

The Hungarian Blasphemy Cases

Free Speech versus Protection of Religious Communities

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Abstract

Free speech is a cornerstone of democracy. So as cultural diversity and the protection of various religious communities. But what if they compete? How to handle situations when expressions infringe religions or religious people? Recently, such questions have become crucial for legal literature and jurisprudence. The present paper does not have a definite answer which democratic value to the first place. Instead, it intends to give aspects upon which the issue can be determined. For this purpose the paper first gathers the different approaches and describes the differences of several national courts and the ECtHR. Then it analyses the recent case law of the Hungarian Constitutional Court, finally it draws conclusions.

Keywords: blasphemy, free speech, mockery, protection of religious communities, religion

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1. Christian Roots of Constitutionalism

In history, Christianity and the community of European states have been intertwined in many ways. On the one hand, the cradle of Christianity

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extended further than the European cultural area. From the fourth century onwards, following the famous Constantinian turn,¹ Christianity became a dominant feature of the Roman Empire and later, the continent, and from that time onwards it was the home of the development of Christian churches and the evolution and consolidation of Christian ethical and political thought. The latter included, in particular, the concept of natural law associated with St Augustine and St Thomas of Aquino, and later with Jean Calvin, the representative of the Reformation. This tradition became so entrenched that subsequently, following World War II, it also laid the foundations for the protection of human rights under international law.²

Christianity has given Europe a vision. On the one hand, Christianity transmitted to Europe the values of the ancient world, including the Roman legal tradition, which is still the foundation and origin of continental European legal thought and legal literature.³ Christianity, on the other hand, has kept the peoples of Europe together as a community for centuries, creating civilisation. In much of Central Europe, the establishment of the state and the stabilisation of political power coincided with the adoption of Christianity.

The uniqueness of Christian civilisation derives from the dogma that God not only created man in his own image, but also gave him the gift of free will, which, however, comes with personal responsibility. It is Christian faith, culture and vision that Europe has defended, promoted and disseminated through missions over many centuries. Until the age of the great discoveries and the rise of the Ottoman Empire, the international community was a ‘family of nations’, made up of a few dozen Christian

1 Christianity gained increasing community-forming power during the reign of the Roman Emperor Constantine I, due to the Constantinian revolution, eclipsing the pagan traditions that dominated the ancient world. The Constantinian turn was a crucial moment for the development of Western civilisation as a whole. Not only in terms of the autonomy and development of ecclesial communities or the defence of Christian beliefs, but also as a pillar of the Roman Empire and later of the Western empires. This was followed by profound social changes: the public rituals of the ancient world, such as bloody circus games or cruelty to slaves disappeared, while the requirements of Christian ethics emerged and were reinforced. At the same time, Emperor Constantine created unity within Christianity, raising up a single church in the empire.

2 Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, Random House Trade Paperbacks, 2002.

3 András Földi & Gábor Hamza, *A római jog története és institutúciói*, Nemzeti Tan könyvkiadó, Budapest, 1996, pp. II0–III.

nations.⁴ International law at the time governed relations between the so-called civilised nations that once made up the European community of Christian states in a community of political, cultural, religious and moral interest.⁵

Christianity seemed to have political relevance, too; it became an integral part of the constitutional traditions of European nations. God and Christianity appear in different ways in different European constitutions. For example, the German, Irish, Polish, Swiss, Maltese and Hungarian constitutions explicitly mention God, and do so in the context of Christianity.⁶ The Hungarian Fundamental Law emphasises the nation-preserving power of Christianity, making the protection of this cultural trait a state task. The Declaration on the Rights of Man and the Citizen, which is part of the French Constitution, refers to a supreme being ('*Être suprême*'), while the Macedonian, Slovak and Czech constitutions emphasise the values and heritage of the spirit of nature. In a significant number of European constitutions, Christianity is presented as a common constitutional tradition.

