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On 21 January 2009, the Amsterdam Court of Appeal had ordered the Public Prosecution Service (OM) to subpoena Dutch politician Geert Wilders for, inter alia, spreading hatred and offending a group because of their religious convictions contrary to articles 137d and 137c of the Dutch Criminal Code. On Monday 24 May, the Amsterdam Court of First Instance rejected all preliminary objections formulated by Wilder's attorney Bram Moszkowicz. High time to scrutinise the precise merits of this prosecution and to re-examine an age old controversy: the perceived clash between the right to freedom of speech and (the right to freedom of) religion.

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I. The Situation in the Netherlands

Geert Wilders has hurt many people by comparing the Quran and Hitler's Mein Kampf as well as by drawing parallels between delinquent immigrant behaviour and Islamic 'culture' and religion. Should Wilders be convicted for these utterances?

No. I don't think Wilders should be convicted for these comments. A fair interpretation of the relevant criminal provisions counsels against it. Wilders is not inciting anyone to violence, discrimination or hate, nor is he insulting Muslims in a way that would make it reasonable for them to seek protection under the law. As is well known, Wilders is giving voice to the fears, preoccupations and grievances of many Dutch citizens. These citizens have the right to be heard. Their worries should be taken into account and the issues they bring forward should be addressed. Mind you that we are talking here about controversial issues of great public concern. What we need in this context is more speech, not enforced silence. Those opposing Wilders should contradict him, instead of running to the Public Prosecutor to have him convicted. When they think it is outrageous to compare the Quran with Mein Kampf, they should offer arguments showing that the comparison goes beyond the pale. Those who deny the existence of a causal connection between immigrant Islamic culture and immigrant delinquency should either demonstrate that something like 'immigrant delinquency' does not exist or they should show that the explanation for this phenomenon can be found elsewhere. Those who think that Wilders is a dangerous demagogue should demonstrate to the world that, in fact, he is a rabble-rouser and an agitator.

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In the past, prosecutions have been secured for offensive remarks aimed at religious groups, which are similar to those in the Wilders case. Yet, it seems unlikely that Geert Wilders will be convicted for insulting a group of people for their religious beliefs, contrary to Article 137c of the Dutch Criminal Code. This is because of the settled case law of the Dutch Supreme Court, which stipulates that

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a distinction must be drawn between offending a group of people and offending the religion that the group adheres to.[1] *Wilders seems according to some, to have quite cunningly, directed his criticisms mainly at the latter. The European Court of Human Rights (ECtHR) has explicitly rejected this approach and has accepted that religious adherents can feel offended when their religion is criticised or ridiculed.*[2] *Which method do you prefer? Do you think that distinguishing between religious adherents and religions in the abstract is an artificial solution?*

The use of the adverb 'cunningly' seems to imply that one may think Wilders is attacking Islam in a secretive and sneaky attempt to incite hatred against Muslims. I do not think that is correct. I think that Wilders sincerely detests Islam and that it is the pernicious character of this system of beliefs (this 'ideology', as he calls it) that worries him. Of course, a religion exists because there are believers and calling Islam a threat means that you think that at least some of the believers - that is, the fundamentalists among them - do form a threat. But Wilders has repeatedly stressed that it is not people or Muslims as such that he detests. I agree with those who argue that if Wilders is sincere about that, he should be more careful about how he expresses himself and should refrain from making denigrating remarks. His proposal to introduce a 'head-rag tax' (kopvoddentax) to discourage Muslim women from 'polluting the public space' by wearing headscarves is perhaps the most notorious of his lapses - an incredibly demeaning description that according to some is all the more ludicrous because it comes from the mouth of a real 'rag head' (a 'voddenkop', ie a person whose head is filled with rags ('vodden') of improper thoughts and obscene ideas with which he pollutes the public space). However that may be, it is clear that Wilders' repugnance is motivated by his conviction that the headscarf is a symbol for the oppression of women that according to him is part and parcel of the Islamic faith. Remember that even the ECtHR seems to share this view (see *Dahlab c. la Suisse*[3] and *Sahin v Turkey*[4]).

1 See eg Dutch Supreme Court, 10 March 2009, NJ 2010, 19, note PAM Mevis ('Stop the Tumour that is Called Islam'), para 2.5.1.

