimination, suffices for the authorities to give priority to fighting hate speech when confronted by the irresponsible use of freedom of expression which undermined people's dignity, or even their safety (Féret v. Belgium [36] and Vejdeland and Others v. Sweden [37]).

In accordance with judicial rulings in the case of Bonnet v. France [33], it can be concluded that various elements of the offending cartoons of Prophet Muhammad aimed directly at the Muslim community. They sought to ridicule the character of Prophet Muhammad and cast doubt on his noble character. It is not the matter of some drawings but it is a systematic character assassination. The contents of the cartoons and the widespread publishing of them in spite of the Muslim objections supports this idea.

Opinions lose their immunity, when the circumstances in which they are expressed are such as to constitute their expression a positive instigation to some mischievous act [61]. This means that the cartoons or any form of disrespecting Prophet Muhammad, Jesus, other Prophets or Quran are wrongful insulting acts. Recently, the 2024 Paris Olympics' opening ceremony included scenes of mockery and derision of Christianity which undermined the dignity of Christians. These kinds of acts are wrongful in virtue of their false representation of the other, and thereby occasioning harm to the other's reputation. These acts encompass libel, slander and defamation of their targets [31]. Disrespecting Prophet Muhammad or Quran, in effect, cause dignitary harms. Such acts directly harm those at whom it is directed (Prophet Muhammad and Muslims) by subverting their status as social equals.

As Waldron [62] argues, the hate speech should be regulated as part of our commitment to human dignity and to inclusion and respect for members of vulnerable minorities. What is problematic in the tolerance of such insulting acts is the undermining of the public good of 'security in the space we all inhabit' and assurance of one another's social status. Toleration of hate speech encourages a public evil, namely that of giving comfort to the racist 'wolves' that they are not alone and do have a place in a liberal society [31]. Denigrating Prophet Muhammad in a newspaper is the most severe form of launching a libelous attack on Muslims' dignity and it should not lie outside the reach of law.

## 6. Perspectives on the Cartoons

The Denmark public prosecutor admitted that depending on the circumstances the caricature of such a central figure in Islam as the Prophet Muhammad certainly implies ridicule of or can be considered as an expression of contempt for Islamic religious doctrines and acts of worship. However, they added that the assessment of whether this is the case must be made in the light of the text accompanying the drawings [63]. This is absolutely unacceptable. The cartoons speak for themselves, clearly denigrating, defaming, and insulting Prophet Muhammad, while inciting hatred and discrimination against Muslims based on their ethnicity and religion. Any accompanying text does not alter the offensive nature of the content. Prophet Muhammad cartoons or disrespecting Quran are similar to anti-Semitism which is the most cherished red line for courts worldwide. Neither the content of the drawings nor their contextual elements were such as to indicate any intention on the part of the cartoonists to denigrate the views of extremists or to denounce terrorism and terrorist groups, though even then, intention is one thing and realization of it another. Claiming that one did not intend to harm anyone after the fact is not a legitimate defense. Table 11 provides an overview of the various perspectives held by the authors and scholars regarding the controversial Prophet Muhammad cartoons.

Table 11. various perspectives held by the authors regarding the controversial Prophet Muhammad cartoons

Levey et. al. [64]
- Muhammad cartoons encompass not one, but three distinct problem areas: the violation of a religious norm in the representation of Muhammad, attacks on Islam as a religion, and attacks on Muslims as a group.
- Attacks on Muslims as a group are a form of racism.
- [The cartoon] involves a perceived breach of a well-known Islamic injunction.
- The second problematic aspect in the cartoon is the suggestion that Islam is violent and dangerous.

<ul style="list-style-type: none"> <li>- The third problematic aspect presented in the cartoon is thus precisely the targeting of Muslims as violent and dangerous. This constitutes a form of racism.</li> <li>- Three most problematic representations furnished by the Danish cartoon controversy are: the very representation of Muhammad; the identification of Islam with violence and terrorism; and the identification of Muslims with violence and terrorism.</li> <li>- The representation of Muhammad presents us essentially with two issues: the breaching of religious edict, and its implied lack of respect for a particular community.</li> <li>- If the editors erred and are deserving of rebuke for representing Muhammad in their paper, then it is for what they did or failed to do at the level of respect.</li> <li>- The representation is strongly suggestive of a comment on Muslims as much as Islam.</li> </ul>
<b>Müller and Özcan [65]</b>
<ul style="list-style-type: none"> <li>- Followers of Islam must feel insulted by the image, which for them does not just symbolize the Prophet, but identifies the depiction as a pars pro toto, aimed at all Muslims.</li> <li>- In an Islamic visual tradition, [such depiction] of Muhammad is twice as insulting.</li> <li>- This sketch was not meant to depict a historically correct setting. But for Muslims, the implicit insult, apart from the explicit depiction of Muhammad, lies in exactly this non-literal interpretation of Muhammad's life.</li> <li>- The majority of the Muhammad cartoons depict the Prophet in an unpleasant, threatening way.</li> <li>- It appears that the derogatory elements in the depictions of Muhammad are related to the particular anti-Muslim discourse in Denmark.</li> <li>- From the perspective of Danish Muslims, the cartoons reinforced two well-entrenched stereotypes of the Danish: that they disrespect Muslim religious beliefs, and that they collectively stigmatize all Muslims as dangerous "Muslim terrorists."</li> </ul>
<b>Philip Cass [66]</b>
<ul style="list-style-type: none"> <li>- The cartoons variously depicted the Prophet Mohammed as a terrorist and murderer.</li> <li>- In dismissing religion, many Europeans have now found themselves in a position where they simply cannot understand why Muslims would be offended by the cartoons. They do not comprehend the central role Islam plays in the lives of Muslim migrants, or of Muslims anywhere.</li> <li>- By turning their backs on their own religious heritage, European intellectuals have stripped themselves of the ability to understand the importance of other religions to other people. They have also denied themselves the ability to understand how their own actions can cause offence. To pretend that religion has gone from the world or that it does not play a central role in the lives of billions of people around the globe is not just arrogance, it is stupidity.</li> </ul>
<b>Erik Bleich [16]</b>
<ul style="list-style-type: none"> <li>- It is possible to interpret the cartoons as attacking both Islam-as-doctrine and Muslims-as-group. These are not mutually exclusive positions.</li> <li>- In the European legal context, therefore, bringing suit over these cartoons was actually in keeping with well-established European norms against hate speech, and it is surprising that no prominent, non-Muslim figure stood up to make this case.</li> <li>- In the prevailing European legal context of the time, it was not radical to argue that some of these images constituted illegal hate speech.</li> <li>- I stress that there is a very plausible case that at least some of these images constitute hate speech in the context of European legal developments and precedent.</li> <li>- Reasonable people may read some of them as crossing the line into the terrain of legally actionable hate speech.</li> <li>- In my judgment, the most controversial images link Muhammad with violence, terrorism, and the oppression of women, in ways that involve little or no ambiguity and no attempt at humor or satire.</li> <li>- The effect of the image is likely to be quite different from the artist's stated goal.</li> <li>- Depicting Muhammad as a violent terrorist, or as oppressive to women implicates all Muslims and is not simply a criticism of a narrow portion of Islamic doctrine.</li> <li>- In fact, the purpose of the project was precisely to insult minorities, and by appealing to the cartoonists union, it was eminently foreseeable that some of the images would fulfill this goal.</li> <li>- Asking for prosecutions was not radical. In fact, it was perfectly consistent with the prevailing trends toward convictions for provocative anti-Muslim speech. This suggests that Muslims who advocated prosecution for the cartoons were relatively well-integrated into the institutional framework of their liberal democracies.</li> <li>- The widespread public and scholarly support for the right to publish the cartoons, despite some criticism, indicates a lack of awareness of the legal context in Europe.</li> <li>- At least two of these cartoons would potentially count as hate speech in many European jurisdictions. There is a plausible argument that they crossed the legal line.</li> </ul>
<b>Bleich [67]</b>
<ul style="list-style-type: none"> <li>- Equating Islam with terrorism, violence, and death is racism.</li> <li>- The cartoons are not just about one individual but about Muslims per se.</li> <li>- Two [of cartoons] go beyond mere offensiveness into the realm of hate speech that should be sanctioned by law.</li> <li>- A line is crossed when criticism evolves into essentializing, stereotyping, and branding the entire group as dangerous or inferior with the likelihood of stirring up hatred. Such criticism is hate speech, and I believe it should be penalized by law.</li> <li>- I view the cartoons that depict Mohammad with a sword and a bomb as hate speech.</li> <li>- By casting Mohammad, the spiritual forefather of the entire group, as inextricably linked to violence, the message is clear – all Muslims are linked to violence.</li> <li>- It is curious that some liberals who defended the free speech rights of Jyllands-Posten to publish material such as the Muhammad cartoons should also condemn the demonstrations that erupted around the world in protest against them.</li> </ul>
<b>Modood et. al. [68]</b>
<ul style="list-style-type: none"> <li>- They are all unfriendly to Islam and Muslims and the most notorious implicate the Prophet with terrorism.</li> <li>- The cartoons are not just about one individual but about Muslims per se—just as a cartoon about Moses as a crooked financier would not be about one man but a comment on Jews. And just as the latter would be racist, so are the cartoons in question.</li> <li>- A handful of humiliating images.</li> <li>- It is hatred of a religion.</li> <li>- Legal intervention is sometimes necessary, notably when speech "is likely to reinforce prejudice and lead to acts of discrimination or victimization".</li> </ul>
<b>Klausen [69]</b>
<ul style="list-style-type: none"> <li>- Europe has a copious catalogue of hate speech laws, prohibitions on holocaust denial, bans on incitements to political violence or hatred, and the old blasphemy laws. Even more problematic is the issue of non-Muslims defaming Muhammad in the name of freedom of speech, which (interestingly enough) has limitations in Denmark, as there are laws that restrict criticism of non-Muslim religious authorities.</li> </ul>
<b>Jytte Klausen [70]</b>
<ul style="list-style-type: none"> <li>- The cartoon is similar to classic Nordic or German anti-Semitic cartoons of Jews from the 1930s.</li> </ul>
<b>Deylami [28]</b>
<ul style="list-style-type: none"> <li>- The publication of the cartoons was not simply a joke—a moment of satire for all to laugh about.</li> <li>- These provocative and, for many Muslims, intensely offensive cartoons, portrayed the Prophet as a terrorist, devil, advocate of suicide bombing, and an oppressive patriarch.</li> <li>- In most of the cartoons, Muhammad is depicted as bearded, turbaned, and dressed in nomadic clothing harkening an ancient, traditional, and barbaric time and culture.</li> <li>- This moral injury is not simply one of breaking the laws against aniconism or blasphemy, but of injuring the very being of Muslims who see themselves as deeply connected to the Prophet. The inability to recognize the pain of these Muslims or to simply think that this pain is not justified operates to strip them of recognition as real citizens and to dehumanize them in a crucial way.</li> <li>- It is also essential to recognize that these feelings of emotion and habitus are not limited to those of Muslims. Like the Muslim that feels deep grief over the cartoon depictions, so too does the liberal secular citizen grieve for and feel anxiety over the transformation of the liberal culture/public that has both encoded and erased its theological origins.</li> </ul>