2. Is Religion a Public or Private Issue in Constitutional Cultures?

Mentioning God and Christianity in constitutions is a separate issue from the freedom of religion and the relationship between religion and public life. Since Reformation and the Enlightenment, European states have enshrined the principle of separation of church and state and ensured free practice of religion by providing for the religious neutrality of the state. Accordingly, the Universal Declaration of Human Rights of 1948 guarantees the right of everyone to religious freedom, which "includes freedom to change his religion or belief, and freedom, either individually or collectively, to manifest his religion or belief, either in public or in private, in teaching, practice and observance" (Article 18). The Universal Declaration appears to consider freedom of religion as a collective value, as a public good.

4 David J. Bederman, *The Spirit of International Law*, The University of Georgia Press, 2002, pp. 50–51.

5 Gábor Sulyok, 'General Principles of Law as a Source of International Law' in Péter Kovács (ed), *International Law – a Quiet Strength*, Pázmány Press, Budapest, 2011, pp. 161–162.

6 Jean-Pierre Duprat, 'Dieu dans les constitutions européennes' in *Les dynamics de droit Européen en début de siècle*. Paris, Pedone, 2004, pp. 296–297.

However, different constitutional systems take different positions on the desired balance between the religious neutrality of the state and the public role of religion. Some countries, notably France, are more secularised, viewing religion and religious practice as a threat, evidenced by the fact that the supervision of religious denominations is carried out by the Minister of the Interior. More generally, there is a trend in the Western world to consider religion as a private matter and intend to exclude religion from public life. This can be seen, for example, in the debates seeking to remove Christian symbols from public spaces, Christian tradition and symbols from public discourse, or to withdraw public funding or benefits from church schools or other institutions.⁷ This approach interprets the separation of church and state in a way that ‘the less religious symbols you have in public spaces, the more neutral you are’.

Meanwhile, in other countries, such as Greece, Malta, Ireland, and certain Scandinavian and Central European countries, constitutional law does not juxtapose the freedom of religious practice with the religious neutrality of the state. Instead, it recognises the vital role of religious freedom in the search for truth and human existence, and therefore acknowledges its legitimacy in public discourse. Moreover, in Hungary and Poland Christianity is also a political issue: Christian culture and identity are the subject of public debate.

Religious freedom is central to the system of fundamental rights, because it ensures the search for the meaning of human existence and knowledge regarding the source of the universe. Religious freedom thus embraces key aspects of humanity and morality; as such it directly concerns social life. This understanding is reflected in the landmark decision of the Grand Chamber of the ECtHR in *Lautsi*.⁸ The judgment considered the requirement to display a cross in classrooms as a symbol of Christianity, *inter alia* in view of the country’s majority Christian culture, to be consistent with the principle of freedom of religion as stipulated in Article 9 ECHR.

The East-West divide in many areas of Europe also affects the perception of religious freedom, largely because of the regions’ different historical experiences and developments. One of the cultural antidotes to foreign ideological oppression of countries east of the Iron Curtain under commu-

7 Robert P. George, *The Natural Law Foundations of International Human Rights and Religious Freedom*, The Heritage Foundation, at www.heritage.org/religious-liberty/lecture/the-natural-law-foundations-international-human-rights-and-religious.

8 *Lautsi v Italy*, No. 30814/06, 18 March 2011

nism was the communal dimension of Christianity with its churches and institutions. In other words, during communism churches were the only shelters from communist ideology. As a consequence, the community-, nation-, and civilisation-preserving power of Christianity together with other factors, greatly contributed to regime changes all over Central Europe. This patriotic and anti-communist nature of Christianity continued to prevail in many Central European countries.

3. The EU's Relationship with Christianity

European integration started to develop on Christian democratic foundations. After the physical and moral destruction brought about by World War II, European unity was organised based on the vision of Christian democratic parties and Christian democratic political leaders. Konrad Adenauer, Robert Schuman and Alcide De Gasperi all contributed to the development of European integration in a Christian democratic spirit and laid the foundations for the so-called '*Les Trente Glorieuses*', or the era of the Thirty Years of Plenty, up to the 1980s. The beginning of European reconstruction thus marked a return to Christian roots, a clear recognition that Christianity was the very basis of European civilisation. While other ideas also shaped the continent, such as capitalism, liberalism among others, none of these were distinctive cultural features of Europe; but were much rather global systems or ideologies.

