



## Odborný článek

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# **Restriction of Religiously Insensitive Expressions or Between Violence and Intolerance – ‘Je suis Charlie’ slogan**

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## Abstrakt

Podle judikatury Evropského soudu pro lidská práva je úkolem státu zajistit, aby si navzájem tolerantně počínaly i skupiny stojící v opozici, přičemž naplnění tohoto cíle však dosud nemá v rozhodovací praxi Soudu zcela jasné kontury. Tento článek se zabývá reakcemi na útok islámských fundamentalistů na redakci časopisu *Charlie Hebdo*, zejména masovým užíváním sloganu „Je suis Charlie“. Cílem představení tohoto případu je posoudit, zda uvedený slogan mohl představovat projev nenávisti či intolerance vůči muslimům. Pozornost je věnována otázce, zda a jakým způsobem by měl být při hodnocení nábožensky necitlivých projevů zohledněn kontext konkrétního případu, zejména povaha původního projevu (karikatury) a okolnosti, za nichž byl projev učiněn (teroristický útok).

**Klíčová slova:** svoboda projevu, ochrana náboženského cítění věřících, nábožensky urážlivý projev, nenávistný projev, „Je suis Charlie“, terorismus, přecitlivělost, karikatura, výsměch

## Abstract

According to the ECtHR the task of the state is to ensure that opposing groups tolerate each other, but the fulfilment of this intention still does not have clear contours in its case-law. This article discusses reaction to the attack by Islamic fundamentalists at the offices of Charlie Hebdo – massively used ‘Je suis Charlie’ slogan. The aim of the introduction of the case will be to find out whether it could have been an expression of hatred and intolerance against Muslims. The question will be whether and how the context of the case should be taken into account when assessing religiously insensitive speeches, in particular the nature of the original speech (caricature) and the circumstances in which the speech was made (terrorist attack).

**Key words:** freedom of expression, protection of the religious feelings of believers, religiously offensive speech, hate speech, ‘Je suis Charlie’, terrorism, hypersensitivity, caricature, laughter

## Introduction

In its case law, the ECtHR has repeatedly stated that “one of the principal characteristics of democracy is the possibility it offers of resolving a country’s problems through dialogue, without recourse to violence, even when they are irksome”<sup>1</sup> and that it is not the task of the state “to remove the cause of tension... but to ensure that the competing groups tolerate each other”<sup>2</sup>. It is an expression of the fact that the immanent feature of any pluralistic democratic state is necessarily the presence of mutually discordant groups of subjects. For all these entities to feel that they are full-fledged members of society, and at the same time to prevent riots in the territory of the contracting states of the Council of Europe, the ECtHR formulates certain rules for peaceful coexistence. To this end, when assessing manifestations capable of offending religious beliefs, it arises in the context of Article 9 and Article 10 of the ECtHR with three categories of peace. It identifies three potential ways in which this peaceful coexistence could be disrupted. It mentions religious, social and civil peace. However, it is not entirely clear from its case-law how it specifically makes the difference between these three categories of measure, nor under what specific conditions each category of measure is applicable. Even so, it can be inferred that the primary objective of the ECtHR in this context is to ensure that the guaranteed rights and freedoms are not exercised in an abusive manner, i.e., that there is no discrimination and violation of tolerance, that it is not a forceful attack aimed at a certain group of believers because of their particular religious beliefs, and that all unrest in society is eliminated to the greatest possible extent. The fulfilment of these intentions still does not have clear contours in the case-law of the ECtHR.

In this article, I analyse the reaction to a case that fundamentally affected peaceful coexistence in the territory of the Council of Europe contracting states. This will be the case of the publication of caricatures of the Prophet Mohammed by the Charlie Hebdo magazine in France. In this case, Islamic fundamentalists responded to the speech with a terrorist attack targeting the magazine’s editorial office. Condemnation of terrorism and support for the victims of this attack subsequently united under the massively used slogan ‘Je suis Charlie’. In the context of the events to which this slogan responded, it would be entirely natural to interpret it in one of two ways. Either as sympathy with the victims of the attack of Islamic fundamentalists, or as an effort to emphasise that any act of violence aimed at influencing certain attitudes, in this case influencing the limits of freedom of speech, cannot be successful in a democratic state. However, another possible interpretation is suggested by Cox, who opines that the slogan

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<sup>1</sup> See, e.g., Judgment of the ECtHR of 30 January 1998, *United Communist Party of Turkey and Others v. Turkey*, Case No 19392/92, ECLI:CE:ECHR:1998:0130JUD001939292, par. 57. Judgment of the ECtHR of 25 June 2024, *Ukraine v. Russia (re Crimea)*, Case No 20958/14, 38334/18, ECLI:CE:ECHR:2024:0625JUD002095814, par. 1066. Judgment of the ECtHR of 25 May 1998, *Socialist Party and Others v. Turkey*, Case No 21237/93, ECLI:CE:ECHR:1998:0525JUD002123793, par. 45.

<sup>2</sup> See, e.g., Judgment of the ECtHR of 1 July 2014, *S.A.S. v. France*, Case No 43835/11, ECLI:CE:ECHR:2014:0701JUD004383511, par. 127. Judgment of the ECtHR of 14 December 1999, *Serif v. Greece*, Case No 38178/97, ECLI:CE:ECHR:1999:1214JUD003817897, par. 53. Judgment of the ECtHR of 10 November 2005, *Leyla Şahin v. Turkey*, Case No 44774/98, ECLI:CE:ECHR:2005:1110JUD004477498, par. 107.

could represent an attack on the Muslim identity.<sup>3</sup> It is based on the cartoons of the magazine that led to the events, and which evoked a number of negative feelings in Muslims, ranging from suffering to fears of possible growing intolerance towards their religious community.<sup>4</sup> Objections to the use of the slogan 'Je suis Charlie', which smacked of a similar consequence, were also voiced by others. Lennard<sup>5</sup>, Hayes<sup>6</sup>, Saeed<sup>7</sup> and Laborde<sup>8</sup> warned of the danger of a bipolar division of the world, i.e. 'us' and 'them', or that the failure to adopt the slogan as one's own, for example, due to the possible intolerance of the published cartoons, may be accepted by society as an insufficient condemnation of a terrorist attack. Therefore, the perception of the entry in question has never been unambiguous.

The aim of this article is to consider, in connection with the use of the 'Je suis Charlie' slogan and in connection with Cox's considerations, whether and how the context of the case should be taken into account when assessing religiously insensitive speeches, in particular the nature of the original speech (caricature) and the circumstances in which the speech was made (terrorist attack). The analysis will be applicable to the assessment of any religiously insensitive speech. However, it can be particularly useful when considering whether speech can contribute "to any form of public debate capable of furthering progress in human affairs"<sup>9</sup>. In its case law, the ECtHR provides greater protection to political speech and those that affect the public interest.<sup>10</sup> At the same time, it automatically associates the inability of a certain speech

<sup>3</sup> COX, Neville. Pourquoi Suis-Je Charlie? Blasphemy, Defamation of Religion, and the Nature of 'Offensive' Cartoons. *Oxford Journal of Law and Religion*, 2015, Vol. 4, No. 3, pp. 343–345, 367. Cited on 26. 3. 2024. Available online at: <https://academic.oup.com/ojlr/article-abstract/4/3/343/1557343>.

<sup>4</sup> Ibid., pp. 343–367.

<sup>5</sup> LENNARD, Natasha. 'Je Suis Charlie' and 'Je Ne Suis Pas Charlie' Are Both the Wrong Response to the Paris Massacre. *vice.com*, published on 13. 1. 2015, cited on 20. 3. 2025. Available online at: <https://www.vice.com/en/article/je-suis-charlie-and-je-ne-suis-pas-charlie-are-both-the-wrong-response-to-the-paris-massacre/>.

<sup>6</sup> HAYES, Ben. No, we're not all Charlie Hebdo, nor should we be. *opendemocracy.net*, published on 9. 1. 2015, cited on 15. 3. 2025. Available online at: <https://www.opendemocracy.net/en/no-were-not-all-charlie-hebdo-nor-should-we-be/>.

<sup>7</sup> SAEED, Sadia. The "Charlie Hebdo" Affair and the Spectre of Majoritarianism. *Economic and Political Weekly*, 2015, Vol. 50, No. 23, p. 37. Cited on 5. 3. 2025. Available online at: <https://www.jstor.org/stable/24482288>.

<sup>8</sup> AMESBURY, Richard. BANGSTAD, Sindre. BARRAS, Amélie. CESARI, Jocelyne. DAVIE, Grace. JUERGENSMEYER, Mark. LABORDE, Cécile. LLOYD, Vincent. MODOOD, Tariq. MOOSA, Ebrahim. SHERWOOD, Yvonne. STRENSKI, Ivan. TAYLOR, Charles. TEMPERMAN, Jeroen. WALTON, Jeremy F. Values and violence: Thoughts on Charlie Hebdo. *tif.ssrc.org*, published on 17. 2. 2015, cited on 15. 3. 2025. Available online at: <https://tif.ssrc.org/2015/02/17/values-and-violence-thoughts-on-charlie-hebdo/>.