2 *Í.A. v Turkey* App no 42571/98 (ECtHR, 13 September 2005).

3 *Dahlab c Suisse* Requête n° 42393/98 (décision sur la recevabilité) (CEDH, 15 février 2001).

4 *Şahin v Turkey* App no 44774/98 (ECtHR, 10 November 2005).

The opinion of the believer about the respect that others owe his gods and prophets carries no weight at all'

But let me return to your question. Although, as I already suggested, attacking an ideology or religion inevitably will reflect negatively on those who are 'stupid enough' to be followers of that ideology or religion, I think it is imperative to distinguish between making discriminatory, demeaning, humiliating or insulting remarks about persons and ridiculing or defaming their religion. Saying that 'Muslims are detestable' or that 'Christians are filthy dogs' is of a different order than saying 'the Islam is a detestable ideology' or 'the Christian religion should be abolished'. In a world like ours, where different belief systems exist side by side, and given the fact that we all have an interest in how others see the world (because their worldview determines in part how they will act), it is to be expected that people will criticise others and will ridicule their beliefs if they think those beliefs deserve such treatment. Without any doubt, 'attacks' on objects of religious veneration can cause profound offense. But the believers do not consider those attacks impermissible because they are offended and their feelings are hurt. (That would be a silly, self-conceited and impious claim indeed.) It is the other way around: they are offended because the blasphemer has violated religious norms requiring us to respect and honor their Gods and Prophets. In a pluralistic democracy, however, that provides no reason whatsoever to silence the blasphemer. Freedom of thought, conscience and religion or belief - and the implied freedom to express ones thoughts and convictions - must at the very least include the right of citizens to determine for themselves whether the gods and prophets of others deserve respect or contempt. The opinion of the believer about the respect that others owe his gods and prophets carries no weight at all.

In recent Dutch case law, a three-prong test has been employed to determine whether a certain utterance or expression falls under the scope of Article 137c.[5] *First, the court determines whether the utterance is offensive on its face. Subsequently, it is decided whether the specific context in which the remarks were made provides any mitigating or aggravating circumstances. In this respect, it is important to ask whether the utterances are capable of contributing to (any type of) public debate. Lastly, the remarks may not be 'gratuitously offensive'.*

5 See eg Dutch Supreme Court 14 January 2003, NJ 2003, 261, note PAM. Mevis ('Herbig'), para 3.4.1.

Some consider the second criteria, relating to public debate, slightly prejudiced in favour of religion because religiously-motivated utterances will easily fit the bill. It is feared that, for instance, Christians will be able to express their negative opinions on homosexuality with impunity, while others who claim out of a genuinely held belief (perhaps related to religious precepts) that homosexuality is 'wrong', are liable to be convicted under Article 137c. Do you think that adherence to a certain religion generally constitutes a somewhat mitigating circumstance?

I cannot see any reason why that should be the case. Although it is true that religion is very important to the believer and an integral part of his identity, the same is true of the adherent of any ideology. The National Socialist ideology, for example, is very important to the Nazi and an integral part of his identity. But I do not think anybody is willing to accept this fact as a mitigating circumstance. Nor can it be the fact that a religious motive is nobler than other motives, because that plainly is not true. Many atrocities were and are committed for religious motives.

'People should be judged according to what they actually have said, not according to what others who do not care to try to understand them might read into their statements'

All the same, that an utterance is an expression of a religious conviction is not immaterial to a determination of the expression's legal acceptability. The religious character of an expression can be relevant in determining the meaning of what has been said. When the Dutch evangelists Lucas and Jenny Goeree claimed that the Jewish people had brought the holocaust on themselves because they had rejected Jesus as the Messiah, the religious context of their preaching made clear that they were not arguing that the Jews 'got what they deserved', but that Jews could be saved from future horrors by accepting Jesus. This is without any doubt an absurd view, incredibly insensitive and a despicable attempt to give a positive theological meaning to the holocaust. But it is not a racist or discriminating view in the sense used in the Dutch Criminal Code (as the Dutch SupremeCourt erroneouslyruled[6]).

People should be judged according to what they actually have said, not according to what others who do not care to try to understand them might read into their statements.