Meanwhile, the initial orientation of European integration was merely an economic community up until the second half of the 1980s. The success and defence of the market economy was, of course, a political objective in stark contrast to the Soviet-style command-and-control system. Nevertheless, the dominant feature of integration was its strong focus on the economy. The goal of the 1986 Single European Act was the completion of the internal market and the broadening of European political cooperation, further unfolded by the Maastricht Treaty of 1992. From then on, the role of Christian democracy and Christianity was not so apparent as it had been at the beginning. Moreover, even integration principles that were rooted in Christianity, such as subsidiarity, were not fully implemented. In only a few cases has the CJEU ruled that the European Commission does not have the power to act for violation of the principle of subsidiarity.

The debate on the Constitutional Treaty in the European Convention in 2004 was a decisive moment in the relationship between the EU and

Christianity. Aspirations for a federalist unification of Europe were divided on the question of whether it was necessary to include a reference to Europe's Christian roots in the preamble of the Constitutional Treaty. Some called for a reference to the common Christian roots, while others insisted on a secularized preamble. In the end, the cultural, religious and humanist heritage was included in the preamble, but the Constitutional Treaty failed in the ratifications by the Member States.

The TEU makes no reference to Christianity, but only to the constitutional tradition shared by the Member States in the area of fundamental freedoms. However, in view of the constant expansion of the EU's regulatory scope, its growing impact on the Member States and on the lives of their citizens, and the fact that integration is taking place on a political level going beyond the dimensions of the market and the economy, it is impossible to avoid the discourse on the EU's relationship to its heritage, to Christianity and Christian values.

4. 'Buffer zone': Free Speech versus Respect for Religious Communities

The representation of religion and the permissible limits thereof raise a number of issues that are important not only for the media, but also for governments and society in general. The way religion and certain symbols are portrayed not only determines society's perception of religion, but also affects political relations between religious groups, society as a whole and the state.⁹

There is consensus in legal literature that the grounds for restricting expressions that offend religious sensitivities is the dignity of religious communities and their members. Earlier legislation that had protected the name of God was repealed (not so long ago!).¹⁰ Now, the grounds for protection

⁹ Norman Doe, 'Religion and Media Law in Europe: A Comparative Study' in Norman Doe (ed.), *The Portrayal of Religion in Europe: the Media and the Arts*, Peeters, Leuven – Paris – Dudley, 2004, p. 287.

¹⁰ Rumy Hasan, 'Blasphemy, Multiculturalism and Free Speech in Modern Britain' in Paul Cliteur & Tom Herrenburg, *The Fall and Rise of Blasphemy Law*, Leiden University Press, 2016, pp. 209–212. Interestingly, the author points out that one of the driving forces behind the abolition of blasphemy was the film *Life of Brian*; the opposition to the Monty Python group's work caused widespread resistance in artistic circles, which later allowed the film to be shown (practically unchanged).

is much rather to safeguard believers from direct or indirect abuse.¹¹ In the modern sense, blasphemy is therefore a verbal or symbolic communication that insults the dignity of a religious person by mocking an element of religion or belief. The object of protection from blasphemy is not God or a belief, but the religious community and the religious individual.¹² One may conclude that the external side of blasphemy is that a spiritual element is mocked or criticised, while its internal side is that the dignity of the community or its member is affected.

An analysis of the case law of the ECtHR shows that the reason for restricting religiously offensive communication is not public policy, but the protection of the “rights of others”, on the grounds that religiosity is one of the most defining elements of a believer’s identity and approach to life.¹³ Török also points out, however, that the ECtHR’s landmark cases have “invariably protected the rights of the followers of the majority religion of the country or region concerned”, notwithstanding the fact that in their case the ‘chilling effect’ of not being able or not daring to exercise their rights is hard to imagine.¹⁴ It is also noticeable that “in cases of blasphemy, it interprets the principle of the margin of appreciation of the state in a particularly broad sense. The ECtHR is less activist in this field; it is cautious enough not to set any general, uniform European benchmark in this area. It has chosen not to fill this void in certain particularly sensitive areas either, unless there is a common European standard. Consequently, the State Parties of the Convention have a wider margin of appreciation”.¹⁵

One country that takes a very strong position in favour of free speech in blasphemy issues is France. According to French jurisprudence, blasphemy must be direct and personal to be punishable. This is illustrated, for example, by the case of the 2005 Last Supper painting. At first instance, the Paris Court of Appeal ordered the immediate removal of the painting, in addition to imposing a daily fine of €100,000. Subsequently, in 2006,

11 Balázs Schanda, ‘The Constitutional Court of Hungary on the Borderlines of Blasphemy’, *Hungarian Yearbook of International Law and European Law*, Vol. 9, 2021, p. 384.