Henkel [71]
- Racist features are clearly evident in some of the cartoons.
A. J. Hussain [72]
- With regard to the Danish cartoons, two of them in particular serve as perfect examples of Europe's long history of distorted images [of Muhammad and Islam]. - In one of the cartoons that most infuriated the Muslim world, not only does the artist's adding the declaration of faith to the bomb explicitly label the Islamic religion itself as inherently violent, but the artist's depiction clearly labels Muhammad himself as a bomber.
Akiner [73]
- The newspaper caused a prejudice against 'others' by once again associating the Prophet with terrorism. - Face of the characters convey messages of anger and hatred. - Portraying a Prophet as a terrorist can explicitly be regarded as an attack against human rights.
Kazkaz and Bosch [74]
- The depictions, characterized by elements such as associating Prophet Muhammad with terrorism and primitive cultural imagery, were considered highly disrespectful and derogatory by the Muslim community.
Carens [68]
- To say that certain cartoons are offensive and that a newspaper should not have published them is not, in itself, a violation of democratic norms of free speech. - Why would someone deliberately present information to children about another religion in a way that the author knows will be offensive to many followers of the religion? Suddenly the author's agenda does not appear so benign, and the refusal of the illustrators (if they acted out of principle and not fear) an admirable exercise of multicultural respect rather than a suppression of free expression. - No reputable major newspaper in Europe or North America will publish overtly racist or anti-Semitic cartoons, even though they are often legally free to do so. One of the reasons, is that they think such cartoons do not treat Jews and racial minorities with the respect that is due them as members of a democratic society and this does seem to me an appropriate exercise of self-restraint. - Are the Danish cartoons also objectionable? Do they fail to treat Muslims with the respect due them as members of a democratic society? I think the answer to that question is Yes. - I want to argue that even the [cartoons] that only depict Muhammad and don't portray him as a terrorist are objectionable. Why? Because they offend widespread Muslim sensibilities, and the publishers knew or should have known that they would. To offend others violates a norm of civility and respect in engaging with other members of society. This requires justification beyond the claim that one is legally entitled to act in this way. - Muhammad is not news. The only reason to publish pictures of Muhammad was because Muslims do not like pictures of Muhammad to be published. That is not a good enough reason. In fact, it is not a good reason at all. - This was precisely the failure of Jyllands-Posten. Of course, there is no religious (or legal) obligation for non-Muslims not to publish portrayals of Muhammad, but there is a civic obligation not to do so, when this serves no important purpose and causes offence. - Islamophobia is a serious problem in Europe today and that many Muslims are disadvantaged in part because they are Muslims, then one cannot ignore the ways in which civil society contributes to this problem, including by means of the legitimization of anti-Muslim views in major newspapers.
Mahmood [75]
- Some liberals could see the lurking racism behind these cartoons. - For many European Muslims the cartoons are a particularly vicious example of the racism they have come to experience from their compatriots in Europe. - The notion of moral injury I am describing no doubt entails a sense of violation, but this violation emanates not from the judgment that the law (blasphemy) has been transgressed but that one's being, grounded as it is in a relationship of dependency with the Prophet, has been shaken. - The cartoons did not simply transgress the religious code of aniconism or the juridical code of blasphemy, but assaulted the very moral core of how Muslims understood themselves in their mirroring of the Prophet. - As Muhammad is meant to represent Muslims as such, the drawing is an incitement to hatred and therefore in the category of the kind of images that ought to be banned.
Sutkuté [6]
- Cartoons in Danish newspapers caused controversies, but the freedom of speech problem distracted attention from the core problem: racism, Islamophobia, xenophobia, and Muslim's stigma in the press. - Many newspapers did not publish cartoons with the argument that history can be told without insulting pictures.
Report of United Nations Commission on Human Rights [76]
- This affair exemplifies three worrying trends underpinning resurgent Islamophobia. - The publication of these cartoons shows how much the defamation of religions has become trivialized. - The dominant theme of the cartoons is to associate Islam with terrorism. - The cartoon harks back to an old cliché of Western Islamophobia, namely the association of Islam and the Prophet with sexual depravity. - The cartoons are thus clearly defamatory of Islam. - The initial reaction of the Danish Government- its refusal to adopt an official stance on the content and the publication of the cartoons out of respect for freedom of expression, and its refusal to receive the ambassadors of Muslim countries - revealed not just the trivialization of Islamophobia at the political level but also, as events subsequently demonstrated, the central involvement of politicians in the national and international impact of manifestations and expressions of Islamophobia. - The subsequent re-publication of the cartoons in a number of European newspapers, despite the strong emotions they aroused in the Muslim world, tends to bear out Samuel Huntington's theory of the clash of civilizations. - In re-publishing the Danish cartoons at the very moment when Jyllands-Posten apologized for the offence they might have given, these newspapers signaled that they preferred confrontation to dialogue with the domestic and foreign Muslim constituencies that took exception to the cartoons. - These newspapers' intransigent defense of unlimited freedom of expression is out of step with international norms that seek an appropriate balance between freedom of expression and religious freedom, specifically the prohibition of incitement to religious and racial hatred endorsed by all States Members of the United Nations in basic international human rights instruments such as the International Covenant on Civil and Political Rights. - The newspapers' stance indicates an alarming lack of sensitivity towards and comprehension of the religious beliefs and deep-felt emotions of the communities concerned. - The criticism of the cartoons by Jewish and Christian community leaders indicates, first of all, a deeply-held belief that the cartoons exemplify the increasing trend to defame all religions and the prevailing ideological climate of intolerance towards religion itself and religious practices. - In a statement, the European Council of Religious Leaders condemned the misuse of freedom of expression for blasphemous ends, which is a violation of this freedom when it is used without consideration for possible harmful effects on individuals and groups.

Table 11 clarifies the intent behind the Prophet cartoons and demonstrates that a specific community -Muslims- was targeted.

### 7. Prophet Muhammad in the Case law: Cartoons and Other Cases

In Prophet Muhammad cartoon cases, some of the Muslim organizations and individuals brought civil proceedings against the newspapers who published the cartoons. In most cases the prosecutors decided not to initiate criminal proceedings against the newspapers. In some other cases the courts dismissed the libel cases against cartoon

publishers and ruled in favor of the newspapers. They simply rejected the complaint of Muslim organizations and Communities against republication of the Prophet Muhammad cartoons. The courts ruled that the Prophet Muhammad cartoons did not exceed the acceptable limits of freedom of expression. However, as demonstrated in previous sections, these very courts have, in similar cases, determined that the limits of freedom of expression were indeed surpassed. This inconsistency underscores a clear double standard. Table 12 displays a few legal cases involving Prophet Muhammad cartoons, all of which have been dismissed.

Table 12. A few legal cases involving Prophet Muhammad cartoons, all of which have been dismissed.