II. The Boundaries of Free Speech

In your manuscript 'Tolerance and Religion. Inquiries into the Van Dijke Case and the Approach of the ECtHR in Respect of Blasphemy', you contend that a right not to be offended in religious beliefs ought not to be afforded to religious adherents. You claim that the same goes (mutatis mutandis) for other minorities that wish to be protected from offense, such as homosexuals.[7]

However, there is a certain difference between religion and homosexuality that might render 'equal treatment' of the two cases unfair. According to prevailing biological views, sexual preferences are obtained at birth, while in reasonably stable Western liberal democracies, religion can be regarded the subject of choice.[8] *It seems less evident that homosexuals should be subjected to scrutiny and criticism for an inherent trait, than that religious adherents should be questioned for having (more or less voluntarily) selected a particular life style and ideology. It has been observed that: 'Expression that advocates hatred and stereotyping of people on the basis of immutable characteristics is particularly harmful to the achievement of these values as it reinforces and perpetuates patterns of discrimination and inequality'.*[9] *What do you think of this argument?*

6 Dutch Supreme Court 18 October 1988, NJ 1989, 476 and after referral Court of Appeal Leeuwarden 16 March 1989, NJ 1989, 810.
In those days the Dutch courts interpreted Article 137 of the Criminal Code in a broad sense as encompassing not only *insults* directed at people because of their race or religion, but also *expressions that offend* the feelings of others because of their race or religion. The Goerees said nothing insulting about Jews, but Jews (as a matter of fact: all people with a minimal sense of propriety) took great offense at their preaching. Cf TE Rosier, *Vrijheid van meningsuiting en discriminatie in Nederland en Amerika* (Ars Aequi Libri 1997) 43-65. Because the Dutch Supreme Court abandoned that broad reading of Article 137c in the decision of 10 March 2009, NJ 2010, 19, this decision should be seen as a landmark decision in which the Court overruled earlier decisions.

7 TE Rosier, 'Tolerantie en Religie. Over de zaak Van Dijke en de visie van het EHRM inzake godslastering' (2000) 161(1) RM Themis 3.

8 See eg Ivan Hare, 'Blasphemy and Incitement to Religious Hatred: Free Speech Dogma and Doctrine' in Ivan Hare and James Weinstein, *Extreme Speech and Democracy* (Oxford University Press 2009) 308.

9 *Islamic Unity Convention v Independent Broadcasting Authority and Others,* 2002 (4) SA 294 in the Constitutional Court of South Africa per Langda DCJ (emphasis added). Moreover, the European Commission of Human Rights seemed to have accepted and endorsed this element of choice in religious matters in *Louise Stedman v United Kingdom* App no 29107/95 (Commission Decision, 9 April 1997); *Karaduman v Turkey* App no 16278/90

I think the argument taken from the South African Court refers to the special situation of South Africa, a society that is in the process of building a liberal democracy with equal rights for all on the ruins of the system of apartheid. The Court is referring to the values of human dignity, equality and national unity. I do not think that the Court meant to say that discrimination on the basis of race is worse than discrimination on the basis of religion because race is an immutable characteristic and religion a matter of choice. In any event, that would plainly be wrong. Hatred and stereotyping of people because of their religion or political affiliation is not less reprehensible because people can decide not to practice their religion or not to express their political opinion.

It is true that you cannot change your race. You simply cannot change your genetic make-up and, as far as I know, the same applies to your sexuality. While you *can* change your religion, I do not think it is very helpful to present religion as a matter of choice and homosexuality as something irreducibly genetic. In the first place, religion is a matter of belief, and although people can change their beliefs because experiences and second thoughts bring them new ideas and insights, I think it is silly to suppose that people can choose to believe something like they choose what to have for lunch. (It is equally as silly to suppose that you can force people to believe something.) Nevertheless, experience teaches us that people can change their religion. Experience also teaches us that homosexuals can struggle against and resist their homosexual inclinations. That is exactly the point made by the group of Dutch Calvinist homosexuals that call themselves 'refo-homo's' (reformed homosexuals).[10] They seem to share the Roman Catholic view that 'it is a demeaning assumption that the sexual behavior of homosexual persons is always and totally compulsive and therefore inculpable'. According to this view homosexual persons share in 'the fundamental liberty which characterizes the human person and gives him his dignity'.[11] In other words, homosexuals are free to obey God's commands and therefore they should obey God's commands.