<sup>9</sup> See, e.g., Judgment of the ECtHR of 20 September 1994, *Otto-Preminger-Institut v. Austria*, Case No 13470/87, ECLI:CE:ECHR:1994:0920JUD001347087, par. 49, Judgment of the ECtHR of 4 December 2003, *Gunduz v. Turkey*, Case No 35071/97, ECLI:CE:ECHR:2003:1204JUD003507197, par. 37, Judgment of the ECtHR of 28 October 2014, *Gough v. The United Kingdom*, Case No 49327/11, ECLI:CE:ECHR:2014:1028JUD004932711, par. 167.

<sup>10</sup> See, e.g., Judgment of the ECtHR of 23 June 2016, *Baka v. Hungary*, Case No 20261/12, ECLI:CE:ECHR:2016:0623JUD002026112, par. 159. Judgment of the ECtHR of 27 June 2017, *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland*, Case No 931/13, ECLI:CE:ECHR:2017:0627JUD00093113, par. 167. Judgment of the ECtHR of 25 November 1996, *Wingrove v. The United Kingdom*, Case No 17419/90, ECLI:CE:ECHR:1996:1125JUD001741990, par. 58.

to contribute to public debate with speech that is religiously offensive without any reason.<sup>11</sup> In addition, it examines the question of the effectiveness of speech when considering whether the speech constitutes inadmissible hate speech. In such cases, it considers whether the intention of the speech was to express himself on issues of public interest or, on the contrary, to incite violence and intolerance.<sup>12</sup> On the one hand, the mass use of the 'Je suis Charlie' slogan may be evidence of widespread and possibly rooted hatred against Muslims, so de facto it may be an attack on their identity, as Cox claims. The second explanation, which perceives the slogan in question as an expression of solidarity with the victims of the attacks, or as a condemnation of the terrorists' efforts to influence the limits of freedom of speech, on the other hand, testifies to the need to express oneself on a question of fundamental social importance. I will try to explain which of these two cases is more likely in this article.

In the first part of this article, I will outline the position of this court on the assessment of religiously insensitive speech through several decisions of the ECtHR. On the one hand, I will mention the protection of the religious feelings of believers and the allegedly inadmissible gratuitous offensiveness of speech. On the other hand, I will describe the criteria for assessing speech inciting hatred and intolerance. The aim of this part of the article will be to outline the approach of the ECtHR to the assessment of speeches concerning the religious beliefs of believers and expressions against hateful believers. Attention will primarily be paid to whether and how the ECtHR takes into account their context when assessing these speeches, i.e., whether it is important for it in these considerations or whether there are other criteria to which it pays attention, and if so, whether they can be sufficient for a decision.

In the second part of the article, I will then present two of Cox's arguments in support of the claim that the use of the 'Je suis Charlie' slogan constituted an attack not on the faith of Muslims, but on their identity. Cox's first argument is on the issue of comparability. According to Cox, the mass use of the 'Je suis Charlie' slogan cannot only condemn the violent reaction to the Charlie Hebdo cartoons and express solidarity with the victims of the attack. The reason, according to Cox, is that a similarly massive response is absent in other cases where human lives are at stake.<sup>13</sup> Cox's second argument refers to the nature of the published cartoons that preceded the terrorist attack, and to which the 'Je suis Charlie' slogan essentially refers.<sup>14</sup> According to Cox, the cartoons did not just ridicule an object of worship among believers, but partially evoked the impression of a connection between Islam and terrorism.<sup>15</sup> With regard to the content of Cox's arguments, I will primarily focus on the question of the meaning of the characteristics of the speech and the circumstances in which the speech consisting in the use of the 'Je suis Charlie'

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<sup>11</sup> See, e.g., *Otto-Preminger-Institut v. Austria*, par. 49, *Wingrove v. The United Kingdom*, par. 52, *Gunduz v. Turkey*, par. 37.

<sup>12</sup> See, e.g., *Gunduz v. Turkey*, par. 44, Judgment of the ECtHR of 17 July 2018, *Mariya Alekhina and Others v. Russia*, Case No 38004/12, ECLI:CE:ECHR:2018:0717JUD003800412, par. 211–230.

<sup>13</sup> COX. *Pourquoi Suis-Je Charlie?*, p. 344. COX, Neville. Understanding 'Je suis Charlie'. *Studies: An Irish Quarterly Review*, 2016, Vol. 105, No. 418, p. 154. Cited on 26. 9. 2024. Available online at: <https://www.jstor.org/stable/24871659>. COX, Neville. The Freedom to Publish 'Irreligious' Cartoons. *Human Rights Law Review*, 2016, Vol. 16, No. 2, pp. 195–221. Cited on 26. 9. 2024. Available online at: <https://academic.oup.com/hrlr/article-abstract/16/2/195/2356207?redirectedFrom=fulltext>.

<sup>14</sup> COX. *Pourquoi Suis-Je Charlie?* ..., p. 345. COX. *The Freedom to Publish...*, p. 199.

<sup>15</sup> *Ibid.*

*slogan was made. At the same time, I will try to think about whether Cox's conclusions are not too simplistic, or whether he does not omit certain facts. If that were the case, the conclusion that the massively used 'Je suis Charlie' slogan was hateful in this case would be based on an insufficient assessment of the individual circumstances of the case.*

*The case of the 'Je suis Charlie' slogan was chosen for this analysis because it stands out among a number of religiously insensitive manifestations, both in its extraordinary seriousness and in its global impact. Therefore, it represents suitable object for research into generally applicable conditions for maintaining peaceful coexistence in the context of religiously insensitive manifestations. The fact that it is one of the borderline cases of disruption of peaceful coexistence can help to better understand the potential risks of the approach of restricting freedom of expression to protect religion in a situation where it cannot be considered that the speech was intended to incite hatred and intolerance.*

## 1. The ECtHR's approach to assessing religiously insensitive speech

In its case-law, the ECtHR does not always approach the assessment of religiously insensitive expressions in the same way. In some cases, it sanctifies the restriction of freedom of speech without requiring proof of any threat to any of the legally protected property. It is content to refer to the number of believers who may have been affected by a particular speech.<sup>16</sup> In other cases, its considerations are aimed at determining whether the speech could have led to incitement of hatred and intolerance.<sup>17</sup> I will focus on the first approach of the ECtHR in particular from the case perspective of *Otto-Preminger-Institut v. Austria*, *I.A. v. Turkey* and *E.S. v. Austria*. I will primarily bring the issue of incitement to hatred and intolerance closer through the decisions of *Mariya Alekhin and Others v. Russia* and *Rabczewska v. Poland*.

Protection of religious feelings of believers, gratuitously offensive speeches and satirical nature of the work in the case of *Otto-Preminger-Institut v. Austria*

The first case that will be mentioned in this part is that of *Otto-Preminger-Institut v. Austria*. In it, the ECtHR addressed the issue of religiously insensitive speech for the first time, through the lens of Articles 9 and 10 of the ECHR. However, in other decisions of the ECtHR concerning the assessment of such speeches, the ECtHR makes do with reference to Article 10 of the ECHR and the legitimate objective of protecting the rights of others.<sup>18</sup>

In the *Otto-Preminger-Institut v. Austria* case, the ECHR assessed the film adaptation of Oskar Panizza's satirical tragedy. In it, God the Father, the Virgin Mary and Jesus Christ were depicted in an unflattering way.<sup>19</sup> The mere presence of the Catholic faith by the "overwhelming majority of Tyroleans"<sup>20</sup>, without the need for any further evidence was used by the ECtHR as

<sup>16</sup> See, e.g., *Otto-Preminger-Institut v. Austria*, par. 56, Judgment of the ECtHR of 13 September 2005, *I.A. v. Turkey*, Case No 42571/98, ECLI:CE:ECHR:2005:0913JUD004257198, par. 20, 24, 29, 30.

<sup>17</sup> See, e.g., Judgment of the ECtHR of 15 September 2022, *Rabczewska v. Poland*, Case No 8257/13, ECLI:CE:ECHR:2022:0915JUD000825713, par. 51.

<sup>18</sup> See, e.g., *I.A. v. Turkey*.

<sup>19</sup> *Otto-Preminger-Institut v. Austria*, par. 10, 21.

<sup>20</sup> *Ibid.*, par. 56.

*an argument in favour of the protection of religious peace in Austria*.<sup>21</sup> It thus sanctioned the restriction of freedom of expression in the form of seizure and forfeiture of the work in question.<sup>22</sup> Such a serious interference with freedom of expression was necessary, according to the ECtHR, despite the fact that the problematic film was only to be screened six times, in an art cinema after 10 p.m., or in one case after 4 p.m., only to persons over 17 years of age.<sup>23</sup>

The ECHR also left aside the author of the bill and its contents. These were circumstances of the case that could have been of fundamental importance for its assessment. In this work, Oskar Panizza pointed out the “undivine” qualities of church representatives.<sup>24</sup> He was also sentenced to imprisonment<sup>25</sup> for one year<sup>26</sup> for publishing this work. In this context, his work and the film adaptation in question could be understood as a way of expressing oneself on the nature of religion and its role in society, i.e., on issues of considerable social importance.