12 András Koltay, ‘The Freedom and Restriction of Blasphemy: Theoretical Perspectives’ in Jeroen Temperman & András Koltay (eds.), *Blasphemy and Freedom of Expression*, Cambridge University Press, Cambridge, 2018, p. 228.

13 Bernát Török, ‘Védhetjük-e a vallás(os)okat a blaszfémiától?’ in András Koltay & Bernát Török (eds.), *Sajtószabadság és médiajog a 21. század elején*, Complex, Budapest, 2014, pp. 198–199.

14 Id. p. 200.

15 Koltay 2018, p. 236.

the Court of Cassation ruled that the artist had not intended to offend believers with the painting. According to the Supreme Court, the image was an artistic work, the publication of which was within the scope of freedom of expression. The parody of a religious symbol does not harm believers, since its purpose is not to offend them but to create a new art.

Also in France, a poster with the slogan “*Sainte Capot protège nous*” (Saint Condom, protect us) was published in the fight against AIDS. The Toulouse Court of Appeal ruled at first instance that the poster offended the religious sensibilities of believers. However, the Court of Cassation concluded that, since the poster was not meant to offend the Catholic community, its prohibition was unjustified.

5. The Jurisprudence of the ECtHR in Blasphemy Cases

5.1. The External Side: Speech Infringing Religious Feelings

The external side of blasphemy is to examine which communications are even capable of objectively violating the dignity of the religious community. According to Török's summary,

“while there is consensus on the need to take action against incitement, and arguments both for and against limiting vilification are regularly made, there is almost unanimous agreement among scholars that nothing should be done about speech that falls below this threshold”.¹⁶

Now the question arises where that ‘threshold’ is, *i.e.* what are the expressions that may deemed insults. Analysing the case-law of the ECtHR leads us to the criteria below.

5.1.1. Is the Criticism Objective?

A recurring element in the ECtHR's practice is whether criticism is “unduly offensive”. In general, one may conclude that disagreement and criticism in itself enjoys the protection of freedom of expression. In *Giniewski*,¹⁷ an expression questioning papal infallibility and analysing the link between the Catholic Church and the Holocaust was considered to fall within the

16 Török 2014, p. 195.

17 *Giniewski v France*, No. 64016/2000, 31 January 2006.

scope of the freedom of expression. It can therefore be concluded that not only the content of the given expression, but also the manner in which it is made is relevant in determining whether it falls under the protection of Article 10 of the Convention.

5.1.2. Is the Criticism Personal?

One should distinguish between the criticism of ideas, intellectual products and the criticism aimed at individuals. All ideas (including religion and religious beliefs) are open to criticism, and anyone is free to express an opinion, even a strongly critical one, on scientific, public or any other writings, pictures or any other forms of communication. No one has a fundamental right not to be confronted with opinions that are contrary to their beliefs.¹⁸ In fact, such debates promote the pluralism of society and the survival of democracy, and *vice versa*: it is against democratic discourse when legislation and law enforcement do not allow for the free exchange of opinions and convictions.

Freedom of expression is justified differently when criticism is directed at the individual rather than at an idea, and the debate turns personal. It is therefore different to criticise a religion and to criticise religious persons for their beliefs and convictions. In the latter case, it is justified for the individual to defend their dignity and reputation.

5.1.3. Who Is the Target Audience of the Expression?

The perception of an expression is also influenced by who its addressees are; the audience to whom it is addressed and to whom it is made available. It makes a difference whether the expression violates the general good or the dignity of a community. Of course, the dignity of the community must be protected even if the expression does not offend others, but it is important who the expression is originally addressed to. In *Otto-Preminger-Institut*, the ECtHR found it important that the film, which offended religious sensibilities, was intended to be shown in the predominantly Catholic

¹⁸ Emese Szilágyi, 'Nem tréfadolog – Karikatúra-ügyek a strasbourgj mérlegen' in Szilvia Köbel & Zoltán Tóth J. (eds.), *100 éves a magyar iszlámtörvény*, KRE ÁJK, Budapest, 2017, pp. 157 and 160.