So, although it would make no sense to admonish someone to change the color of his skin, it is not unintelligible to urge someone to leave behind his religion. Neither is it senseless to try to convince a homosexual that he should stop having homosexual sex. Personally, I think it reprehensible to condemn homosexuals as sinners and thereby to suggest that they fail in a moral sense only because they try to realize love and happiness and to frame a plan of life that best suits their nature and character without in any way causing any harm to anybody. But that is irrelevant to the question at hand.

'I do not think that the Court meant to say that discrimination on the basis of race is worse than discrimination on the basis of religion because race is an immutable characteristic and religion a matter of choice'

In the manuscript cited above, you advance the opinion that the boundary of the right to freedom of expression must be found in human dignity.[12] When a human being is absolutely debased and degraded by speech, criminal law should be employed to provide protection. Is this boundary of human dignity the same as the American doctrine of 'fighting words' supplies, or is the threshold of human dignity lower?

No, it is not. The boundary in terms of human dignity is meant to target only those expressions that contain an unambiguous negation of the equal human dignity of the addressee. The definition of 'insulting' or 'fighting words' that we find in the famous case of *Chaplinsky v New Hampshire*[13] is much broader (which perhaps explains why the US Supreme Court never again used the fighting words doctrine to uphold a conviction): 'those which by their very utterance inflict injury or tend to incite an immediate breach of the peace'.[14] According to this definition, not only personally abusive epithets should be considered fighting words, but also and even especially all kinds of verbal assaults on things that the addressee holds sacred.[15] In other words, this doctrine would justify the suppression of 'improper attacks on objects of religious veneration' along the

and *Bulut v Turkey* App no 18783/91 (Commission Decision, 3 May 1993).

10 See eg <http://www.refoanders.nl>.

11 Letter from Joseph Cardinal Ratzinger to the Congregation for the Doctrine of the Faith of the Roman Catholic Church, 'Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons' (1 October 1986).

12 TE Rosier, 'Tolerantie en Religie. Over de zaak Van Dijke en de visie van het EHRM inzake godslastering' (2000) 161(1) RM Themis 17.

13 315 US 568 (1942).

14 315 US 568 (1942), para 572.

15 See the magnificent analysis of Joel Feinberg, *Offense to Others. The Moral Limits of the Criminal Law*, Part II (Oxford University Press 1985) 232.

lines set out by the ECtHR in *Otto-Preminger-Institut v Austria*. The boundary I draw in terms of human dignity is meant to distinguish this class of offensive utterances from the class of discriminatory insults. Improper attacks on religious veneration do not tamper with the human dignity of the addressee; discriminatory insults do.[16]

Both in Murphy v Ireland and Otto-Preminger-Institut v Austria, the ECtHR accepts that freedom of expression needs to be curtailed for the sake of protecting public order and safety. While invoking this limitation seems conceptually more solid than deriving a 'right not to be offended in religious feelings' from Article 9 ECHR, concerning the right to free thought, conscience and religion, you seem unimpressed with this argument.[17] Can you elaborate on your objections against allowing public safety concerns to curb free speech?

The basic idea is very simple. When a man can be silenced or turned into a criminal 'simply because his neighbours have no self-control and cannot refrain from violence', freedom no longer exists.[18] Especially in the case of *Otto-Preminger-Institut v Austria*,[19] the appeal to public order seems to me preposterous. One of the claims of the Austrian government was that the seizure of the blasphemous film was necessary for 'the prevention of disorder'. The ECtHR agreed. It stressed the fact that the overwhelming majority of the Tyroleans were Roman Catholic and went on to say that, seen in that light, the Austrian authorities did not overstep their margin of appreciation by judging that the seizure of the film was necessary to ensure religious peace.[20] In my eyes that can only mean that a minority should abstain from openly criticizing what in their eyes is a pernicious religion, because the overwhelming majority might resort to violence to shut them up. Of course we know from experience that religious majorities sometimes do commit or condone violence against minorities who don't think as they do. Just last month, shortly before Easter, a group of Jehovah's Witnesses was attacked by an angry mob in Bulgaria and students of the ECtHR case law are perhaps familiar with the appalling facts of *97 Members of the Gldani Congregation of Jehovah's Witnesses v Georgia*.[21] What these events teach us is *not* that Jehovah's Witnesses should be banned 'to ensure religious peace'. They teach us that governments and courts have the duty to protect unpopular individuals and minorities against the intolerance of others and especially against the intolerance of the majority.