<b>Prophet Cartoons v. Denmark [63]</b>
After the Danish newspaper Jyllands-Posten published twelve controversial caricatures of the Islamic prophet Muhammad in September 2005, several Muslim organizations in Denmark reported Jyllands-Posten to the Danish police, maintaining that it had violated the provisions of the Criminal Code concerning blasphemy and insult on the basis of race or religious orientation. Mr. Mohammed Ben El Mahi, a Moroccan national living in Morocco and two Moroccan associations operating in that country brought civil proceedings against the newspaper and complained under Articles 9 and 14 of the Convention, that as Muslims, they had been discriminated against by Denmark.
<b>Public Prosecutions (2006):</b>
The Danish Government refused to intervene in the conflict. In March 2006, the Director of Public Prosecution decided not to initiate criminal proceedings against the newspaper and rejected the relevant complaint of several Muslim organizations based in Denmark. The regional public prosecutor for Viborg decided not to initiate criminal proceedings against the newspaper. The Muslim organizations appealed against that decision to the Director of Public Prosecutions, who upheld the decision in 2006, giving the following reasons: Article 140 of the Danish Criminal Code provides that any person who, in public, mocks or scorns the religious doctrines or acts of worship of any lawfully existing religious community in this country is liable to a term of imprisonment not exceeding four months. An assessment of the drawings and the article in the light of the provisions of Article 140 of the Danish Criminal Code involves deciding whether they amount to mockery or scorn of Islam's religious doctrines or acts of worship.... As regards ... 'religious doctrines or acts of worship', it should first be noted that the expressions of opinion falling within the scope of the Criminal Code cover the internal and external religious life of a religious community, that is, the doctrines (a creed, if any, and the central texts of the religion) and the institutions, practices, persons and things (ritual acts, etc.) by which the acts of worship of the community take place. However, according to the preparatory legislative material for the Criminal Code, the concepts concerned do not encompass religious feelings which are not tied to a community's religious doctrines or acts of worship, including doctrines of an ethical or social nature or similar. The concept of 'mockery' covers ridicule and is an expression of lack of respect or derision of the object of mockery. 'Scorn' is an expression of contempt for the object that is scorned. It must be assumed that these words imply ridicule or contempt with a certain element of abuse, just as it is clear from the preparatory legislative material for the Criminal Code that punishment can be imposed only in 'serious' cases. Depending on the circumstances, a caricature of such a central figure in Islam as the Prophet Muhammad may imply ridicule of or be considered an expression of contempt for Islamic religious doctrines and acts of worship. An assessment of whether this is the case must be made in the light of the text accompanying the drawings.
<b>Director of Public Prosecutions:</b>
None of the drawing can be considered either as an expression of mockery or scorn of Islamic religious doctrines or acts of worship and thus none of the drawings can be considered to constitute criminal offences under Article 140 of the Danish Criminal Code. The drawing could be seen as a contribution to the current debate ... and as an expression of the view that ... The drawing cannot be considered to express contempt for the Prophet Muhammad or the Islamic religion ... One of the depictions might with good reason be understood as an affront and insult to the Prophet, who represents an ideal for believing Muslims. However, such a depiction is not an expression of mockery or ridicule, and almost certainly not of scorn within the meaning of Article 140 of the Danish Criminal Code. The concept of scorn covers contempt and debasement, which in their usual meaning would not cover situations depicting a figure such as that shown in drawing 2, regardless of how the illustration might be understood or interpreted. Article 140 of the Danish Criminal Code protects religious feelings against mockery and scorn and Article 266 (b) protects groups of persons against scorn and degradation on account of, inter alia, their religion. To the extent that publicly made expressions of opinion fall within the scope of these rules there is, therefore, no free and unrestricted right to express opinions about religious subjects. In stating that it is incompatible with the right to freedom of expression to demand special consideration for religious feelings and that one has to be prepared to put up with 'scorn, mockery and ridicule', the article in Jyllands-Posten does not therefore accurately describe the law as it stands.
<b>European Court of Human Rights (2006):</b>
The ECHR did not assess the case because the first applicant lived in Morocco and the two applicant associations were based there. It stated that: A State's jurisdictional competence is primarily territorial and also that jurisdiction is presumed to be exercised normally throughout the State's territory. Only in exceptional circumstances may the acts of Contracting States performed outside their territory or which produce effects there (an "extra-territorial act") amount to an exercise by them of their jurisdiction within the meaning of Article 1. The Court found no jurisdictional link between any of the applicants and the respondent State, nor could the applicants come within the jurisdiction of Denmark on account of any extra-territorial act. Accordingly, the Court had no competence to examine the applicants' substantive complaints, see Mohammed Ben El Mahi v. Denmark [63].
<b>Prophet Cartoons v. Denmark [77][78]</b>
Various Muslim organizations initiated civil proceedings for defamation against Jyllands-Posten before the Århus City Court: "We're seeking judgment for both the text and the drawings, which were gratuitously defamatory and injurious. The drawings were published "solely to provoke and mock not only the Prophet Muhammad but also the Muslim population" [23].
<b>Danish court in Aarhus (2006):</b>
The court dismissed a libel case against Jyllands-Posten, the daily that first published the controversial Muhammad cartoons. The court ruled that there were insufficient proof that the cartoons were intended to be insulting or harmful to Muslims. "Of course, it cannot be excluded that the drawings offended some Muslims", the court said in its ruling, "but there is no basis to assume that the drawings are, or were conceived as, insulting or that the purpose of the drawings was to present opinions that can belittle Muslims," the court said.
<b>Prophet Cartoons v. France [79]</b>
<b>French court (2007):</b>
The court ruled in favor of Charlie Hebdo, a satirical weekly that had printed cartoons of the Prophet Mohammad, rejecting accusations by Islamic groups who said the publication incited hatred against Muslims. The court said the cartoons published by the weekly Charlie Hebdo fell under the category of freedom of expression and did not constitute an attack on Islam in general. The court said the acceptable limits of freedom of expression have not been overstepped, with the contentious pictures participating in a public debate of general interest. Even if the cartoon in itself was "shocking or hurting for Muslims", there is no deliberate desire to offend them.
<b>Prophet Cartoons v. Canada [77]</b>
<b>Alberta Human Rights and Citizenship Commission (2008):</b>
The commission rejected a complaint by the Edmonton Council of Muslim Communities against former Western Standard publisher Ezra Levant over his republication of the Danish Muhammad cartoons. The commission found insufficient grounds to proceed with a human rights tribunal (which does not imply criminal charges, but is a quasi-judicial, mandatory process) against the publication.
<b>Geert Wilders v. Netherland [80] [81]</b>