Tyrol.¹⁹ Similarly, in *Klein*, the ECtHR took into account that the expression insulting the Slovak bishop was published in an intellectual newspaper, in a deliberately slang style.²⁰

5.1.4. Is the Speech Part of a Public Debate?

In general, political communication in the broader sense, which affects the functioning of society, is subject to increased protection. If the Church or people speaking in the name of the church are involved in the social debate, they must, like other public actors, be able to withstand strong criticism,²¹ especially if the public figures themselves publicly proclaim their religiousness.

5.2. The Inner Side of Blasphemy: the Believers' Dignity

One of the criteria for determining the scope of protection of freedom of expression is the nature of the expression. Another is how it affects the personal rights and dignity of the religious community or the religious person.

Török points out that the sense of offence is subjective; what one person laughs at or shrugs off may be an outrageous defamation of religion for another. That is why, in his view, the focus should not be on the subjective offence, but on the religious convictions held by the believers, whether the communication concerns the believers' faith, the beliefs that give religion its essence or some relevant element thereof.²² This solution seems convincing but there is an important concern: it necessarily leaves it to the secularized state power, the secular courts and legislature, to decide whether a symbol or dogma belongs to the core of religion or not. As long as this relationship is a well-known fact, the position of the secular power is acceptable, but many questions arise where it is not clear whether it is a central element of faith. And of course there are several instances where there is a debate within the community of believers, where there is no established consensus.

In such cases, if the constitutional protection of free speech is extremely narrow if it does not allow for the criticism of, or offending any beliefs.

19 *Otto-Preminger-Institut v Austria*, No. 13470/87, 20 September 1994, para. 56.

20 *Klein v Slovakia*, No. 72208/01, 31 October 2006, para. 48.

21 Schanda 2021, p. 388.

22 Török 2014, pp. 203–204.

Even Protestantism that dominates many parts of Europe could not have emerged by this logic, since it began by questioning important parts of Catholic beliefs.

That is why the subjective aspect cannot be ignored: how much the believers themselves consider the expression to be offensive, to be an affront to their religious identity. The combination of subjective and objective sides can help determine whether there is a stronger constitutional interest supporting the protection of free speech, or conversely, its restriction.

6. The Hungarian Blasphemy Cases

Contrary to the French view, Hungarian legislation is more rigorous in protecting religion and the dignity of religious communities. Over the past decade, the Hungarian Constitutional Court was faced with three cases in which it had to decide the conflict between free speech and the protection of religious communities.

6.1. The Adoration of the Shepherds Case

In 2014 the Christmas edition of the Hungarian weekly newspaper HVG presented a picture on its cover titled “Grand Theft Christmas”.²³ The cover featured a caricature in the vein of Gerard Van Honthorst’s “The Adoration of the Shepherds”, where the faces of the original characters were replaced by those of public figures, and the image of the baby Jesus was replaced by a pile of gold coins.

A former Member of Parliament brought an action against HVG, claiming that the picture violates the personal rights, honour and dignity of members of the Catholic community. Both the court of first instance and the court of appeal, as well as the Curia in the review proceedings decided that the image falls under the freedom of expression and dismissed the action. Subsequently, the same MP lodged a constitutional complaint.

The Constitutional Court in its *Decision No. 7/2021. (II. 19.) AB* rejected the petition. It pointed out that

²³ Originally: Nagy Harácsony. In Hungarian there is only one character difference between Christmas (Karácsony) and the aggressive collection of fortune (Harács); the cover mixed the two in the caricature.