'When a man can be silenced or turned into a criminal 'simply because his neighbours have no self-control and cannot refrain from violence', freedom no longer exists'

IV. Tolerance

In an manuscript in the 'Nederlands Juristenblad',[22] legal author Klaas Rozemond has defended the proposition, inspired by the work of liberal philosopher John Mill, that 'freedom will set free'. In the manuscript, Rozemond contends that freedom increasingly seems to be perceived as something that needs to be restricted in order to maintain public order, to placate the easily-offended and to prevent extremist views from being ventilated, with all the undesirable (?) consequences that follow from that. This is ironic because, in Rozemond's view, freedom will eventually liberate those who advocate the restriction of liberty from the oppression of 'closed' societies. Rozemond warns that an alternative approach will result in a 'downward spiral of intolerance of the criminal law'. For, 'in order to protect freedom, the government will increasingly have to avail itself of the coercion of the criminal law to take action against utterances perceived as intolerant'.[23] The ECtHR appears to disagree in the Refah Partisi case, where it sanctioned the dissolution of a Turkish political party that advocated the establishment of a pluralistic legal order encompassing sharia law. This wariness on the part of the Court in preventing sharia law from becoming one of the legal systems in Turkey was substantiated by reference to the Court's desire to ward off potential threats to liberalism and democracy: 'It is difficult to declare one's respect for democracy and human rights while at the same time supporting a system based on

16 For an extensive argument, see TE Rosier, *Vrijheid van meningsuiting en discriminatie in Nederland en Amerika* (Ars Aequi Libri 1997) 276-291.

17 TE Rosier, 'Tolerantie en Religie. Over de zaak Van Dijke en de visie van het EHRM inzake godslastering' (2000) 161(1) RM Themis 5.

18 Zechariah Chafee, *Freedom of Speech in the United States* (6th edn, Harvard University Press 1967) 151.

19 *Otto-Preminger-Institut v Austria* App no 13470/87 (ECtHR, 20 September 1994).

20 ibid, para 56.

21 *97 Members of the Gldani Congregation of Jehovah's Witnesses and 4 others v Georgia* App No 71156/01 (ECtHR, 3 May 2007).

22 Klaas Rozemond, 'Vertrouw op de Vrijheid. 150 Jaar On Liberty van Mill en de Strafrechtelijke Vervolging van Discriminerende Uitlatingen' (2009) Nederlands Juristenblad 2614-2618.

23 ibid 2614. Translations by the interviewer.

sharia, which clearly diverges from conventional values, particularly with regard to its criminal law and criminal procedure, its rules on the legal status of women and the way it intervenes in all spheres of private and public life in accordance with religious precepts(…)'.[24] *What do you think of this issue? Is freedom or tolerance ever self-defeating?*

This is of course an empirical question. It might be possible. Some claim that this is exactly what happened in the late Twenties and early Thirties in Germany. This is also the period in which the fear of extremist political parties gave rise to the notion of a militant or vigilant democracy – a democracy that arms itself against those who want to abolish democracy by forbidding extremist speech and that tries to protect freedom and tolerance by silencing the intolerant. Perhaps we can imagine circumstances in which such liberty-restricting measures should be taken. But the enthusiastic embrace of this idea of a vigilant democracy might easily end in policies that undermine democracy in another way, by breeding inert citizens and discouraging 'uninhibited, robust, and wide-open' discussions of pressing public issues. Here we should call in an alternative ideal of a vigilant democracy, one that can be found in the writings of Mill, but especially in the writings of American defenders of free speech. That is the ideal Klaas Rozemond is appealing to. The essence of this ideal is that if we want to defend freedom we have no alternative but to put our trust in freedom. We can put our trust in freedom because, if you allow me to cite Thomas Jefferson, 'we have nothing to fear from the demoralizing reasonings of some, if others are left free to demonstrate their errors and especially when the law stands ready to punish the first criminal act produced by the false reasonings; these are safer corrections than the conscience of the judge.'[25] I advise all those interested in the contours of this ideal to read not only Mill's *On Liberty* but especially the concurring opinion of US Supreme Court Justice Brandeis in *Whitney v California*.[26]