<p>Mr. Wilders charges stemmed from articles he had written between 2006 and 2008, as well as his short film against Islam, Quran and Prophet Muhammad. These statements included a call for a ban on the Quran, warnings against an "Islamic invasion, and a tsunami of Islamization". He also labeled Islam a fascist religion, described Dutch-Moroccan youths as violent, and compared the Quran with Hitler's Mein Kampf. He has also referred to Prophet Mohammed as "the devil". Wilders was accused of criminally insulting religious and ethnic groups and inciting hatred and discrimination. He faced criminal offenses of criminally insulting Muslims because of their religion and incitement of hatred and discrimination of Muslims, Moroccans, and other non-Western immigrants because of their race or ethnicity.</p>
<p>Amsterdam Court (2011):</p>
<p>The court accepted the Freedom Party leader's (Wilders') statements were directed at Islam and not at Muslim believers. The judge ruled, "acceptable within the context of public debate". Judge van Oosten said that although the bench found remarks by Mr. Wilders "gross and denigrating", they had not given rise to hatred. As such, the court held that he had not insulted or incited discrimination of "a group of people" (§4.3.2). The Criminal Code intends to protect persons, not religions. This remains true even if Muslims in fact do feel discriminated against by his words. In addition, the court invoked the ECHR previous ruling that Wilders' freedom of expression also covers speech that offends, shocks or disturbs (Handyside v. UK [82]). Wilders was acquitted by the court of all charges.</p>
<p>Susanne Winter v. Austria [83]</p>
<p>In 2009, Austrian Member of Parliament Susanne Winter was convicted for disparaging Prophet Muhammad. She also was convicted of "incitement" because of comments on Muslim immigration. Winters was ordered to pay a fine of €24,000 (\$31,000), and received a suspended three-month prison sentence.</p>
<p>Jussi Kristian Halla-aho v. Finland [84]</p>
<p>Finland's Supreme Court has found a prominent politician guilty of defaming Islam for "Islamophobic" comments he made on his personal blog in 2008. The Helsinki-based Supreme Court ruled in 2012 that Finns Party MP Jussi Kristian Halla-aho was guilty of "inciting hatred against an ethnic group" for blog posts he made in 2008 against Islam and Prophet Muhammad, and for sarcastic comments which insinuated that immigrants from Somalia are predisposed to stealing and living off welfare. In its ruling, the court said that hate speech does not fall under the protections afforded by the freedom of speech, even though Halla-aho said his comments were a protest against public policy and not against Islam and Mohammed per se.</p>
<p>Mrs Elisabeth Sabaditsch-Wolff (E. S.) v. Austria [40]</p>
<p>She was convicted for disparaging religious doctrines and for her defamatory remarks about Prophet Muhammad's marriage to Aisha, which is usually misrepresented as being to an underage girl.<sup>1</sup></p>
<p>Vienna Regional Criminal Court (2011):</p>
<p>The courts convicted her for disparaging religious doctrines pursuant to § 188 of the Criminal Code. It found her guilty of publicly disparaging an object of veneration of a church or religious society namely Muhammad, the Prophet of Islam in a manner capable of arousing justified indignation. Her statements were not statements of fact, but derogatory value judgments which exceeded the permissible limits. The applicant directly aimed to degrade Muhammad. Presenting objects of religious worship in a provocative way capable of hurting the feelings of the followers of that religion could be conceived as a malicious violation of the spirit of tolerance, as one of the bases of a democratic society.</p>
<p>Vienna Court of Appeal (2011):</p>
<p>The Court of Appeal dismissed the applicant's appeal. It concluded that the comments at issue were an abusive attack on the Prophet of Islam as Muslims would find the applicant's statements wrong and offensive. Her statements showed her intention to unnecessarily disparage and deride Muslims. The permissible limits of criticism were exceeded where criticism ended and insults or mockery of a religious belief or person of worship began. The interference with the applicant's freedoms under Article 10 of the Convention had therefore been justified.</p>
<p>Supreme Court (2013):</p>
<p>The Court dismissed the request for a renewal of the proceedings. It found that the applicant's conviction under Article 188 of the Criminal Code constituted an interference with the right to freedom of expression, which had been justified under Article 10 § 2 of the Convention. Referring to the Court's case-law (Otto-Preminger-Institut v. Austria [43]; Wingrove v. the UK [11]), it held that the aim of the interference had been to protect religious peace and the religious feelings of others and was therefore legitimate. In cases where the impugned statements not only offended or shocked, or expressed a "provocative" opinion, but had also been considered an abusive attack on a religious group – for example an abusive attack on the Prophet of Islam, as in the applicant's case – a criminal conviction might be necessary to protect the freedom of religion of others. The Court held that she had not aimed to contribute to a serious debate about Islam but merely to defame Muhammad by accusing him of a specific preference, to show that he was not a worthy subject of worship.</p>
<p>European Court of Human Rights (2012):</p>
<p>The applicant's statements in substance accused Muhammad, and in that respect lacked a sufficient factual basis; they were disparaging towards Muhammad and therefore had not contributed to an objective public debate. Critical statements regarded by believers as extremely insulting and provocative, as well as general vehement attacks on a religious or ethnic group, were incompatible with the values of tolerance, social peace and non-discrimination which underlay the Convention and therefore were not protected by the right to freedom of expression. The ECHR notes that it was undisputed that the interference had been "prescribed by law", the applicant's conviction being based on Article 188 of the Criminal Code. The applicant's criminal conviction had pursued the legitimate aim of maintaining order (protecting religious peace) and protecting the rights of others (namely their religious feelings). The impugned statements had not been part of an objective discussion concerning Islam, but had rather been aimed at defaming Muhammad, and therefore had been capable of arousing justified indignation. The ECHR endorses the Government's assessment that the impugned interference pursued the aim of preventing disorder by safeguarding religious peace, as well as protecting religious feelings, which corresponds to protecting the rights of others within the meaning of Article 10 § 2 of the Convention. As Article 10 § 2 recognizes, the exercise of the freedom of expression carries with it duties and responsibilities. Amongst them, in the context of religious beliefs, is the general requirement to ensure the peaceful enjoyment of the rights guaranteed under Article 9 to the holders of such beliefs including a duty to avoid as far as possible an expression that is, in regard to objects of veneration, gratuitously offensive to others and profane. Where such expressions go beyond the limits of a critical denial of other people's religious beliefs and are likely to incite religious intolerance, for example in the event of an improper or even abusive attack on an object of religious veneration, a State may legitimately consider them to be incompatible with respect for the freedom of thought, conscience and religion and take proportionate restrictive measures (see for example, Otto-Preminger-Institute v. Austria [43] and İ.A. v. Turkey [57]). The applicant's statements had been capable of arousing justified indignation, on the grounds that they had not been made in an objective manner aimed at contributing to a debate of public interest, but could only be understood as having been aimed at demonstrating that Muhammad was not a worthy subject of worship. Presenting objects of religious worship in a provocative way capable of hurting the feelings of the followers of that religion could be conceived as a malicious violation of the spirit of tolerance, which was one of the bases of a democratic society. The applicant had subjectively labelled Muhammad with some sexual preferences and had failed to neutrally inform her audience of the historical background, which consequently had not allowed for a serious debate on that issue. The applicant must have been aware that her statements were partly based on untrue facts and liable to arouse (justified) indignation in others. The impugned statements can be classified as value judgments not having a sufficient factual basis. By considering them as going beyond the permissible limits of an objective debate and classifying them as an abusive attack on the Prophet of Islam, which was capable of stirring up prejudice and putting religious peace at risk, the facts at issue contained elements of incitement to religious intolerance. The interference with the applicant's rights under Article 10 did indeed correspond to a pressing social need and was proportionate to the legitimate aim pursued. Accordingly, there has been no violation of Article 10 of the Convention.</p>
<p>İ.A. v. Turkey [57]</p>
<p>İ.A., the owner and managing director of a publishing company, published 2,000 copies of a book which conveyed critical views about the Muslim religion. The Istanbul public prosecutor charged the applicant under the third and fourth paragraphs of Article 175 of the Criminal Code with insulting "God, the Religion, the Prophet and the Holy Book" through the publication of the book.</p>

<sup>1</sup> It should be noted that there are historical records of Aisha's age at marriage that estimated her age 19 but they are usually ignored deliberately and non-scientifically by those who close their eyes on the truth and seek to attach blame to Prophet Muhammad and defame him. This means that Aisha had already turned nineteen and had therefore passed the age of puberty and the marriage had continued until the Prophet's Demise.

<p><b>Turkey Court of First Instance (1996):</b></p> <p>The Court decided based on the third and fourth paragraphs of Article 175 of the Criminal Code that provides: "It shall be an offence punishable by six months to one year's imprisonment and a fine of 5,000 to 25,000 Turkish liras to blaspheme against God, one of the religions, one of the prophets, one of the sects or one of the holy books ... or to vilify or insult another on account of his religious beliefs or fulfilment of religious duties ... The penalty for the offence set out in the third paragraph of this Article shall be doubled where it has been committed by means of a publication." The Court convicted the applicant for insulting "God, the Religion (Islam), the Prophet (Muhammad) and the Holy Book (Quran)" through the publication and sentenced him to two years' imprisonment and a fine. It commuted the prison sentence to a fine, so that the applicant was ultimately ordered to pay a total fine of 3,291,000 Turkish liras.</p>
<p><b>European Court of Human Rights (2005):</b></p> <p>It was not disputed that the interference with the applicant's right to freedom of expression had been prescribed by law. The interference with the applicant's right to freedom of expression had pursued the legitimate aims of preventing disorder and protecting morals and the rights of others within the meaning of Article 10 § 2. Certain passages in the novel in question had attacked the Prophet Muhammad in an abusive manner. The book in issue had contained an abusive attack on religion, in particular Islam, and had offended and insulted religious feelings. The criticism of Islam in the book had fallen short of the level of responsibility to be expected of criticism. Therefore, the measure at issue had been intended to provide protection against offensive attacks on matters regarded as sacred by Muslims and could reasonably be regarded as meeting a "pressing social need". As paragraph 2 of Article 10 recognizes, the exercise of that freedom carries with it duties and responsibilities. Among them, in the context of religious beliefs, may legitimately be included a duty to avoid expressions that are gratuitously offensive to others and profane. This being so, as a matter of principle it may be considered necessary to punish improper attacks on objects of religious veneration. A State may therefore legitimately consider it necessary to take measures aimed at repressing certain forms of conduct, including the imparting of information and ideas, judged incompatible with respect for the freedom of thought, conscience and religion of others (see, <i>OttoPreminger-Institut v. Austria</i> [43]). The present case concerns not only comments that offend or shock, or a "provocative" opinion, but also an abusive attack on the Prophet of Islam. Notwithstanding the fact that there is a certain tolerance of criticism of religious doctrine within Turkish society, which is deeply attached to the principle of secularity, believers may legitimately feel themselves to be the object of <u>unwarranted and offensive attacks</u> through some of the book passages. The Court therefore considers that the measure taken in respect of the statements in issue was intended to provide protection against offensive attacks on matters regarded as sacred by Muslims. In that respect it finds that the measure may reasonably be held to have met a "pressing social need". The Court holds that there has been no violation of Article 10 of the Convention.</p>

The months preceding the publication of the cartoons, the Danish state moved on two cases of anti-Muslim speech. It removed the broadcast license from a radio station whose announcer called for expelling Muslims from Europe or "exterminating the fanatical Muslims." It also pursued criminal charges against a politician who compared Muslims to a cancer on society that had to be "cut out" [69]. As the ECHR considers, it is not compatible with Article 10 of the Convention to package incriminating statements in the wrapping of an otherwise acceptable expression of opinion and deduce that this renders statements exceeding the permissible limits of freedom of expression passable [40]. According to *E.S. v. Austria* [40], disparaging Prophet Muhammad or Quran which are disparaging religious doctrines have to be convicted.

There are also conflicting orders in cases of *Ben El Mahi v. Denmark* [63] and *Williamson v. Germany* [51]. In the case of *Ben El Mahi v. Denmark* [63], the ECHR did not assess the case because Mr. Ben El Mahi (who brought civil proceedings against the offensive Prophet Muhammad cartoons) lived in Morocco and the two applicant associations were based there. The ECHR stated that "A State's jurisdictional competence is primarily territorial and also that jurisdiction is presumed to be exercised normally throughout the State's territory". Whereas in the case of *Williamson v. Germany* [51], While Mr. Williamson did not reside in Germany, the exercise of his right to freedom of expression, which was lawful in another member state, faced restrictions in Germany, where it was deemed unlawful. Mr. Williamson denial of existence of gas chambers was conceived disparaging the dignity of the Jewish victims and he was found guilty of incitement to hatred and was fined by German courts. ECHR accepted the German Court's decision on the basis that the applicant's statements had been made "publicly" also with respect to Germany. It seems that the target of the offense influences the decisions of prosecutors and Courts. Recent cases (offensive cartoons) indicate that, for certain groups of targets (Muslims), they aim to grant freedom to offenders, while for others, they seek to impose strict penalties on offenders.