In the case of *Otto-Preminger-Institut v. Austria*, the ECtHR also stated that it is necessary to avoid, as far as possible, expressions that are gratuitously offensive.<sup>27</sup> According to the ECtHR, they “do not contribute to any form of public debate capable of furthering progress in human affairs”<sup>28</sup>. According to the ECtHR, a malicious way of expressing oneself is inadmissible, such as an offensive, inappropriate or blasphemous attack on things, objects and figures considered sacred by believers.<sup>29</sup> Thus, the ECtHR allegedly refuses to provide protection to speech that crosses the line of “denial by others of their religious beliefs”<sup>30</sup>. Such an approach of the ECtHR may have serious consequences, especially when assessing artistic expressions. If we evaluate a certain speech as unreasonably offensive and therefore inadmissible, we can resign ourselves to identifying its possible social overlap. In its case-law, the ECtHR recognises the need to maintain the widest possible protection of speech affecting the public interest, or political speech.<sup>31</sup> However, by allowing the restriction of religiously offensive, inappropriate or blasphemous speech by referring to its unjustified offensiveness, it does not take much account of the importance of such speech in religiously insensitive cases. This consequence is not only evident here in the case of *Otto-Preminger-Institut v. Austria*, where the ECHR was confronted with the satirical nature of the speech, but also in other cases.

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<sup>21</sup> Ibid.

<sup>22</sup> Ibid., par. 56, 57.

<sup>23</sup> Ibid., par. 10.

<sup>24</sup> Ibid., par. 10, 21.

<sup>25</sup> Ibid., par. 20.

<sup>26</sup> LIEB, Claudia. Freedom of Satire? Oskar Panizza’s Play *Das Liebeskonzil* in a Series of Trials in Germany and Austria. In: GRÜTTEMEIER, Ralf ed. *Literary Trials: Exceptio Artis and Theories of Literature in Court*. London, New York: Bloomsbury Academic, 2016, p. 107.

<sup>27</sup> *Otto-Preminger-Institut v. Austria*, par. 49.

<sup>28</sup> Ibid.

<sup>29</sup> See, e.g., *Otto-Preminger-Institut v. Austria*, par. 49, *I.A. v. Turkey*, par. 24, 29, 30. Judgment of the ECtHR of 25 October 2018, *E.S. v. Austria*, Case No 38450/12, ECLI:CE:ECHR:2018:1025JUD003845012, par. 43.

<sup>30</sup> See, e.g., *Otto-Preminger-Institut v. Austria*, par. 47, *E.S. v. Austria*, par. 43.

<sup>31</sup> See, e.g., *Baka v. Hungary*, par. 159, *Wingrove v. The United Kingdom*, par. 58.

*The ECtHR generally recognises satire as a means of legal ridicule<sup>32</sup>, or as a way of engaging in public debate<sup>33</sup>. In the case of Vereinigung Bildender Künstler v. Austria, for example, it attributes to satire, despite its provocativeness, the character of social commentary.<sup>34</sup> However, it does not place greater emphasis on its importance for democracy.<sup>35</sup> Thus, it is possible to agree with Kuhn<sup>36</sup> and Leigh<sup>37</sup> that the ECtHR does not really protect artistic expression in its case-law.*

It can be assumed that the difficulties in assessing the satirical nature of a work are caused by the impossibility of an unambiguous interpretation of such a speech. Nevertheless, it should be possible to identify certain criteria that could help us clarify the expression under consideration. Chovanec and Tsakony generally identify five factors that should be relevant in relation to the assessment of humorous speeches.<sup>38</sup> First, they say it is necessary to find out whether certain elements of humour can be seen in the speech.<sup>39</sup> Second, it is necessary to understand how the speech was interpreted by the addressees, i.e., whether they understood its message and what attitude they took to the speech.<sup>40</sup> The third criterion consists in finding the social characteristics of the authors and addressees of the speech on the one hand, and the community as a whole, on the other hand.<sup>41</sup> Fourth, the purpose of the use of humour must not be ignored.<sup>42</sup> Fifth, it is necessary to distinguish which genre was involved in the given case.<sup>43</sup>

Following a number of decisions of the ECHR, and partly also the analysis of Chovanec and Tsakokna, Godioli, Yong and Fiori formulate five aspects essential for assessing the context

<sup>32</sup> Judgment of the ECtHR of 25 January 2007, *Vereinigung Bildender Künstler v. Austria*, Case No 68354/01, ECLI:CE:ECHR:2007:0125JUD006835401, par. 33.

<sup>33</sup> Ibid., Judgment of the ECtHR of 30 October 2018, *Kaboğlu and Oran v. Turkey*, Case No 1759/08, 50766/10, 50782/10, ECLI:CE:ECHR:2018:1030JUD000175908, par. 79.

<sup>34</sup> *Vereinigung Bildender Künstler v. Austria*, par. 33.

<sup>35</sup> For a detailed analysis, see, e.g., HUSSAIN, Hatim. SANGHI, Sanskriti. Irreverence Intended? Destabilizing ‘Intent’ as Determinative in Discourse around Satire at the ECtHR. *Pécs Journal of International and European Law*, 2022, Vol. 2022, No. 1, pp. 8–21. Cited on 5. 3. 2025. Available online at: [www.heinonline.org](http://www.heinonline.org).

<sup>36</sup> KUHN, Philippe Yves Kuhn. Reforming the Approach to Racial and Religious Hate Speech Under Article 10 of the European Convention on Human Rights. *Human Rights Law Review*, 2019, Vol. 19, No. 1, pp. 124–125. Cited on 2. 3. 2025. Available online at: <https://doi.org/10.1093/hrlr/ngz001>.

<sup>37</sup> LEIGH, Ian. Damned if they do, Damned if they don’t: the European Court of Human Rights and the Protection of Religion from Attack. *Res Publica*, 2011, Vol. 17, p. 70. Cited on 2. 3. 2025. Available online at: <https://doi.org/10.1007/s11158-011-9143-5>.

<sup>38</sup> CHOVANEC, Jan. TSAKONA, Villy. Investigating the dynamics of humor: Towards a theory of interactional humor. In: TSAKONA, Villy, CHOVANEC, Jan eds. *The Dynamics of Interactional Humor: Creating and negotiating humor in everyday encounters*. Amsterdam, Philadelphia: John Benjamins Publishing Company, 2018, pp. 3–8.

<sup>39</sup> Ibid., pp. 3–4.

<sup>40</sup> Ibid., pp. 4–5.

<sup>41</sup> Ibid., pp. 5–6.

<sup>42</sup> Ibid., p. 6.

<sup>43</sup> Ibid., pp. 6–7.

of speeches with a humorous element.<sup>44</sup> First of all, they mention the socio-cultural aspects of humour, i.e., how humour is perceived in a certain society.<sup>45</sup> As another criterion, they mention the genre of the speech.<sup>46</sup> It is therefore necessary to consider whether the speech is a stand-up comedy or whether the speech is part of political propaganda.<sup>47</sup> Third, the conditions under which the speech was made and under which the addressees of the speech are confronted with it play a role in the assessment.<sup>48</sup> Fourth, it is necessary to take into account the speech in a broader context, i.e., to take into account certain guidelines relating to the text under review.<sup>49</sup> Fifth, how the addressees of the speech react to the speech is decisive.<sup>50</sup>

Godioli also derives from the case-law of the ECtHR ten general criteria for assessing the limits of freedom of expression.<sup>51</sup> He links the first criterion to the possible ambivalent nature of speech. It is a question of identifying the satirical or humorous intention of the author of the speech.<sup>52</sup> Second, according to Godioli, it is necessary to distinguish how large a circle of addressees can really understand the message being conveyed.<sup>53</sup> The third criterion should be to place the speech in context, namely geographical, social and historical.<sup>54</sup> Fourth, it should not be forgotten that no speech operates in a vacuum.<sup>55</sup> It can therefore be a reaction to another speech.<sup>56</sup> It is therefore necessary to look at both speeches in their mutual context.<sup>57</sup> Fifth, it will be the difference between when a speech is the result of an immediate impulse and when it sees the light of day only after broader consideration.<sup>58</sup> Sixth, when assessing, it is necessary to consider how many people may have been affected by the speech, i.e., whether a large part of society or only a small group of people could have been exposed to it regardless of their own will, while retaining the right to decide.<sup>59</sup> Seventh, the question

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<sup>44</sup> GODIOLI, Alberto. YOUNG, Jennifer. FIORI, Brando Matteo. Laughing Matters: Humor, Free Speech and Hate Speech at the European Court of Human Rights. *International Journal for the Semiotics of Law – Revue internationale de Sémiotique juridique*, 2022, Vol. 35, pp. 2254–2257. Cited on 2. 3. 2025. Available online at: <https://doi.org/10.1007/s11196-022-09949-8>.