'But, whereas the law should enforce toleration, in my opinion the law cannot enforce respect for other people's convictions without coming into conflict with the principle of freedom of religion itself'

Paul van Tongeren observed in his 'Introduction to Virtue Ethics[27] *that in contemporary society what we describe as tolerance is merely one of two sentiments: we either feel indifferent towards other lifestyles and convictions or we deem ourselves superior. But 'tolerance', in line with definitions ascribed to it by Aristotle and Thomas Aquinas, implies the power to bear a burden. It does not imply indifference as long as we are not bothered, or superiority in respect of people that do not accept the proposition that all manners of life are culturally and historically constructed, and consequently, are all equal. You defend a minimalist or 'narrow' conception of 'tolerance' when you submit that only respect for other people's autonomy can be guaranteed, not respect for other people's convictions.*[28] *Would this definition not be at risk of evolving into either superiority or indifference and, as such, effectively erode the notion of tolerance?*

The conception of toleration I defend is, as far as I know, the traditional conception that emerged during the religious wars of the Sixteenth and Seventeenth centuries. The call for toleration becomes important when those with power or those able to use violence strongly disapprove of the ideas or practices of others and are inclined to use coercive means to oppress those ideas or practices. In liberal democracies the state not only should itself abstain from using coercive means to oppress harmless ideas or practices, it should also enforce toleration in the sense that it should stop those who want to use coercive means to silence others. States are under a moral and legal obligation to protect individuals and minorities from the intolerance of others, ie against the readiness of others to use violence to silence those whose ideas or practices they disapprove. But, whereas the law should enforce *toleration*, in my opinion the law cannot enforce *respect for other people's convictions* without coming into conflict with the principle of freedom of religion itself. The ECtHR makes a dangerous mistake when it judges that 'it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected. '[29] As I said

24 *Refah Partisi (Prosperity Party) and Others v Turkey* App no 41340/98, 41342/98, 41343/98 and 41344/98, para 123 (ECtHR 13 February 2003).

25 Letter from Thomas Jefferson to Elijah Boardman (3 July 1801) <http://www.princeton.edu/~tjpapers/Boardman/boardman01.html#notes>.

26 274 US 357 (1927) 372. See <http://www.law.cornell.edu/supct/html/historics/USSC_CR_0274_0357_ZC.html>.

27 Translated by the interviewer. Original title: 'Inleiding in de Deugdethiek' (Amsterdam: Sun 2003).

28 TE Rosier, 'Tolerantie en Religie. Over de zaak Van Dijke en de visie van het EHRM inzake godslastering' (2000) 161(1) RM Themis 13-14.

29 *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25

earlier, freedom of thought, conscience and religion or belief and the implied freedom to express one's thoughts and convictions must at the very least include the right of citizens to determine for themselves whether or not to respect the beliefs of others.

It is important to stress that this does *not* mean that the state should refrain from fostering mutual respect. Dutch law for example requires schools to ascertain that children obtain knowledge of and get acquainted with the different backgrounds and cultures of their peers, and that is a good thing.[30] *Nor* does it follow that virulent attacks on the beliefs of others - that is, non-coercive forms of disrespect - cannot be considered *morally* blameworthy. They can. Moral reasons derived from mutual respect can cause us to be careful about the words we choose or the cartoons we draw in expressing our criticism of others' beliefs. The problem is that there can be reasonable disagreement about how much virulence, biting criticism and ridicule the beliefs and opinions of others deserve. That is why I think that it is not for governments or judges to determine that some forms of criticism are 'gratuitously offensive' (the standard used by the ECtHR in *Otto-Preminger-Institut v Austria*, but absent in *Í.A. v Turkey*). All the same, citizens should be aware of the fact that there is some truth in the idea that speech can silence others and their fellow citizens should call them to account when, in their opinion, they cross the line.

Returning to your question, I don't think this conception of toleration runs the risk of evolving into indifference. Quite the contrary, it forbids citizens to use the sword (directly or indirectly through the coercive mechanisms of the state) to suppress unwelcome ideas or verbal attacks or detested but harmless practices, but it summons them to use their pen to attack, if they think that is what should be done. Concerning the other risk you named, the risk of evolving into superiority, I'm afraid I do not exactly understand what this means. I do not accept 'the proposition that all manners of life are culturally and historically constructed and, consequently, are all equal.' I think we should fight this kind of unfounded cultural relativism as we should also fight intolerance. This also means that we should defend the superiority of the ideal of tolerance and the accompanying idea that every human being deserves to be treated with equal concern and respect.