## **8. Conflicting Orders and Decisions of Courts on Free Speech**

The case of *Bonnet v. France* [33] is one of the most similar cases to the case of Prophet Muhammad cartoons. It is about an offending cartoon against Jewish community. A brief comparison of similarities and differences between the Prophet Muhammad cartoons case and similar cases is shown in the Table 13. According to the sections 23, 24, 29, and 32 of France Freedom of the Press Act [48], mocking, insulting, disparaging or demonizing Prophet Muhammad, Quran or Muslims are punishable crimes. These sections of the France Freedom of the Press Act have been used in French courts' and ECHR judgments in case of *Garaudy v. France* [48]. The cases of *M'bala M'bala* [60] and *Garaudy* [48] v. France have legal arguments and judicial opinions in their court rulings that are applicable to the Prophet Muhammad cartoon or Quran burning cases. These two cases have been added to Table 13 for further comparison and analysis. When comparing them to the case of Prophet Muhammad cartoons or Quran burning, the inconsistent rulings of the French courts are revealed. Please review Table 13 one row at a time for clearer analysis.

Table 13. Conflicting orders and decisions of courts on free speech

Prophet Muhammad Cartoons	Bonnet v. France [33]	M'bala M'bala v. France [60]	Garaudy v. France [48]
Offending cartoons against Prophet Muhammad and Muslim community Published by Charlie Hebdo	Offending cartoon against Jewish Community Published by Charlie Hebdo	Expressing of anti-Semitic views during a show in Paris	Defamation and inciting to racial or religious hatred in a book
The French court in 2007 ruled in favor of Charlie Hebdo, rejecting accusations by Islamic groups who said the publication incited hatred against Muslims [79].	The French court in 2017 convicted Alain Bonnet, for the offence of proffering a public insult of a racial nature against an individual or group on account of their origin or of belonging to a given ethnicity, nation, race or religion [33].	The French court in 2009 found Mr. M'bala M'bala, guilty of proffering public insult directed at a person or group of persons on account of their origin or of belonging, or not belonging, to a given ethnic community, nation, race or religion, specifically in this case persons of Jewish origin or faith [60].	The French court in 1998 found Mr. Garaudy guilty of denying crimes against humanity, offence of publicly defaming a group of persons namely the Jewish community, and undeniably infringing the honor and reputation of the entire Jewish community [48].
The court ruled that the cartoons published by the weekly Charlie Hebdo fell under the category of freedom of expression and did not constitute an attack on Islam in general. Even if the cartoon in itself was shocking or hurting for Muslims, there is no deliberate desire to offend them [79].	The judges considered that the misappropriation of the front page of the 30 March 2016 issue of the weekly Charlie Hebdo was aimed at making fun of the Jewish community, through particularly outrageous and contemptuous depictions [33].	He debased the emblem of the Jewish religion and by using some Jewish symbols tried to attain a paroxysm of anti-Semitism. The defendant's intention and the real target of his so-called 'quenelle' gesture was to undermine the 'foundation' of the Jewish people. The defendant excessively overstepped the permissible limits of the right to humour [60].	The court found that the passages, whether taken alone or as part of the whole book, seriously harmed the Jewish community as a whole. The impugned comments do not have to contain an incitement to hatred, violence or discrimination. It is sufficient, for the offence to be made out, for the passages to be such as to arouse those sentiments [48].
The court emphasized the importance of protecting free speech in a democratic society, and the need to tolerate the viewpoints of others including viewpoints that some may find offensive. The court also noted that the cartoons appeared in a satirical magazine that the public was free to buy or not to buy, they did not, for instance, appear on billboards that everyone could see [85].	The Court of Appeal upheld the Bonnet's conviction, rejecting his arguments that the Jewish community had not been targeted and that the offending cartoon fell within the register of art, humour and politics [33].	He mocked symbols of the Jewish religion. The right to humor has certain limits, and in particular that of respect for the dignity of the person. The offending remarks are both contemptuous and insulting vis-à-vis persons of Jewish origin or faith. Nor can he hide behind the pretext of comedy. The audience did not find the remarks particularly funny. The ECHR observed that the anti-Semitic and revisionist significance of the sketch was perceived by the audience [60].	Such acts are incompatible with democracy and human rights because they infringe the rights of others. The French government maintained that the interference to the right of the freedom of speech had pursued a legitimate aim, whether it be the general aim of fighting anti-Semitism or that of punishing behavior that seriously threatened public order or damaged the reputation and honor of individuals [48].
The court ruled that the acceptable limits of freedom of expression have not been overstepped, with the contentious pictures participating in a public debate of general interest [79].	The Court was of the opinion that the cartoon and the message it conveyed could not be regarded as contributing to any debate of public interest and that, even if Article 10 were to apply, the cartoon fell within a category which was afforded reduced protection under that provision of the Convention [33].	The offending remarks do not fall within the free expression of a political view. The target of the insult was without doubt the entire people of Jewish origin or faith, who were insulted solely on account of their origin or religion. His statement about Jews did not fall within the free criticism of religion contributing to a debate of general interest either, but constituted an insult, targeting a group of people on account of their origin, the prohibition of which was a necessary restriction on freedom of expression in a democratic society [60].	The applicant questions the reality, extent and seriousness of the historical events that are not the subject of debate between historians. By calling for "a public and academic debate" on the historical event of the gas chambers, as he alleges, the applicant does actually subscribe to those theories and in fact systematically denies the crimes against humanity perpetrated by the Nazis against the Jewish community [48].

The comparison made in the Table 13 reveals a clear bias in the way courts perceive offensive, insulting, or mocking expressions. It is evident that when the target is Prophet Muhammad, Quran, Islam, or Muslims, those expressions are considered free speech, while when the target is the Jewish community, they are immediately labeled as hate speech and deemed to be restricted. This double standard is concerning and raises questions about the impartiality and fairness of the judicial system. Some European countries have recently recognized that anti-revisionist legislation of the French model is a step backward both for the law and for history [13]. While insulting of Islamic main symbols are considered free speech, research on some subjects which are of obvious interest to Jewish organizations is unjustifiably limited in the name of fighting anti-semitism. Muslims organizations request for outlawing insults against their religion are rejected explicitly whereas some subjects have become virtual taboos for research following a request by Jewish political or religious community. Based on the same judicial rulings presented in the Table 13, it can be argued that Prophet Muhammad cartoons should have been restricted, and the cartoonists and publishers should have faced conviction.

### 9. Court Orders Applicable to Cartoons and other forms of Defaming Prophet Muhammad or Quran

Anti-Islam activists in Denmark and Sweden have burnt and damaged copies of the Quran in 2023. They were granted permission by the police to burn the Muslim holy book during the demonstration. The protests, which involved Quran burning, were authorized by the Swedish and Danish police. It is concerning that there are contradictory court judgments that indicate these governments are not consistently addressing hateful acts against the Quran and Prophet Muhammad. In many instances, they choose to overlook these actions under the guise of



freedom of expression, while comparable cases result in convictions in the courts. This inconsistency highlights a troubling disparity in the application of standards. Table 14 shows some of the cases in those governments.

Table 14. Inconsistent addressing of hateful acts against the Quran and Prophet Muhammad