“when discussing public affairs, especially when the aim is to control public power or those exercising public power and to inform and draw the attention of public opinion, the form and style of expression chosen must not be inconsistently or excessively offensive, but criticism, irony, a certain degree of provocation, and, where appropriate, mildly offensive or insulting statements remain protected by the freedom of expression”.²⁴

It also stated that

“the message, the purpose or the degree of offence or harm of a given expression must be assessed with due care, in addition to the content and form of the expression in question, in the light of its context within the medium and the social environment. If a community in our country has historically been subjected to serious offences, or if it is currently subject to repeated attacks, the dignity of that community within society may be considered to be more vulnerable”.

The Constitutional Court agreed with the *Kúria*’s view that the authors of the picture had expressed a political opinion and that “it was neither aimed at insulting Christians nor did it convey a negative value judgement regarding believers”.²⁵

6.2. Demonstration against the Polish Abortion Regulation

Decision No. 6/2021. (II. 19.) AB decided in the case of a demonstration that had been organized against the Polish Catholic church supporting the complete ban on abortion in Poland. During this performance, which was later published on the internet, one of the demonstrators, feigning the act of communion, placed a white pill from a bag marked ‘abortion pill’ on the tongue of the other two defendants, uttering the statement “the body of Christ”. The Metropolitan Court dismissed the action. Upon appeal by the plaintiffs, the Budapest Court of Appeal overturned the judgment of the court of first instance and found that the defendants had violated the plaintiffs’ human dignity and right to freedom of religion. In its judgment, the *Kúria* set aside the judgment of the court of second instance and upheld the judgment of the first instance court. In its reasoning, the court of first instance pointed out that, in the social debate on the authorisation

²⁴ Decision No. 7/2021. (II. 19.) AB, Reasoning [31].

²⁵ Id. Reasoning [37].

of abortion, the Church, its members and the members of the religious community concerned, who express their views firmly, are obliged, like other public figures, to tolerate strong criticism on a wider scale. However, the Constitutional Court has stressed that

“assessments and criticisms of the religious community expressed in a public matter may by their very nature also affect members of the religious community who do not take part in the public debate. Nevertheless, it cannot be justified that, in general, the protection of the dignity of members of the religious community, by reason of their very membership of the community, be restricted to the degree as that of representatives of the religious community who participate in public life”.²⁶

The Constitutional Court therefore made a distinction between mockery of the Church and mockery of believers; holding that the Church’s opinion on public matters could be criticised in the same way as that of public figures, but that this did not mean that the believers’ religious convictions could be criticised to the same extent.

6.3. The Daily Drawing Case

At the end of 2022 the Constitutional Court was faced with quite a similar case as the one it had decided in the “Grand Theft Christmas” and the abortion demonstration case.

The Hungarian political newspaper Népszava published a caricature on 28 April 2020 called “Chronic” on its Daily Drawing column. In the left hand corner of the caricature stood the national medical officer, standing behind the lectern used at press conferences, and on the right is Jesus Christ crucified. The caricature shows the doctor looking at Christ on the cross with the following sentence in the text bubble above his head: “His primary disease was crucifixion”.²⁷

26 Decision No. 6/2021. (II. 19.) AB, Reasoning [34].

27 In Hungarian the same word may mean dependency and to hang. To change the mock to English: the message is if one would refer Christ’s crucifixion as hangover. The picture referred that during Covid the numbers of diseased and deaths were not real as they always referred to the primary diseases when they intended to minimise the risk of Covid.

A Member of Parliament initiated proceedings before the court, arguing that the caricature violated the personality rights of Christian communities and the dignity of the religious community, because it caricatured the death of Jesus on the cross. The court of first instance dismissed the action because it considered that the expression mocked the communication typically conveyed by the competent national agency for disease control, not a religious symbol or event. The court of appeal, however, reversed the judgment, holding that the depiction of Jesus in the context of the epidemic was not a political expression and that the Christian denominations had not expressed their views on the epidemic. Upon review, the *Kúria* upheld the judgment of the court of appeal. It held that the use of a religious symbol in a caricature is arbitrary and self-serving if it contributes nothing to the discussion of public affairs.