'As far as the UNHRC is concerned, it seems to me that the Human Rights Council is dominated by representatives of governments which don't have a clue about the values of freedom of religion and freedom of speech and, as a matter of fact, I think, couldn't be interested less'

V. Controversy

What do you think of the proposition that the case law of the ECtHR, in which it develops a 'right not to be offended in religious sentiments'[31] coupled with the 'respect for religions' discourse in many UNGA Resolutions and UNHRC Resolutions,[32] might be part of a soothing-strategy on the international plane to placate belligerent religious adherents?

I am a complete layman in this field, but it seems to me highly unlikely. *Otto-Preminger-Institut v Austria* introduced the right of Roman Catholics 'not to be insulted in their religious feelings by the public expression of views of other persons', but, except perhaps for those in Northern Ireland, Roman Catholics do not seem to be that belligerent anymore. There is no need for any soothing here. In *Í.A. v Turkey* the same right was accorded to Muslims who were offended by a blasphemous novel that contained 'abusive attack[s] on the Prophet of Islam'.[33] On the other hand, in *Şahin v Turkey* the Court upheld a ban on headscarves[34] – which doesn't seem to fit into a soothing-strategy to placate belligerent religious adherents. My guess is that the Court in all these cases is more concerned with showing deference to the national authorities (allowing them their margin of appreciation) than with the threat of religious fundamentalism.

As far as the UNHRC is concerned, it seems to me that the Human Rights Council is dominated by representatives of governments which don't have a clue about the values of freedom of religion and freedom of speech and, as a matter of fact, I think, couldn't be interested less. Those governments do not

May 1993), para 33.

30 Law of 9 December 2005, Stb 2005, 678.

31 Eg *Otto Preminger Institut v Austria; Wingrove v UK; Murphy v Ireland; İ.A. v Turkey; Aydin Tatlav v Turkey.*

32 See eg UNHRC Res 4/9 (30 March 2007), Res 7/19 (27 March 2008) and Res 10/22 (26 March 2009), all entitled 'Combating Defamation of Religions'.

33 *İ.A. v Turkey* App no 42571/98 (ECtHR, 21 December 2005).

34 *Şahin v Turkey* App no 44774/98 (ECtHR, 10 November 2005).

want to soothe. They want the world to adhere to their norms concerning the respect that they think their gods and prophets deserve. Or, alternatively, they want to appease their subjects out of fear for the growing influence of religious fundamentalists.

The right to freedom of expression and the right to freedom of thought, conscience and religion have a history of (perceived) conflict. What do you think of the suggestion that the latter be altogether removed from the European Convention of Human Rights as a fundamental human right and instead be substituted by the right to free speech and the right to assembly? Is the right to freedom of thought, conscience and religion absolutely indispensible?

'Why are the followers of some silly sect allowed to use drugs in their religious ceremonies, whereas secular adults who use the same drug recreationally are criminalized?'

Again, I'm not an expert, but it seems to me that the idea that there is no room in secular liberal democracies for freedom of religion is mainly nourished by worries about unjustifiable privileges that believers are thought to enjoy. Why are the followers of some silly sect allowed to use drugs in their religious ceremonies, whereas secular adults who use the same drug recreationally are criminalized? Why would certain methods of slaughtering animals be allowed to Jews and Muslims, whereas hedonistic connoisseurs are fined when they use the same techniques to get better tasting meat? Why are gyms forced to allow Muslim women to wear headscarves during their exercises, whereas youngster can't wear their cap? And so on. I have to admit that in my view these cases are examples of unjustified unequal treatment. In some of these cases, though, my conclusion would not be that the privilege - that is, the exception to the rule - is indefensible, but rather that the rule itself is an unjustified restriction of freedom.

All the same, my answer to your question would be a simple pragmatic 'yes'. As long as people are silenced, discriminated against, oppressed, tortured and persecuted just because of their religion, I think we cannot do without the special protection afforded by an internationally recognized fundamental right to religious freedom. A quick glance at the reports of the UN Special Rapporteur on Freedom of Religion or Belief will do to illustrate this point. ■