<sup>45</sup> Ibid., p. 2254.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid., p. 2255.

<sup>49</sup> Ibid., p. 2256.

<sup>50</sup> Ibid.

<sup>51</sup> GODIOLI, Alberto. Cartoon Controversies at the European Court of Human Rights: Towards Forensic Humor Studies. *Open Library of Humanities*, 2020, Vol. 6, No. 1, pp. 10–18. Cited on 2. 3. 2025. Available online at: <https://doi.org/10.16995/olh.571>.

<sup>52</sup> Ibid., pp. 10–12.

<sup>53</sup> Ibid., p. 12.

<sup>54</sup> Ibid., pp. 12–13.

<sup>55</sup> Ibid., pp. 13–14.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid., p. 14.

<sup>59</sup> Ibid., pp. 14–15.

is who is the subject of the speech, for example, whether it is a public figure.<sup>60</sup> Eighth, the speech can either be part of a public debate or can only be gratuitously offensive.<sup>61</sup> Ninth, Godioli addresses the possible interference with human dignity<sup>62</sup> and, tenth, the threat to peaceful coexistence and health.<sup>63</sup>

These will undoubtedly not be the only criteria that could play a role in assessing a certain speech, especially a satirical speech as in the case of *Otto-Preminger-Institut v. Austria*. However, the position of the ECtHR in the case of *Otto-Preminger-Institut v. Austria* showed that it was not essential for the ECtHR to carry out any similarly detailed test. The ECtHR did not address the question of the significance of the use of humour and satire, or ridicule, in the case under consideration. It seemingly didn't think consideration of how many people could actually be confronted with the speech, nor how they interpreted such a speech, i.e., whether they were really affected in their faith in such a fundamental way, was important. The only key for it was that the Austrian government, in view of the large number of Catholics in the area, assessed that the speech could threaten religious peace in Austria.

The gratuitous offensiveness of the speech, the abusive attack on objects of religious veneration and the philosophical nature of the work in the case of *I.A. v. Turkey*

The subject of the *I.A. v. Turkey* case was a philosophical book.<sup>64</sup> It was a novel that was published in a print run of two thousand copies.<sup>65</sup> In this case, the ECtHR stated that it is necessary to distinguish between mere offensive, shocking and provocative speeches on the one hand, and speeches constituting an abusive attack on objects of religious veneration or inappropriate speeches.<sup>66</sup> The ECHR found an abusive attack on the religious faith of believers, in this case Muslims, in the following statement: *"Some of these words were, moreover, inspired in a surge of exultation, in Aisha's arms. ... God's messenger broke his fast through sexual intercourse, after dinner and before prayer. Muhammad did not forbid sexual intercourse with a dead person or a live animal."*<sup>67</sup>

*The conclusion that the attack was abusive could not have been based on a possible incitement to atheism, as the expert in question claimed. First of all, the ECtHR recognises the importance of proselytism in a pluralistic society.<sup>68</sup> Moreover, Article 9 of the ECHR does not only guarantee religious beliefs, but also beliefs that lack any religious character.<sup>69</sup> The reasons for the ECtHR's decision in this case are therefore not entirely appropriate.*

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<sup>60</sup> Ibid., p. 15.

<sup>61</sup> Ibid., p. 16.

<sup>62</sup> Ibid., p. 17.

<sup>63</sup> Ibid.

<sup>64</sup> *I.A. v. Turkey*, par. 5.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid., par. 29.

<sup>67</sup> Ibid.

<sup>68</sup> See, e.g., Judgment of the ECtHR of 25 May 1993, *Kokkinakis v. Greece*, Case No 14307/88, ECLI:CE:ECHR:1993:0525JUD001430788.

<sup>69</sup> See, e.g., Judgment of the ECtHR of 13 February 2003, *Refah Partisi (The Welfare party) and Others v. Turkey*, Case No. 41340/98, 41342/98, 41343/98, 41344/98, ECLI:CE:ECHR:2003:0213JUD004134098,

Cram also considers the way in which the ECtHR worked with the created criterion of unreasonable offensiveness of speech in the context of the novelistic nature of the work problematic.<sup>70</sup> In his opinion, this connection can be interpreted in one of two ways, both of which are highly problematic. By emphasising the groundlessness of a speech, the ECtHR can aim at the fact that the speech lacks a factual basis.<sup>71</sup> However, according to Cram, this cannot be considered automatic by definition of the nature of the speech in question.<sup>72</sup> The second solution he offers would be to link groundlessness with the manner in which the speech was made.<sup>73</sup> The criticism of the Catholic Church present in the case of *Otto-Preminger-Institut v. Austria* could thus be expressed in a less offensive way through the lens of this approach.<sup>74</sup> As another example, he cites criticism of the connection between Islam and terrorism.<sup>75</sup> Instead of caricaturing the object of religious veneration of believers, it would be appropriate to use a less offensive method.<sup>76</sup> However, he finds one fundamental shortcoming in this approach. It can make it impossible to realise strongly emotional expressions.<sup>77</sup> Among other things, artistic expressions, or expressions working with caricature or humour, can be excluded.

What the ECtHR apparently tried to do in this decision, albeit unsuccessfully, was to specify in more detail when it is necessary to restrict certain religiously insensitive expression. Instead, however, the ECtHR has merely confirmed that in the case of restricting religiously insensitive speech, neither the specific meaning of the speech nor the number of people confronted with the speech play a role.

Protection of religious peace and proof of paedophilic tendencies in the case of *E.S. v. Austria*

The last case on which I will describe the approach of the ECHR based on the identification of possible offense to believers will be the case of *E.S. v. Austria*. In this case, the ECHR approved a measure by the state consisting of imposing a fine for the connection of the Prophet Mohammed with paedophilia.<sup>78</sup> This overstepping of the boundaries of freedom of speech was supposed to take place at a seminar of an educational institute of an Austrian political party.<sup>79</sup> The event was presented as an opportunity to expand one's knowledge free of charge.<sup>80</sup> However, it only took place twice, and then with a limited number of participants.<sup>81</sup>

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par. 90. Decision of the ECommHR of 3 December 1986, *Angelini v. Sweden*, Case No. 10491/83, ECLI:CE:ECHR:1986:1203DEC001049183.

<sup>70</sup> CRAM, Ian. The Danish Cartoons, Offensive, Expression, and Democratic Legitimacy. In: HARE, Ivan. WEINSTEIN, James eds. *Extreme Speech and Democracy*. New York: Oxford University Press, 2009, pp. 325–327.

<sup>71</sup> *Ibid.*, pp. 325–326.

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*, p. 326.

<sup>75</sup> *Ibid.*, pp. 326–327.

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

<sup>78</sup> *E.S. v. Austria*, par. 22.

<sup>79</sup> *Ibid.*, par. 7.

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*, par. 8.

An undercover journalist also attended the seminar.<sup>82</sup> On the basis of his complaint, criminal proceedings were subsequently initiated against the author of the speech.<sup>83</sup>

With regard to the facts outlined above, it can be assumed that the number of potentially affected believers at the event must have been minimal. For this reason, the impact of condemning a religious leader idealised by Muslims for paedophilic tendencies could not have been significant. Moreover, the author of the speech did not completely fabricate events in this case, basing her decision on the historically based existence of the marriage of the Prophet Muhammad with the underage Aisha.<sup>84</sup> The only questionable thing was the assessment of this important figure for Muslims as a paedophile on the basis of the fact of sexual intercourse with a child. The abusive attack on the religious faith of Muslims therefore probably took place at the moment when the Prophet Muhammad, as the bearer of Islamic virtues<sup>85</sup>, was attributed the characteristics of a sex offender. Therefore, the assessment of the case is that a certain person can be attributed paedophilic tendencies only if he is proven to have a sexual interest in underage girls. A mere sexual relationship or marriage with a minor is not sufficient. As Bougiakiotis points out, this is completely absurd.<sup>86</sup> If we want to evaluate a person who has died long since in this way, we have obvious practical problems in terms of bearing the burden of proof. If we were to apply this approach without further ado, we could one day, as Smet mentions, deal with the issue of the reproduction of animals saved on Noah's Ark after God's punishment in the form of the flood.<sup>87</sup>

In the case of *E.S. v. Austria*, the ECtHR stated that when assessing religiously insensitive speech, freedom of expression comes into conflict on the one hand, and the right to the protection of religious feelings of believers and to the safeguarding of religious peace on the other.<sup>88</sup> In the spirit of the thesis to protect the rights of believers, the ECtHR proceeded in this case to provide protection for a religion that was not professed in the given state by the 'overwhelming majority' of believers, nor was it associated with the state-sanctioned dominance of a particular religion in society. On the other hand, Islam, which was affected by this decision, cannot be considered a religion occupying a completely marginal, negligible role in society. This is obvious at first glance from the reactions of supporters of this religion, especially from the violent ones, or those aimed at inducing self-censorship.