Prophet Muhammad Cartoons v. Denmark	Jersild v. Denmark [38]	Hedegaard v. Denmark [46]	Vejdeland and Others v. Sweden [37]
Muslim organizations reported Jyllands-Posten to the police, maintaining that it had violated the Criminal Code provisions concerning hate speech and insult on the basis of race or religious orientation [63]. They initiated civil proceedings for defamation against Jyllands-Posten before the Århus City Court complaining that both the text and the drawings were gratuitously defamatory and injurious. [77][78].	Jens Olaf Jersild, a journalist produced a documentary on group of young people called the Greenjackets. During the interview, which was conducted by him, the three Greenjackets made abusive and derogatory remarks about immigrants and ethnic groups in Denmark [38].	The Int. Free Press Society (IFPS) president Lars Hedegaard was charged with racism. The IFPS describes itself as an organization "exclusively devoted to defending the right of free expression." Hedegaard's statements earned him a hate speech charge under Danish law.	Mr. Vejdeland was convicted for distributing in a school leaflets offensive to homosexuals. The statements in the leaflets were allegations and had a morally destructive effect on the substance of society. The Supreme Court convicted the applicants of agitation against a national or ethnic group [37].
Muslim organizations complained to the Århus City Court that both the text and the drawings were published solely to provoke and mock not only the Prophet Muhammad but also the Muslim population. The Court dismissed a libel case against Jyllands-Posten, that first published the Muhammad cartoons [77][78]. The regional public prosecutor for Viborg decided not to initiate criminal proceedings against the newspaper. The director of public prosecutions, upheld the decision [63].	The Public Prosecutor instituted criminal proceedings in the City Court of Copenhagen, charging them with a violation of Article 266(b) of the Penal Code which criminalizes the insulting or degrading a group of persons on account of their race, color, national or ethnic origin [38].	The Danish public prosecutor declared him guilty of violating Article 266b of the penal code, a catch-all provision that enforces politically correct speech [46]. While Denmark's constitution ostensibly protects freedom of expression and forbids censorship, the Criminal code provides that expressing and spreading racial hatred is a criminal offense punishable with up to two years imprisonment [46].	Supreme Court: The purpose of the leaflets was to initiate a debate on a question of public interest. However, it was offensive and disparaging for homosexuals as a group and in violation of the duty under Article 10 to avoid statements that are unwarrantably offensive to others thus constituting an assault on their rights, and without contributing to any form of public debate which could help to further mutual understanding [37].
Denmark director of public prosecutions: None of the drawing can be considered either as an expression of mockery or scorn of Islamic religious doctrines or acts of worship and thus none of the drawings can be considered to constitute criminal offences under Article 140 of the Danish Criminal Code [63].	Regarding the reputation or rights of others, the court recalls the contents of the program included statements about immigrant workers which were highly insulting [38]. The applicant had edited the item in a sensationalist rather than informative manner and that its news or information value was minimal [38].	Danish superior court found Hedegaard guilty of hate speech in accordance with Article 266b because he "ought to have known" that his statements regarding family rape in Muslim families were intended for public dissemination. He was convicted of hate speech under the Article 266b of the Danish Penal Code, and fined 5,000 kroner [46].	The purpose of the relevant sections in the leaflets could be achieved without offensive statements to homosexuals as a group. Chapter 16, Article 8 of the Penal Code, in conformity with the Convention, permits a judgment of conviction. The first three applicants were given suspended sentences combined with fines and the fourth applicant was sentenced to probation [37].
The Court ruled that there were insufficient proof that the cartoons were intended to be insulting or harmful to Muslims [77][78]. The drawings cannot be considered to express contempt for the Prophet Muhammad or the Islamic religion. The drawings could be seen as a contribution to the current debate and as an expression of the view [63].	The City Court held, the applicant was guilty of aiding and abetting the violation of Article 266 (b). The City Court convicted the racists and Jersild for publishing racist statements and for aiding and abetting a xenophobic group [38].	The Danish Supreme Court decided that the prosecution had failed to prove that Hedegaard was aware that his statements would be published [46].	ECHR: The applicants were convicted of agitation against a national or ethnic group according to Chap. 16, Art. 8 of Penal Code, which included statements that threatened or expressed contempt for a group of people with reference to their sexual orientation. The impugned interference was prescribed by law within the meaning of ECHR [37].
Art. 140 of the Danish Criminal Code protects religious feelings against mockery and scorn and Art. 266(b) protects groups of persons against scorn and degradation on account of, inter alia, their religion. However, religious groups have to be ready to put up with scorn, mockery and ridicule. The punishment can be imposed only in serious cases of mockery and scorn which imply ridicule or contempt with a certain element of abuse [63].	He was convicted of aiding and abetting the dissemination of racist remarks contrary to section 266(b) in conjunction with section 23 of the Penal Code. The same charge was brought against the head of the news section, Mr. Jensen who was sentenced to pay day-fines or five days' imprisonment [38].	Danish Supreme Court: Although Hedegaard was thus acquitted, the court also made a special point of ruling that the substance of his statements, namely the public criticism of Islam, is a violation of Article 266b [46].	The ECHR further considers that the interference served a legitimate aim, namely "the protection of the reputation and rights of others", within the meaning of Article 10 § 2 of the Convention [37].

<p>Any person who, in public, mocks or scorns the religious doctrines or acts of worship of any lawfully existing religious community in this country is liable to a term of imprisonment. However, the concepts concerned do not encompass religious feelings which are not tied to a community's religious doctrines or acts of worship, including doctrines of an ethical or social nature or similar [63].</p>	<p>The Appeal and Supreme Courts upheld the convictions and the sentence imposed on Mr. Jersild for aiding and abetting the three youths in exposing defamatory remarks about immigrants in Denmark. The applicant failed to fulfil the duties and responsibilities incumbent on him as a television journalist [38].</p>	<p>Langballe v. Denmark [49] Right-wing Danish MP Jesper Langballe has pleaded guilty to defamation after writing in a newspaper article against Islam. He was handed down a fine of DKK 5000 (USD 888) by the court. In a statement, he said that he is sorry that some felt derided by his comments. He added that he regrets the tone but not the content of his statements [49].</p>	<p>In the ECHR's opinion, although the statements did not directly recommend individuals to commit hateful acts, they are serious and prejudicial allegations [37].</p>
<p>The Arhus City Court: It cannot be excluded that the drawings offended some Muslims, but there is no basis to assume that the drawings are, or were conceived as, insulting or that the purpose of the drawings was to present opinions that can belittle Muslims [77][78]. The Director of Public Prosecutions: Depending on the circumstances, a caricature of such a central figure in Islam as the Prophet Muhammad may imply ridicule or be considered an expression of contempt for Islamic religious doctrines and acts of worship. An assessment of whether this is the case must be made in the light of the text accompanying the drawings [63].</p>	<p>The ECHR finds that it is undisputed that this interference was "prescribed by law", as the applicant's conviction was based on Articles 266(b) and 23(1) of the Danish Penal Code [38]. The review effected by Danish Courts had been similar to that carried out under Article 10; their decisions fell within the margin of appreciation to be left to the national authorities and corresponded to a "pressing social need" [38].</p>	<p>Quran Burning v. Sweden [86][87] The Linköping district court found a man guilty of inciting ethnic hatred (with a 2020 Quran burning) and agitation against an ethnic group, saying that his action had targeted Muslims and not Islam as a religion, and can hardly be said to have encouraged an objective and responsible debate. He had published a video on social media showing a Quran being burned, with a pejorative remark about Prophet Muhammad. The court interpreted the film as a threat against Muslims with an allusion to their faith. His primary purpose was to express threats and contempt [87].</p>	<p>The ECHR reiterates that inciting to hatred does not necessarily entail a call for an act of violence, or other criminal acts. Attacks on persons committed by insulting, holding up to ridicule or slandering specific groups of the population can be sufficient for the authorities to favor combating racist speech in the face of freedom of expression exercised in an irresponsible manner. In this regard, the Court stresses that discrimination based on sexual orientation is as serious as discrimination based on "race, origin or color" [37].</p>
<p>One of the depictions could reasonably be seen as an affront and insult to the Prophet, who represents an ideal for Muslims. However, such a depiction is not an expression of mockery or ridicule, and almost certainly not of scorn according to Art. 140 of the Danish Criminal Code [63]. The concept of scorn covers contempt and debasement, but not cover situations depicting a figure such as that shown in drawing, regardless of how it might be understood or interpreted.</p>	<p>The restriction furthermore pursued a legitimate aim covered by Article 10 para. 2 of the Convention, namely the protection of the reputation and rights of others [38]. There can be no doubt that the remarks in respect of which the Greenjackets were convicted were more than insulting to members of the targeted groups and did not enjoy the protection of Article 10 [38].</p>	<p>Police v. Sweden [86] An appeals court upheld a lower court striking down a ban on Quran burning, saying police had no legal grounds to block two Quran burning protests earlier this year (2023). The Administrative Appeals Court for Stockholm, affirmed a lower court decision holding that the Stockholm police had been wrong to refuse permission for public gatherings to burn the Quran. The Swedish government has publicly rejected the burning of the Quran and called it "legal but not appropriate" [86].</p>	<p>The applicants have the right to express their ideas but along with freedoms and rights people also have obligations including, as far as possible, to avoid statements that are unwarrantably offensive to others, constituting an assault on their rights. The statements had been unnecessarily offensive. The ECHR concluded that the interference with the applicants' exercise of their right to freedom of expression had been necessary in a democratic society for the protection of the reputation and rights of others [37].</p>

Analysis of the case law compared in Table 14 shows that the Danish courts should have ruled that the cartoons were "insulting and degrading a group of persons on account of their religion", or "they constitute severe forms of racial defamation or incitement to hatred" against Muslims, or "having allegations with morally destructive effects on the substance of society". They should have found them a "general, vehement attack against a religious group," or they should have convicted the publishers of "aiding and abetting in exposing defamatory remarks about Muslims in Denmark" and the cartoonists of "agitation against a national or ethnic group" and convicted them of hate speech under the Article 266b of the Danish Penal Code. The Danish courts should have ruled that "the cartoons, which were insulting to Muslims, were intended for public dissemination" or ruled that "the public criticism of Islam, is a violation of Article 266b" or they should have interpreted the cartoons as "a threat against Muslims with an allusion to their faith with the primary purpose of expressing threats and contempt" or they should have found that they linked Muslims "as a whole with a grave act of terrorism". The publishers or the cartoonists did not disassociate themselves from the insulting cartoons whose purpose were to perpetuate intolerance by insulting minorities and by spreading prejudiced and discriminatory actions. The Danish courts should have determined that the cartoons were "offensive and disparaging for Muslims as a group and in violation of the duty under Article 10 to avoid as far as possible statements that are unwarrantably offensive to others thus constituting an assault on their rights, and without contributing to any form of public debate which could help to further mutual understanding". If

so, then the ECHR would have agreed they constituted unprotected hate speech [16] and would have upheld the domestic Courts rulings by stating that “attacks on persons committed by insulting, holding up to ridicule or slandering specific groups of the population can be sufficient for the authorities to favor combating racist speech in the face of freedom of expression exercised in an irresponsible manner” and “there can be no doubt that the cartoons were more than insulting to members of the targeted groups and did not enjoy the protection of Article 10”.

From the standpoint of legal precedent, the Danish and other European governments, against the backdrop of an alarming resurgence of defamation of religions, especially Islamophobia, have failed to combat religious intolerance, with the exception of taking strong measures against anti-Semitism. In the case of Prophet Muhammad cartoons, they failed to show the commitment and vigilance that they normally display in combating religious intolerance and incitement to religious hatred and promoting religious harmony.