Decision No. 3488/2022. (XII. 20.) AB stated that “the subject of the mockery is not religious, instead, it relates to government information and communication regarding Covid”,²⁸ nevertheless, it displayed a negative attitude towards believers. The Constitutional Court found that “all Christian communities place the death (and resurrection) of Jesus at the centre of their theology and build their whole thought system around this event”, and the caricaturing of this central element of faith must be appreciated by law.²⁹ The Constitutional Court also pointed out that there was no clear link between the communication of the political event (the information about Covid) and the depiction of the religious symbol, so that, in the absence of a logical link, the text offending religious sensibilities was self-serving.³⁰ The Constitutional Court therefore shared the view of the *Kúria* that the use of a religious symbol is not protected by freedom of expression in case it does not contribute anything to the discussion of public affairs, and rejected the petition.

On face value, the Daily Drawing case is similar to the Grand Theft Christmas and the demonstration cases. The fact that the Constitutional Court decided the case in panel without dissenting and concurring opinions (while there were many of them in the earlier cases) seems also to support the statement. In fact, the ruling is not that simple; in certain ways the Court refined its earlier position, some other ways it overruled it.

²⁸ Decision No. 3488/2022. (XII. 20.) AB, Reasoning [34].

²⁹ Id. Reasoning [35].

³⁰ Id. Reasoning [37].

The Daily Drawing case is ‘somewhere between’ the earlier two; it directly contained a religious symbol (Jesus on the cross), unlike the Grand Theft Christmas case, which only made a reference to religion. On the other hand, the mockery did not have a religious purpose (it targeted a specific doctor and the government), unlike the demonstration case which willingly mocked the believers. The Court decision shows that they find a mockery as religious also when the mockery of religion is ‘side-effect’; does not target the religion but results it.

In these situations the Constitutional Court examines two aspects: (i) how closely the depiction is related to religion, and (ii) whether the depiction is directly related to a public issue. The Constitutional Court held that in the Daily Drawing case, the communication was not protected by freedom of expression because it was related to a central element of the Christian faith and the depiction of Jesus did not help to understand the (otherwise political) expression related to the Covid, in addition it did not contain a political message *per se*.

What is missing from the decision is that the Constitutional Court did not examine the context of the communication, when it was made public and to what audience. The Daily Drawing, as a political cartoon column in a notoriously left-wing media product, and it regularly contains articles on public affairs, mocking politicians, which is precisely the genre of the column. The “Chronic” caricature, which was the subject of a Constitutional Court case, was evaluated by the courts and the Constitutional Court as such, not as an element of the column.

It is precisely because of this procedure that the controversial publication of the Daily Drawing became widely known to members of the religious community.

7. To Conclude

The French and Hungarian cases also show that the boundaries of the freedom of expression can be drawn in very different ways. Based on the case law of the ECtHR, it is clear that there is no uniform standard in Europe to adjudicate depictions and expressions that offend religious sensibilities. The case-law shows that there is a great margin of appreciation; even severe restrictions of free speech might be in line with the Convention in case it offends believers. In its assessment, the ECtHR seems also to consider extra-legal aspects, such as the tradition, culture and the religiousness of the

country. However, it is not easy to decide in the conflict of free speech and the protection of religious communities. Not only legislators and judges, but scholars are also divided.

Some are of the view that freedom of expression and free communication are essential in society. It is a core value of democracy; in lack of which any social system quickly becomes authoritarian. Moreover, all scientific progress begins by questioning what prevailing dominant beliefs: if the foundations of science and society could not have been questioned, we would still believe that the Earth is flat or that women should not have the right to vote. Freedom of opinion, whether popular or not, is also the key to the progress of science. This is also true of expressions that offend religious sensibilities, mock or ridicule religion. Where there are taboo topics in the society, democracy no longer exists.

Some on the other hand, are more in favour of the protection of religious communities. They claim that Europe's history is full of wars and repression on religious grounds, from the Roman Empire, through the Counter-Reformation and the Crusades, to Communist dictatorship. Members of religious communities may be concerned, not only out of sensitivity but also out of historical experience, when their religion and religiosity come under verbal attack. They are concerned that verbal attacks may lead to severe conflicts and that there is a direct link between blasphemy and the radicalisation of certain religious groups. Pragmatically, law is to secure peace within the community and if the restriction of free speech yields peace, it is worth paying the price.

Constitutional law and human rights jurisprudence can only provide criteria for determining the correct level of protection, everything else is the responsibility of the society and the individual.