The approach of the ECtHR in this case, as in the case of *Otto-Preminger-Institut v. Austria* and *I.A. v. Turkey*, is characterised by an emphasis on the protection of religious feelings

<sup>82</sup> Ibid.

<sup>83</sup> Ibid., par. 9.

<sup>84</sup> ROGERSON, Barnaby. *The Prophet Muhammad: A Biography*. Mahwah: HiddenSpring, 2003, pp. 137–138.

<sup>85</sup> KHALIDI, Tarif. *Images of Muhammad. The Evolution of Portrayals of the Prophet in Islam Across the Centuries*. New York: Doubleday, 2009, p. 10.

<sup>86</sup> BOUGIAKIOTIS, Emmanouil. *E.S. v Austria: Blasphemy Laws and the Double Standards of the European Court of Human Rights*. [ukconstitutionallaw.org](https://ukconstitutionallaw.org), published on 22. 11. 2018, cited on 10. 3. 2025. Available online at: <https://ukconstitutionallaw.org/2018/11/22/emmanouil-bougiakiotis-e-s-v-austria-blasphemy-laws-and-the-double-standards-of-the-european-court-of-human-rights/>.

<sup>87</sup> SMET, Stijn. *E.S. v. Austria: Freedom of Expression versus Religious Feelings, the Sequel*. [strasbourgobservers.com](https://strasbourgobservers.com), published on 7. 11. 2018, cited on 10. 3. 2025. Available online at: [https://strasbourgobservers.com/2018/11/07/e-s-v-austria-freedom-of-expression-versus-religious-feelings-the-sequel/#\\_ftn1](https://strasbourgobservers.com/2018/11/07/e-s-v-austria-freedom-of-expression-versus-religious-feelings-the-sequel/#_ftn1).

<sup>88</sup> *E.S. v. Austria*, par. 57.

of believers. The significance for the assessment of a religiously insensitive speech is not attributed to the characteristics of the society in which the speech was made, the limited number of addressees of the speech, or the fact that the initiator of the criminal prosecution in the case in question was not the believer in question, but a journalist.

## 2. Incitement to hatred and intolerance

Instead of assessing whether the religious feelings of believers have been affected, the ECtHR in some cases examines whether the speech could have led to incitement to hatred and intolerance against believers, and whether it is therefore inadmissible hate speech in the context of the circumstances of the case.<sup>89</sup> The ECtHR does not precisely define hate speech. However, it sees it as a way to ensure that there is no speech that spreads, incites, supports or justifies religious intolerance or discrimination.<sup>90</sup> Whether a particular speech abuses the guarantee of freedom of expression in this way is assessed by the ECtHR either through the lens of Article 10 of the ECHR or, in cases of more serious forms of hate speech, through the lens of Article 17 of the ECHR, depending on the circumstances of the individual case.<sup>91</sup> According to Hill, however, such speech should be distinguishable from 'harmless speech' by its intention and the extent to which it incites a certain action against the object of speech.<sup>92</sup> In the context of religiously insensitive speech, this is necessarily the believer of a particular religion. However, as Weber points out, such an intention is not always immediately apparent.<sup>93</sup>

In the case of *Mariya Alekhina and Others v. Russia*, the ECtHR elaborated on several circumstances that should be essential for assessing the permissibility of restrictions on freedom of expression.

The subject of the case of *Mariya Alekhina and Others v. Russia* was the implementation of the punk prayer "Virgin Mary, Drive Putin Away" in Moscow's Christ the Saviour Cathedral.<sup>94</sup> The state's argument for adopting measures at the level of criminal law against the participating performers was an effort to protect the "*feelings of a large group of people*"<sup>95</sup> from offensive speech.<sup>96</sup> *Feminism was presented here as a movement that strongly influenced social relations traditionally intertwined with religion.*<sup>97</sup> By taking measures against freedom

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<sup>89</sup> See, e.g., *Rabczewska v. Poland*, par. 51.

<sup>90</sup> See, e.g., Judgment of the ECtHR of 20 December 2022, *Zemmour v. France*, Case No 63539/19, ECLI:CE:ECHR:2022:1220JUD006353919, par. 50. *Mariya Alekhina and Others v. Russia*, par. 219–227.

<sup>91</sup> Decision of the ECtHR of 12 May 2020, *Lilliendahl v. Iceland*, Case No 29297/18, ECLI:CE:ECHR:2020:0512DEC002929718, par. 34–35.

<sup>92</sup> HILL, Ryan. Challenging the Right to Offend Religious Sensibilities in the Face of Foreseeable Harm. *Law & Justice – The Christian Law Review*, 2020, Vol. 184, p. 46. Cited on 1. 3. 2025. Available online at: [www.heinonline.org](http://www.heinonline.org).

<sup>93</sup> WEBER, Anne. *Manual on hate speech*. France: Council of Europe Publishing, 2009, p. 5.

<sup>94</sup> *Mariya Alekhina and Others v. Russia*, par. 3.

<sup>95</sup> *Ibid.*, par. 52.

<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.*

of expression, this former state of the Council of Europe sought to fulfil the principles of “mutual respect and equality”<sup>98</sup>. At the same time, quite paradoxically, it also sought to prevent a particular “ideology, social group or religion”<sup>99</sup> from becoming dominant over another.<sup>100</sup> The unacceptable offence to the religious feelings of the group of believers identified in this way was inferred by Russia from the alleged intention of the authors to incite religious intolerance. This intention was mainly associated with the performance of the speech in a publicly accessible place, with the alleged expectation of adverse reactions towards to performers of the speech and from their clothing, body movements and manner of expression and action.<sup>101</sup>

In that decision, the ECtHR emphasised that several factors must be taken into account before a conclusion could be reached on incitement to religious hatred. It linked their identification with reference to its previous case law, although not the case law explicitly concerning the assessment of religiously insensitive speech. Thus, it did not primarily address the question of affecting the religious feelings of believers. It considered the nature of the environment in which the manifestation took place, including any tensions existing in society, to be decisive.<sup>102</sup> It also reflected on the ability of speech to express oneself in favor of the use of physical force against believers of a certain religion or on its ability to be a bearer of hatred and intolerance.<sup>103</sup> Another part of his reasoning was a focus on the way in which freedom of expression is exercised. In particular, it took into account the medium through which the speech is made.<sup>104</sup> As the ECtHR has stated, speech is not always capable of bearing equally serious consequences.<sup>105</sup> At the same time, according to the ECtHR, all of these circumstances must be assessed in their mutual context.<sup>106</sup>

In this case, the ECtHR was interested in whether a specific purpose justified the chosen manner of speech by assessing the accompanying circumstances of the case. First of all, it was a provocation at a place intended for the meeting of believers. Like a caricature, however, such a deliberately chosen form of speech successfully drew attention to the problem it wanted to point out. The fact that it has not been resolved in this case is another matter. However, attention was also paid to other circumstances in this case, such as the nature of the environment, the ability of speech to defend and justify the use of physical force against believers of a specific religion, or its ability to be a bearer of hatred and intolerance. These circumstances could also have been significant in other cases too.

The decision of *Rabczewska v. Poland* is similar to the conclusion of *Mariya Alekhina and Others v. Russia*. The religiously insensitive speech here consisted of calling the authors of

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<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid., par. 218.

<sup>103</sup> Ibid., par. 219.

<sup>104</sup> Ibid., par. 220.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid., par. 221.

*biblical stories “drunks and stoners” by a famous Polish singer.<sup>107</sup> She had no intention to engage in public debate in any way.<sup>108</sup> In this decision, the ECtHR did not find sufficient and relevant reasons for the Polish state’s restriction of freedom of expression.<sup>109</sup> However, it stressed that it is still crucial to insist that the speech does not constitute “an improper or abusive attack on an object of religious veneration, likely to incite religious intolerance or violating the spirit of tolerance”<sup>110</sup>. In particular, it pointed out the inadequacy of the review carried out by Poland, including on the issue of affecting religious peace.<sup>111</sup> It always insisted on the need to ensure the protection of the religious feelings of believers.<sup>112</sup> However, it referred to a possible interference with the principle of tolerance and religious intolerance.<sup>113</sup> Thus, it did not rely primarily on the question of protecting religious beliefs associated with identifying dangers to religious peace.*

Both of these decisions strongly accentuate the importance that must be attached to the assessment of the individual circumstances of the case, especially its context. In the case of Mariya Alekhina and Others v. Russia, it was about the art form of performance and the political context. In Rabczewska’s decision against Poland, the speech did not participate in public debate and was only found to be potentially religiously offensive. The ECtHR did not find incitement to religious intolerance in this case. It considered it important to distinguish the mere offensiveness of speech from possible incitement to religious intolerance.

### **3. Approach to assessing the ‘Je suis Charlie’ slogan**

It is clear from the presented cases that in cases where the ECtHR bases its reasoning on the protection of religious feelings of believers, or on the protection of religious peace, a thorough assessment of the individual circumstances of the case is lacking. The ECtHR takes into account the public nature of the speech, but even in a situation where it is likely that a very small number of believers will be confronted with the implementation of the speech, it emphasises the importance of protecting their religious feelings. It thus infers that believers of a certain religion have been affected regardless of the number of believers who might be affected by the speech. It does not attribute any special importance to the nature of the work or to the person of its author. At the same time, the recognition of the importance of satire, for example, for democracy only remains on a theoretical level.