## 10. Cartoon or Image Cases

### 10.1. Similar Cases to Prophet Muhammad Cartoons

In accordance with legal precedent, disrespecting Prophet Muhammad or Quran through insulting expressions such as cartoons are offensive against the Muslim community and not only hurt the ethnic identity of the groups at whom such acts are directed (Muslims) infringing upon their rights but also denigrates them causing infringement of their respect and reputations. It is a kind of public insult of a racial nature against an individual or group on account of belonging to a given religion. These expressive acts incite hatred or discrimination against Muslims on the grounds of their ethnic identity and religion and have even as their object or as their result the systematic denigration or defamation of Muslims, their Prophet, and their scripture which means that such acts violate Muslims’ dignity causing religiously aggravated intentional harassment, alarm or distress. Table 15 demonstrates that similar cases involving cartoons or images have resulted in convictions in both domestic and international courts, leading to the removal and confiscation of the disputed cartoons or pictures.

Table 15. Similar cases that have resulted in convictions, removal, and confiscation of the disputed cartoons or pictures.

Bonnet v. France [33]	Taylor v. United Kingdom [59]	AEL v. Netherlands [54]	Norwood v. United Kingdom [34]	Müller and others v. Switzerland [58]
Mr. Bonnet, was convicted by the French courts for the offensive cartoon against the Jewish community, for the offence of proffering a public insult of a racial nature against an individual or group on account of their origin or of belonging to a given ethnicity, nation, race or religion, and for the offence of questioning the existence of crimes against humanity.	Mr. Taylor, was found guilty of leaving grossly offensive religious images in a prayer room at Liverpool’s airport. He was convicted of leaving obscene material depicting figures from Christianity and Islam, often in sexual poses, with the intention of causing harassment and alarm.	Arab European League (AEL) was fined 2500 EUR, for publishing a cartoon suggesting the Holocaust was made up or exaggerated by Jews. The AEL re-published the cartoon on its website, saying it wanted to point out double standards in society.	Mr. Norwood displayed a large anti-Muslim poster that religiously aggravated harassment. He was convicted of aggravated hostility towards a religious group.	The public prosecutor: the large paintings of obscenity displayed in modern art exhibition by Mr. Müller and others, come within the provisions of Art. 204 of the Criminal Code, which prohibited obscene publications and required that they be destroyed. The District Court sentenced each of them to a fine of 300 SF for publishing obscene material [58].
The Paris Criminal Court ruled that the cartoon had been aimed at making fun of the Jewish community, by joking about the genocide of which its people had been victims and about their suffering, through particularly outrageous and contemptuous depictions.	He insisted people would only be offended if their faith was “weak” and that the images were meant as satire. Jurors found him guilty of causing religiously aggravated intentional harassment, alarm or distress.	AEL was reacting to a decision by Dutch prosecutors not to put far-right lawmaker Geert Wilders on trial for distributing controversial Danish cartoons of the Prophet Muhammad.	He was charged with an aggravated offence under section 5 of the Public Order Act 1986. He was convicted of the offence, and fined 300 GBP.	The Government contended that the aim of the interference complained of was to protect morals and the rights of others. The disputed pictures removed and confiscated.
As to the offence of questioning the crime against humanity (Holocaust), the court sentenced him to 3 months’ imprisonment, ordered him to pay damages to the civil parties, and ordered the deletion of the cartoon and the offending remarks from the website, on pain of a fine of 300 EUR per day of non-compliance. Court of Appeal upheld the conviction,	He was given a 5-year Anti-social Behavior Order which bans him from carrying religiously offensive material in a public place. The prosecutor: some of his cartoons went far beyond exercising freedom of expression and the jurors were acting as the “conscience of our society”. The 6-month	In April 2010, a court acquitted the AEL of insulting Jews by publishing the cartoon, which depicts the Nazi Holocaust as a figment of Jewish imagination. But appeals judges agreed with prosecutors that the cartoon was more offensive than could	He was charged of displaying, with hostility towards a racial or religious group, any writing, sign or other visible representation which is threatening, abusive or insulting, within the sight of a person likely to be caused harassment, alarm	The Appellate Court did not accept that the paintings are symbolical and held that what counts is their face value, their effect on the observer, not some abstraction utterly unconnected with the visible image or which glosses over it. The important thing is not the artist’s meaning or purported meaning but the objective effect of the image on the observer. Even someone insensible to obscenity realizes

rejecting his arguments that the Jewish community had not been targeted and that the offending cartoon fell within the register of art, humour and politics.	prison sentence was suspended for 2 years. He was ordered to undertake 100 hours of unpaid work and pay £250 costs.	be justified by the debate.	or distress by it.	that it may disturb others.
ECHR: Various elements of the offending cartoon had been aimed directly at the Jewish community. The use of symbols which undeniably referred to the extermination of Jews during the 2nd World War had sought to ridicule that historical event and cast doubt on its reality. The cartoon and the message it conveyed could not be regarded as contributing to any debate of public interest.	Nekschot v. Netherlands [47] Mr. Nekschot was arrested in Amsterdam for drawing cartoons deemed offensive to Muslims. He was released after 30 hours of interrogation by Dutch law enforcement officials.	The court in the western city of Arnhem overruled the acquittal handed down by a Dutch lower court, saying the cartoon, published on the website of the AEL, was "unnecessarily hurtful."	The ECHR notes that the words and images on the poster amounted to a public expression of attack on all Muslims in the United Kingdom.	The Federal Court: the paintings are liable grossly to offend the sense of sexual propriety of persons of ordinary sensitivity. The artistic license relied on by the appellant cannot in any way alter that conclusion. ECHR held that the applicants' conviction had a legitimate aim under Art. 10§2. The confiscation of the paintings was designed to protect public morals by preventing any repetition of the offence.
ECHR: Although the Criminal Court ordered the removal of the cartoon from the website, it was still accessible via search engine and the harmful impact of the message it conveyed remained considerable. As to the nature, medium and context of the offending cartoon, the courts weighed in the balance the various interests at stake: the applicant's right to freedom of expression, on the one hand, and the protection of the rights of others, on the other.	Nekschot was charged for eight cartoons that "attribute negative qualities to certain groups of people," and, as such, are insulting and constitute the crimes of discrimination and hate according to articles 137c and 137d of the Dutch Penal Code.	The court points out that the European Court of Human Rights, which considers freedom of speech of paramount importance and defends it thoroughly, makes an exception for the denial or trivialization of the Holocaust," the court said.	Such a general, vehement attack against a religious group, linking the group as a whole with a grave act of terrorism, is incompatible with the values proclaimed and guaranteed by the Convention, notably tolerance, social peace and non-discrimination.	ECHR: There is a natural link between protection of morals and protection of the rights of others. After emphasizing the correlation between necessity and social needs, the Court deduced that the interference in the artistic creativity of the applicants was necessary and hence proportionate. It also held that the confiscation of the paintings did not infringe Art. 10 of the Convention.
The ECHR noted that the applicant had been sentenced on appeal to pay 10,000 euros, and that while this was a significant amount it was less than that imposed at first instance. The Court concluded that, even supposing that Article 10 of the Convention was applicable, the interference with the applicant's freedom of expression had been necessary in a democratic society.	Several of Nekschot's cartoons on his website target Islam and also criticize other religions including Christianity. The case against him was dismissed in Sep. 2010. The prosecution service: He would not be facing charges because he had spent a day and night in detention and the cartoons in question were no longer online.	The suggestion that it may have been contrived or exaggerated by victims is extraordinarily offensive for the victims and their surviving relatives, in this case the Jews. The court also imposed a 2-year probation period on the AEL.	The European Court of Human Rights held that the applicant's display of the poster in his window constituted an act within the meaning of Article 17, which did not, therefore, enjoy the protection of Articles 10 or 14.	ECHR: Under Article 10§2, the courts considered it "necessary" for the protection of morals to impose a fine on the applicants. A principle of law allows confiscation of "items whose use has been lawfully adjudged illicit and dangerous to the general interest". The purpose was to protect the public from any repetition of the offence. The applicants' conviction responded to a genuine social need under Article 10§2 of the Convention.

## 10.2. Symbols of Freedom of Speech or Symbols of Irresponsible Insulting?

The cartoons of the Prophet of Islam, taken as a whole, lack serious literary, artistic, political, or scientific value. Depiction of the Prophet Muhammad as a violent person is definitely an incorrect depiction. This depiction certainly with good reason is understood as an affront and insult to the Prophet, who represents an ideal for believing Muslims. The case law (as reviewed in Table 15) confirms that such cartoons constitute the crimes of discrimination, hate, and aggravated hostility towards a religious group. The caricatures of Prophet of Islam published by Charlie Hebdo are very indecent, insulting, and devoid of any artistic merit. They are more insults rather than caricatures. They are rude, unsociable, uncivilized and a proper subject for moral reproach and do not fall within the register of art, humour and politics based on the case law. According to the case law in Table 15, such caricatures are definitely so insulting such that they transgress the rules of polite or civilized human interactions. The freedom of expression is very tightly circumscribed when it comes to the absolute sacred status of the Jewish symbols. Thus, in conformity with case law, the disputed Prophet Muhammad cartoons should have been removed and confiscated to protect public morals by preventing any repetition of the offence. However, in blatant disregard of legal precedent, those who lacked knowledge of Prophet Muhammad, showed no regard for the law and failed to

respect the reputation and dignity of others, by republishing the cartoons of the Prophet. The widespread public and scholarly support for the right to publish the cartoons, despite some criticism, indicates a lack of awareness of the legal context in Europe [67]. They repeatedly republished cartoons of Prophet Muhammad, demonstrating a pattern of irresponsible behavior. Shockingly, prosecutors and courts remained silent, and some publishers were hailed as symbols of freedom of speech. Based on established legal rulings, that they are not symbols of freedom of speech, but rather symbols of irresponsible and insulting behavior.