It is doubtful that the mere presumption of concern based on the number of believers in the locality where the speech takes place constitutes a sufficient assessment of all the relevant facts. Religious sensitivity says nothing about the characteristics of the speech or about the other circumstances in which the speech was made. Moreover, it is unclear how many believers who could have been affected by the speech should be involved to conclude that

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<sup>107</sup> *Rabczewska v. Poland*, par. 6.

<sup>108</sup> *Ibid.*, par. 58.

<sup>109</sup> *Ibid.*, par. 64.

<sup>110</sup> *Ibid.*

<sup>111</sup> *Ibid.*, par. 60.

<sup>112</sup> *Ibid.*, par. 51, 64.

<sup>113</sup> *Ibid.*, par. 57, 61.

religious peace is threatened. At the same time, one can agree with Ahdar and Leigh that excessive restrictions on freedom of expression in religiously insensitive cases could disrupt public debate on important issues related to religion.<sup>114</sup> The ECtHR is slowly realising this, as it seems from the last two cases. However, it is not yet fully prepared to give up on protecting religious peace through the lens of protecting the religious feelings of believers.

I believe that it is not appropriate to assess religiously insensitive manifestations by identifying the offending of religious feelings of believers. It cannot lead to the provision of a fair balance between the interests of society and the requirements for the protection of human rights and freedoms, as required by the ECtHR. It would be a means capable of suspending any detailed review. The possibility of affecting the subjective beliefs of believers cannot be objectively verified, so it is only presumed when assessing. The context of the speech, its nature and possibly other important circumstances can be ignored. Thus, mere insensitivity of speech is not able to answer the question of whether a certain religiously insensitive speech could have interfered with the rights of others, or with Article 9 of the ECHR, guaranteed the freedom to hold, change or manifest a certain religious belief. It can therefore be concluded that in order to assess the limits of freedom of expression in the context of religiously insensitive speech, it is necessary to carefully consider all the relevant circumstances of the case. A role in assessing religiously insensitive cases could thus particularly be played by the nature of the environment in which the speech is carried out or the manner in which freedom of speech is exercised. Here it might not only be necessary to consider the medium used, but also whether the provocativeness of the speech has a specific meaning in a given case and whether it does not lead to incitement to hatred and intolerance.

The use of the 'Je suis Charlie' slogan was an expression of solidarity with the victims of the attack for some. Cox, however, proceeded from the thesis that this was an attack on the identity of Muslims. In the light of the abovementioned case-law of the ECtHR, the question arises as to whether speech could actually constitute a form of incitement to hatred and intolerance against these believers.

#### **4. Muslim attacks as the only subject of interest v. terrorism and the risk of hypersensitivity**

Cox's first argument in support of the claim that the use of the 'Je suis Charlie' slogan constituted an attack on the identity of Muslims points out that it is not possible to identify a reaction of solidarity similar to that of the slogan in other cases where human lives have been attacked.<sup>115</sup> Cox compares the death of a French journalist to the death of a Pakistani child.<sup>116</sup> As an example of terrorist attacks in Pakistan, we can recall, for example, the attack

<sup>114</sup> AHDAR, Rex. LEIGH, Ian. *Religious Freedom in the Liberal State*. Oxford: Oxford University Press, 2013, p. 471.

<sup>115</sup> COX. *Pourquoi Suis-Je Charlie?...*, p. 344. COX. *Understanding 'Je suis Charlie'...*, p. 154. COX. *The Freedom to Publish...*, pp. 195–221.

<sup>116</sup> COX. *The Freedom to Publish...*, p. 197.

in Peshawar, which led to the deaths of more than a hundred children<sup>117</sup>, and which did not receive an equally significant international response. However, the veracity of this argument alone cannot support Cox's conclusion. The reaction to the massacre in the case of Charlie Hebdo could have been an expression of accumulated disagreement with the fact that the society in question is increasingly influenced by Islam and that it is therefore losing, also because of violent acts, something of its former nature. In order to confirm this assumption, it is necessary to think about the possible consequences of terrorist attacks, or violence committed in the name of Islam in general.

No matter how society was originally characterised, any massive and illegal attack, including the murder of cartoonists, could fundamentally change it. One of the many natural consequences that can be considered is an appeal for a wider introduction of instruments to protection against irreversible damage to the democratic state. For example, the tools of militant democracy are conceivable. As Loewenstein put it, "*legalistic self-complacency and suicidal lethargy gave way to a better grasp of realities*"<sup>118</sup>. *What better way to understand the reality of the terrorism than through the lens of the restrictions on fundamental rights and freedoms guaranteed by the ECHR? In this context, Sajo recalls, for example, the suspension of elections in Algeria.*<sup>119</sup> *There was a fear that candidates of the movement involved in terrorist attacks would win.*<sup>120</sup> *We can also mention the adoption of any other preventive measures aimed at ensuring that such a massive threat to people's lives can no longer occur. For example, wider monitoring of public spaces through CCTV systems or the implementation of school or hospital access control system as fingerprint scanners, metal detectors or bulletproof windows to prevent terrorist attacks.*

*However, the fact that violent disagreement with religiously insensitive speech can lead to the gradual restriction of individual fundamental rights and freedoms guaranteed by the ECHR is not the only consequence. In its case law, the ECtHR has repeatedly emphasised the need to maintain tolerance and pluralism.*<sup>121</sup> *Terrorist attacks do not contribute to their well-being. It is enough to think about the essence of this violent way of expressing ourselves. According to Mayntz, terrorism can be defined by trying to significantly affect a certain political system with the aim of threatening its stability and disrupting the status quo in society.*<sup>122</sup> *Sajo interprets it in a similar way.*<sup>123</sup> *He mentions efforts aimed at making certain changes against the will*

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<sup>117</sup> Pakistan Taliban: Peshawar school attack leaves 141 dead. *bbc.com*, published on 16. 12. 2014, cited on 23. 9. 2024. Available online at: <https://www.bbc.com/news/world-asia-30491435>.

<sup>118</sup> LOEWENSTEIN, Karl. Militant Democracy and Fundamental Rights, I. *The American Political Science Review*, 1937, Vol. 31, No. 3, p. 431. Cited on 26. 9. 2024. Available online at: <https://www.jstor.org/stable/1948164>.

<sup>119</sup> SAJO, Andras. From Militant Democracy to the Preventive State. *Cardozo Law Review*. 2006, Vol. 27, No. 5, p. 2264. Cited on 25. 9. 2024. Available online at: [www.heinonline.org](http://www.heinonline.org).

<sup>120</sup> Ibid.

<sup>121</sup> See, e.g., *S.A.S. v. France*, par. 127. *Serif v. Greece*, par. 53.

<sup>122</sup> MAYNTZ, Renate. Organizational Forms of Terrorism: Hierarchy, Network, or a Type sui generis?. *Max Planck Institute for the Study of Societies Discussion Paper*, 2004, No. 04/4, p. 7. Cited on 26. 9. 2024. Available online at: <https://www.econstor.eu/bitstream/10419/19906/1/dp04-4.pdf>.

<sup>123</sup> SAJO. *From Militant Democracy...*, p. 2264.

of society.<sup>124</sup> *The government accepts them only under the influence of fear of repeating the threat.*<sup>125</sup> Thus, condemning religiously insensitive speech through terrorism can lead to a society accepting the demands of terrorists and finding certain restrictive measures necessary in a democratic society. For example, it may be considered necessary to restrict religiously offensive, inappropriate or blasphemous speech. The reason for this step would be that such manifestations can significantly affect religious belief. This fact could be illustrated by the profound suffering of the believers, which is capable of motivating some of them to violate binding rules of conduct by committing illegal activities. It can also be considered decisive that terrorist attacks are so serious that states will not be able to prevent them, and taking measures to restrict freedom of expression will be the only way to save lives.

Over time, contemporary society could become hypersensitive when, under the influence of visible danger, it would protect the feelings of certain people to the detriment of the fundamental rights and freedoms guaranteed by the ECHR. It could also be characterised as protectionist if it restricted freedom of speech with the intention of ensuring that non-democratic entities do not affect the extent of the guarantee of this freedom. Paradoxically, this effort of society would lead to complete submission to the violent tendencies of certain entities. In addition, society could prevent itself from potential danger by restricting other rights and freedoms, such as the right to privacy.

The 'Je suis Charlie' slogan could therefore be an expression of an effort to ensure that the widest possible protection of freedom of expression is guaranteed in society, and that as an impact of fear of further terrorist and other violent attacks, the legislation of the given state does not significantly curtail this freedom. Just because society does not similarly condemn other acts of violence, the 'Je suis Charlie' slogan cannot be perceived as a way of inciting hatred and intolerance. It is precisely in this case, in the wake of a previous terrorist attack, that the importance of assessing the context of individual cases comes to the fore. The terrorist attack did not only mean the loss of several lives, but above all a way for a certain group of people to show that expressions that are insensitive to Islam should be restricted. Article 10 of the ECHR allows for restrictions on freedom of expression under the conditions of legality, legitimacy and necessity in a democratic society. In the case of terrorism, however, it is an illegal act with the aim of setting a new status quo in society. To restrict speech for fear of a repetition of such a threat to human life would be to support the strategy of anyone who wants to determine by force what speech should be permissible in a democratic society. That would be completely contrary to the principle of pluralism and the ECtHR's efforts to ensure that opposing groups tolerate each other.

## 5. The nature of caricature and the benefits of laughter

At the same time, Cox points out the dual nature of the published caricatures.<sup>126</sup> Some were a mere ridicule of the object of worship of believers, others were about finding a connection

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<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

<sup>126</sup> COX. *Pourquoi Suis-Je Charlie? ...*, p. 345. COX. *The Freedom to Publish...*, p. 199.

between Islam and terrorism.<sup>127</sup> However, another interpretation is also possible. Its basis can be found in the question of the definition of caricature. Although the ECtHR does not take much account of the social importance of artistic means in its case-law, it cannot be ignored. The nature of the speech is one of the essential criteria when assessing religiously insensitive speech. We cannot characterise speech as merely offensive and inappropriate without recognising that in some cases the use of such a way of expression may have a specific meaning. Dworkin also draws attention to this fact when he excludes the possibility of expressing a certain religiously insensitive speech in a less offensive, inappropriate or blasphemous way, if its content is to be preserved.<sup>128</sup> Given that the use of the 'Je suis Charlie' slogan refers to the original cartoon and the subsequent terrorist attack, it is necessary to think about what the essence of the caricature is, and whether, in the context of the circumstances of the case, it is not possible to speak of a way of engaging in public debate rather than incitement to hatred and intolerance, given its characteristics albeit controversial for some.

Caricature can be characterised as inaccurate representation of caricatured facts to attract the interest of the 'audience'.<sup>129</sup> Thanks to the understandable language that does not require any special education, not even literacy, the caricatures easily gain publicity among the public. In the hands of a cartoonist, a complicated and unclear issue or question turns into 'a few brushstrokes', either meaningless or fundamental. It is true that caricatures can lead to the humiliation of their victims, but they also often, and very beneficially, hold up a mirror to society itself.

One can agree with Patrick that a cartoonist is a gambler.<sup>130</sup> Patrick sees signs of gambling in doubts as to whether the work can convey the idea to the audience after the dramatic and emotionally torn introduction.<sup>131</sup> However, the risk of a caricature also lies in the possible exertion of a completely futile effort. This fact means that the work may not always succeed in arousing enthusiasm in readers for the presented idea, capable of subsequently potentially influencing social events. This problem can arise when the subject of the caricature is something that, although the author may themselves consider it controversial, finds almost no response in society. Even though caricature can undoubtedly contribute to arousing society from lethargy due to its unconventionality, if the caricaturist does not choose a topic capable of arousing emotions in society, they will be completely unsuccessful in conveying any possible message. Therefore, a large role in caricature is also played by the locally (culturally) and temporally conditioned context.

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<sup>127</sup> Ibid.

<sup>128</sup> DWORKIN, Ronald. The Right to Ridicule. *nybooks.com*, published on 23. 3. 2006, cited on 15. 3. 2025. Available online at: <https://www.nybooks.com/articles/2006/03/23/the-right-to-ridicule/>.

<sup>129</sup> PATRICK, Jeremy. The Curious Persistence of Blasphemy. *Florida Journal of International Law*, 2011, Vol. 23, No. 2, p. 211. Cited on 26. 2. 2024. Available online at: <https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1542&context=fjil>. DOUGLAS, Roy. 19<sup>th</sup> century Ireland and the Cartoonists. *original-political-cartoon.com*, cited on 12. 10. 2024. Available online at: <https://www.original-political-cartoon.com/cartoon-history/19th-century-ireland-and-cartoonists/>. KEMNITZ, Thomas Milton. The Cartoon as a Historical Source. *The Journal of Interdisciplinary History*, 1973, Vol. 4, No. 1, p. 74. Cited on 19. 4. 2024. Available online at: <https://www.jstor.org/stable/202359>.

<sup>130</sup> PATRICK. *The Curious Persistence of Blasphemy...*, p. 211.

<sup>131</sup> Ibid.

The conditionality can be seen in the fact that caricature represents, as Kemnitz explains in detail, a source of knowledge of the long-lost past for future generations.<sup>132</sup> In addition, we find the ability to reveal the dark sides of humanity in caricatures. In this context, the question of the factual possibility of caricatures causing a wave of hatred and intolerance towards the object of the attack also comes to the fore in a society free of any prejudice. Given that such a society, due to the nature of man and the populist efforts of many politicians, solely fulfils a utopian idea, it is necessary not to perceive caricature or any other similar way of expression as the primary source of evil. The simplistic language of caricatures should not automatically represent a condition limiting the exercise of freedom of expression.

The mere fact that the use of the caricature in the Charlie Hebdo case may have evoked a connection between Islam and terrorism does not imply that the speech constituted an attack on the Muslim identity. Even though Cox pointed out that the terrorism in question was condemned by Muslims<sup>133</sup>, the fact remains that the attack took place. This attack represented a violation of the rules of communication within a democratic society. At the same time, as Sultan commemorates, it is only the offense against Islam that provokes violent reactions of this nature.<sup>134</sup> The consequence of this fact could therefore be to focus attention on the effect of this religion in society. At the same time, one can agree with Pannick that insufficient condemnation of the violent attack on freedom of speech could lead to a gradual erosion of that freedom.<sup>135</sup>

In many cases, the combination of caricature and humour is inevitable at the same time.<sup>136</sup> There is no need to try to accurately capture the multi-layered nature of laughter and humour. It is enough to look at some of its possible purposes through a few theses. First, there is no doubt that it can be difficult to prove a certain purpose of laughter in a particular case. Similarly, it can be difficult to discover the motivation of the speaker and the subsequent motivation of the audience to express the emotion of amusement.<sup>137</sup> Nevertheless, it is not possible to completely resign to finding out these facts. Even more if we realise that humour has played a major role in society in the past as well, albeit often partly under the guise of ridicule capable of provoking offense and hostility. Let us recall, for example, the

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<sup>132</sup> KEMNITZ. *The Cartoon as a Historical Source*..., p. 86.

<sup>133</sup> COX. *Understanding 'Je suis Charlie'*..., p. 156.

<sup>134</sup> Attacks on Arab-American Psychiatrist Wafa Sultan: Islamist Sheikh on Al-Jazeera Calls Her Heretic; Syrian Sermon Calls Her Infidel. *memri.org*, published on 7. 3. 2006, cited on 23. 9. 2024. Available online at: <https://www.memri.org/reports/attacks-arab-american-psychiatrist-wafa-sultan-islamist-sheikh-al-jazeera-calls-her-heretic>.

<sup>135</sup> PANNICK, David. Margaret Howard Memorial Lecture. 19. 5. 2005. Organised by Trinity College, Oxford. Available online at: <https://www.secularism.org.uk/uploads/3543216b2ccd2e5738717582.pdf>.

<sup>136</sup> ROSS, Stephanie. Caricature. *The Monist*, 1974, Vol. 58, No. 2, p. 291. Cited on 19. 5. 2024. Available online at: <https://www.jstor.org/stable/27902362>.

<sup>137</sup> See, e.g., HOUCK, Anita. The Ambiguous Laughter of Reconciliation: Comic Theodicy in Modern Literature. *Religion & Literature*, 2007, Vol. 39, No. 1, p. 50. Cited on 26. 2. 2024. Available online at: <https://www.jstor.org/stable/40060054>.

Sharivari<sup>138</sup>, or the punishment carried out by the Eskimos through laughter at the expense of the perpetrator, mentioned by Obrdlik<sup>139</sup>.

The positive contribution of laughter in the course of turbulent historical development is also evident when reading the verses of the American black poet Langston Hughes, who tries to replace the pain and crying of homesickness with this ambivalent feeling.<sup>140</sup> Humour in this concept represents a defence mechanism of the organism striving to survive certain pain, sadness, difficulties or frustration. At the same time, however, it also brings relief in a moment of hopelessness. In the context of Hitler's occupation of Czechoslovakia, Obrdlik described this vital function in detail.<sup>141</sup> Given that he spent nine months in Czechoslovakia during the Nazi occupation<sup>142</sup>, he presented humour as a tool of defiance against evil, also from his own experience.