### 11. Video Cases

Two of the video cases, one convicted for a demeaning portrayal of the God of the Jewish and Christian religions, and the other for an indecent depiction of Jesus Christ and St. Teresa that would outrage the feelings of Christians, have been reviewed in the Table 16.

Table 16. Analysis of Video Cases in Legal Precedent

Otto-Preminger-Institute v. Austria [43]	Wingrove v. United Kingdom [11]
The Otto-Preminger Institute (OPI), showed a satirical film presented a demeaning portrayal the God of the Jewish and the Christian religions. The film targeted Christian creed in a caricatural mode. The charge was "disparaging religious doctrines", prohibited by sect. 188 of the Penal Code.	Mr. Wingrove wrote the script for, and directed the making of, a video work whose content was the indecent depiction of Jesus Christ and St. Teresa that would outrage the feelings of Christians.
The film was seized and forfeited. Public Prosecutor and Innsbruck Regional Court reasoned that the disparagement of God the Father, Christ, Mary and the Eucharistic ceremony was reinforced by the general character of the film as an attack on Christian religion. It was done in a scope and manner likely to disturb the feelings of average people, in particular the majority of believing Christians.	British Board of Film Classification: The board seek to avoid classifying works that are obscene or infringe other provisions of the criminal law. Amongst these provisions is the criminal law of blasphemy. The definition of blasphemy is 'any contemptuous, reviling, scurrilous or ludicrous matter relating to God, Jesus Christ or the Bible.
This was not counterbalanced by the fact that a small minority of persons might be able to interpret the film in a positive way, regarding the logical context of the disparaging remarks which could be seen as criticism of historic facts and of religious practices. The freedom of art under Article 17a (Basic Law on the General Rights of Citizens) could not be invoked as this freedom was limited by other fundamental rights such as the right to religious freedom and by the necessity of a social order based on tolerance and respect for legally protected values. While Sect. 188 of the Penal Code did not in itself restrict the freedom of art, there was in the present case such an intensive interference with religious feelings by the provocative anti-Christian attitude of the film that it outweighed the freedom of art.	It is not blasphemous to speak or publish opinions hostile to the Christian religion if the publication is 'decent and temperate'. The question is not one of the matter expressed, but of its manner, i.e. 'the tone, style and spirit', in which it is presented. British Board of Film Classification noted that the video work becomes subject to the law of blasphemy if the manner of its presentation is bound to give rise to outrage at the unacceptable treatment of a sacred subject. The sexual imagery is focused on the figure of the crucified Christ. In consequence, we have concluded that it would not be suitable for a classification certificate to be issued to this video work.
The Innsbruck Regional Court ordered the forfeiture of the film. It held that the artistic freedom cannot be unlimited. The limitations on artistic freedom are to be found, firstly, in other basic rights and freedoms guaranteed by the Constitution (such as the freedom of religion and conscience), secondly, in the need for an ordered form of human coexistence based on tolerance, and finally in flagrant and extreme violations of other interests protected by law.	The ECHR considered that the English law of blasphemy is intended to suppress behavior directed against objects of religious veneration that is likely to cause justified indignation amongst believing Christians. It follows that the application of this law in the present case was intended to protect the right of citizens not to be insulted in their religious feelings.
In the instant case -a film primarily intended to be provocative and aimed at the Church- with violation of legally protected interests, the basic right of artistic freedom will have to come second. The seizure and forfeiture of the film aimed at the "protection of the rights of others", including the right to freedom of religion within the meaning of Article 9 of the Convention, and the "protection of morals" and also aimed at the protection of the right to respect for one's religious feelings, and at "the prevention of disorder". ECHR: The measures were based on section 188 of the Austrian Penal Code, which is intended to suppress behavior directed against objects of religious veneration that is likely to cause "justified indignation". Their purpose was to protect the right of citizens not to be insulted in their religious feelings by the public expression of views of other persons. The impugned measures pursued a legitimate aim under Article 10 para. 2.	ECHR: The aim of the interference was to protect against the treatment of a religious subject in such a manner "as to be calculated (that is, bound, not intended) to outrage those who have an understanding of, sympathy towards and support for the Christian story and ethic, because of the contemptuous, reviling, insulting, scurrilous or ludicrous tone, style and spirit in which the subject is presented". This aim corresponds to that of the protection of "the rights of others" within the meaning of Article 10 para. 2. It is fully consonant with the aim of the protections afforded by Article 9 to religious freedom. The refusal to grant a certificate for the distribution consequently had a legitimate aim under Article 10 para. 2 namely "the protection of the rights of others".
ECHR: The respect for the religious feelings of believers as guaranteed in Article 9 have been violated by provocative portrayals of objects of religious veneration which can be regarded as malicious violation of the spirit of tolerance, which is a feature of democratic society. Article 10 para. 2 states that whoever exercises the rights and freedoms enshrined in Article 10 para. 1, undertakes "duties and responsibilities". Amongst them in the context of religious opinions and beliefs may legitimately be included an obligation to avoid as far as possible expressions that are gratuitously offensive to others and thus an infringement of their rights, and which do not contribute to any form of public debate capable of furthering progress in human affairs. As a matter of principle, it may be considered necessary in certain democratic societies to sanction or even prevent improper attacks on objects of religious veneration, provided always that any "formality", "condition", "restriction" or "penalty" imposed be proportionate to the legitimate aim pursued.	ECHR held that as paragraph 2 of Article 10 expressly recognizes, however, the exercise of that freedom carries with it duties and responsibilities. Amongst them, in the context of religious beliefs, may legitimately be included a duty to avoid as far as possible an expression that is, in regard to objects of veneration, gratuitously offensive to others and profanatory. No restriction on freedom of expression, whether in the context of religious beliefs or in any other, can be compatible with Article 10 unless it satisfies, inter alia, the test of necessity as required by the second paragraph of that Article (art. 10-2).
ECHR: There was a pressing social need for the preservation of religious peace; necessary to protect public order. In seizing the film, the Austrian authorities acted to ensure religious peace in that region and to prevent that some people should feel the object of attacks on their religious beliefs in an unwarranted and offensive manner. Article 10 cannot be interpreted as prohibiting the forfeiture in the public interest of items whose use has lawfully been adjudged illicit. Although the forfeiture made it permanently impossible to show the film anywhere in Austria, the Court considers that the means employed were not disproportionate to the legitimate aim pursued and that therefore the national authorities did not exceed their margin of appreciation in this respect. The ECHR holds that there has been no violation of Article 10 of the Convention as regards either the seizure or the forfeiture of the film.	ECHR: The refusal to grant the video a distribution certificate was intended to protect "the rights of others", and more specifically to provide protection against seriously offensive attacks on matters regarded as sacred by Christians. The reasons given to justify the measures taken can be considered as both relevant and sufficient for the purposes of Article 10 para. 2. It cannot be said that the authorities overstepped their margin of appreciation. The national authorities were entitled to consider that the impugned measure was justified as being necessary in a democratic society within the meaning of paragraph 2 of Article 10. There has therefore been no violation of Article 10 of the Convention.

The court judgments in the aforementioned video cases is certainly applicable to the Prophet Muhammad cartoon case. The application of judicial statements to the case of the Prophet Muhammad leads to the following outcomes: “indecent depiction of Prophet Muhammad that would outrage the feelings of Muslims”, “disparaging religious doctrines”, “contemptuous, reviling, scurrilous or ludicrous expressions relating to God, Prophet Muhammad or the Quran”, “done in a scope and manner likely to disturb the feelings of average people, in particular the majority of believing Muslims”, “the intensive interference with religious feelings by the provocative anti-Islamic attitude of the film outweighs the freedom of art”, “the right of citizens not to be insulted in their religious feelings must be protected”, and “protection against seriously offensive attacks on matters regarded as sacred by Muslims have to be provided”. The case law demonstrates that attacking and insulting religious and non-religious matters must be restricted to protect the rights and reputation of others. Therefore, it is not about giving Islam special treatment; rather, it is about upholding the same standards for all religions and beliefs.

### Conclusion

In conclusion, the analysis of the case law revealed disparities in the level of protection against hate speech afforded to different religions. It was found that certain religions (especially Islam) are afforded lower levels of protection compared to others, highlighting potential inequalities in the legal treatment of religious groups. The inconsistency in judicial rulings raises questions about the fairness and impartiality of the legal system, and underscores the need for a more equitable approach to addressing offensive and insulting expressions targeting different religious and cultural groups. The unequal treatment may have been another contributing factor to the heightened offense experienced by Muslims, exacerbating the impact of the cartoons themselves. This disparity further underscores the need to prioritize and emphasize the protection of Muslims' rights within the legal framework. This can be realized by outlawing disrespectful acts against Prophet Muhammad and Quran, thus providing a more equitable level of protection for the religious beliefs and symbols of the Muslim community.

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