To illustrate the function of laughter consisting in relieving tensions in society and providing psychological assistance to cope with the factual loss of the territory of one's own state and potentially the loss of one's own national identity, Obrdlik cites several period jokes working to a certain extent with realities, or with common elements of human life, as in the case of caricature. They can turn a certain expression into much more than just a few random words and thus get into people's consciousness, or even become popular. Let's mention, for example, his joke about the Gestapo, which discovered a hanged hen with the notice: "*It'd rather commit suicide than lay eggs for Hitler.*"<sup>143</sup> This innocent joke carries with it a profound message of the strength of a nation caught in the tentacles of destruction.

However, the potential consequences of such statements referring to human laughter in difficult times, whether because of a global war conflict or only in the context of the everyday problems of human existence, are necessarily much broader. Burma, for example, perceives humour as a way of expressing anger<sup>144</sup>, Myrdal as a means of explaining the inexplicable, or something completely defying human logic.<sup>145</sup> In the context of this suffering, the function of humour to free oneself from the pressure exerted by adverse factual circumstances is also

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<sup>138</sup> Ibid., pp. 47–78.

<sup>139</sup> OBRDLIK, Antonin J. "Gallows Humor" – A Sociological Phenomenon. *American Journal of Sociology*, 1942, Vol. 47, No. 5, p. 710. Cited on 19. 5. 2024. Available online at: <https://www.jstor.org/stable/2769536>.

<sup>140</sup> HUGHES, Langston. *The Collected Works of Langston Hughes. Volume 11: Works for Children and Young Adults: Poetry, Fiction, and Other Writing*. Columbia, London: University of Missouri Press, 2003, p. 62.

<sup>141</sup> OBRDLIK. "Gallows Humor"...

<sup>142</sup> Ibid., p. 710.

<sup>143</sup> Ibid., p. 715.

<sup>144</sup> Burma, John H. Humor as a Technique in Race Conflict. *American Sociological Review*. 1946, Vol. 11, No. 6, p. 710. Cited on 13. 2. 2024. Available online at: <https://www.jstor.org/stable/2087066>.

<sup>145</sup> MYRDAL, Gunnar. *An American Dilemma, Volume I: The Negro Problem and Modern Democracy*. New Brunswick, New Jersey: Transaction Publishers, 1996, p. 38.

offered. This aspect of humour not only appears in Myrdal<sup>146</sup>, but also in Boskin, Dorinson<sup>147</sup> and Miller<sup>148</sup>.

In connection with humour, Streicher points to the presence of a certain kind of communicative process.<sup>149</sup> The way of communicating with the outside world can be seen in the belonging to society. In this context, Miller speaks of a means of expressing mutual support<sup>150</sup>, Pérez of establishing relationships between individual members of the community<sup>151</sup>. The question is whether the last thesis can not only be perceived at the level of creating ties within the existing society, but also at the level of accepting new members into this community. In both cases, however, this role of laughter remains irreplaceable.

Therefore, whether the speech insensitive to the religious beliefs is in this case only perceived at the level of caricature, or also at the level of bringing emotions in the form of laughter to the addressees of the speech, the connection between Islam and terrorism cannot be interpreted as inadmissible speech directed primarily at believers of a certain religion, through the lens of the ECtHR, on the grounds that its purpose is only to incite hatred and intolerance. It is also necessary to consider the fact that the statement in a given, albeit offensive, way could have fulfilled one of the functions mentioned. To see the unification of society after the terrorist attacks behind the '*Je suis Charlie*' slogan primarily as an '*isolating, demonizing and familiar message*' about Islam<sup>152</sup> would therefore be a shorthand perception of reality.

## Conclusion

In this article, I analysed the reaction to a case that fundamentally affected peaceful coexistence within the territory of the state parties to the Council of Europe. It was the mass use of the '*Je suis Charlie*' slogan in response to a terrorist attack by Islamic fundamentalists. The aim of this article was to consider whether and how the context of the case should be taken into account when assessing religiously insensitive speech, particularly the nature of the original speech (caricature) and the circumstances under which the speech was made (terrorist attack). On the one hand, the ECtHR in its case-law sanctions the restriction of freedom of expression if speech is unreasonably offensive to believers of a particular religion. Thus, it finds a mere offensive, inappropriate or blasphemous attack on things, objects and figures considered sacred by believers inadmissible. On the other hand, however, its case law also

<sup>146</sup> Ibid., pp. 38–39.

<sup>147</sup> BOSKIN, Joseph, DORINSON, Joseph. Ethnic Humor: Subversion and Survival. *American Quarterly*, 1985, Vol. 37, No. 1, Special Issue: American Humor, pp. 83–84. Cited on 14. 2. 2024. Available online at: <https://www.jstor.org/stable/2712764>.

<sup>148</sup> MILLER, Frank C. Humor in a Chippewa Tribal Council. *Ethnology*, 1967, Vol. 6, No. 3, pp. 269–270. Cited on 19. 5. 2024. Available online at: <https://www.jstor.org/stable/3773031>.

<sup>149</sup> STREICHER, Lawrence H. On a Theory of Political Caricature. *Comparative Studies in Society and History*, 1967, Vol. 9, No. 4, p. 434. Cited on 14. 4. 2024. Available online at: <https://www.jstor.org/stable/177687>.

<sup>150</sup> MILLER. *Humor in a Chippewa Tribal...*, pp. 266–267.

<sup>151</sup> PÉREZ, Raúl. Racism without Hatred? Racist Humor and the Myth of "Colorblindness". *Sociological Perspectives*, 2017, Vol. 60, No. 5, p. 958. Cited on 14. 8. 2024. Available online at: <https://journals.sagepub.com/doi/full/10.1177/0731121417719699>.

<sup>152</sup> COX. *Pourquoi Suis-Je Charlie?*..., p. 367.

includes an effort to take into account the individual circumstances of the case, including the context and situation in which the speech was made. This is done when assessing whether a speech incites hatred against a certain group of people.

A great deal of caution should be exercised before drawing any conclusions when assessing religiously insensitive speech. As was evident from the interpretation of the '*Je suis Charlie*' slogan, even a completely harmless statement can potentially be perceived as a religiously hostile manifestation. It is then up to the subjective assessment of the deciding authority what weight it will attach to the individual factual circumstances in the given case. Often, it is possible to find comparably convincing arguments for restricting freedom of speech and for ensuring its guarantee, albeit at the expense of the religious beliefs of certain believers. However, at a time when a society is faced with a one-off serious attack, or even a repeated attack on values that must be considered necessary for the existence of a democratic state, this fact should not be neglected when assessing a certain expression. Terrorist attacks carried out in response to freedom of speech can undoubtedly be considered such violations of the principles of democracy. If a democratic state were to retreat from its principles at such a moment, it would allow the rules of conduct of a given society to be determined by unelected entities with often marginal representation in society. It is precisely in such a situation that restraint is extremely important when assessing religiously insensitive speech and its possible hateful nature.

The use of the '*Je suis Charlie*' slogan in the context of terrorist attacks that ended in the deaths of many people, as well as in the context of Cox's reflections, also invites reflection on the nature of the speech, which can be an impulse for subsequent reactions, whether hostile, inciting hatred and intolerance, directed against the believers, or reactions carried out by alleged defenders of the faith. If there was no willingness in society to listen to the content of a problematic speech, such a speech could not be evaluated as seriously as a speech that would not lack a mass response. Regardless of how insensitive speech may seem to believers of a particular religion, it is not possible to ignore the state of the society in which the speech took place when evaluating any reaction capable of jeopardising peaceful coexistence in society.

At the same time, the question of the interpretation of the speech by its addressees comes to the fore. Their attitude to the group of believers allegedly attacked by the speech does not have to be obscured by unreasonably negative emotions. The speech may be motivated by an effort to deal with the reality in which, under certain circumstances, murder in the interest of protecting a particular religion becomes an effective way of influencing the scope of the guarantee of certain fundamental rights and freedoms. The fact that the actual content of the individual generally accepted theses of a given religion does not have to correspond to the ideas of fundamentalists who defend their faith with weapons in their hands remains completely irrelevant. Regardless of what faith was defended by the violent act, the fact remains undeniable that the use of violence makes the given action, and therefore the religion defended, regardless of its specific interpretation, a subject of public interest.

The use of a means that can increase the feeling of hostility in believers can also have its specific, often very beneficial purpose for society. Whether in the context of religiously insensitive speech, its use of caricature or more general humour, the primary purpose does

not have to be to ridicule believers of a particular religion, nor to incite hatred and intolerance against them. They may have a much simpler but extremely important purpose, namely, to ensure the survival of a certain society and its values. It is also necessary to consider that to achieve this goal, the message conveyed can be greatly simplified, for example, to make the addressees of the speech more accessible or to emphasise the weight of one's own statement. To evaluate a certain speech as hostile to the faithful, it is necessary to assess several circumstances in advance.

An assessment of the context of the case, in particular the nature of the original speech and the circumstances under which the speech was made, thus appears to be absolutely necessary in the context of the mass use of the 'Je suis Charlie' slogan. Just because society does not respond in a similar way to other cases of violence, or because the cartoons may evoke a connection between Islam and terrorism, it is not possible to ignore the indications that the speech was not aimed at inciting hatred and intolerance against Muslims.