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FINDING HUMOUR IN HUMAN RIGHTS

Author: Aistė Marija Macaitė
Supervisor: Prof. Dr. Koen Lemmens

ABSTRACT

Humour as a form of freedom of expression plays a vital role in the framework of human rights (in Europe.) This is especially true in cases where the freedom of expression potentially interferes or contradicts other rights, for instance, the freedom of religion. Therefore, in order to find suitable and encouraging limitations of 'comic acts', this paper begins with a theoretical study of the use of humour. However, the legal limits of acceptable expressions of humour have been defined in the European Court of Human Rights' jurisprudence related to Article 10 of ECHR (and in particular cases under Article 17), and so an examination of this case law is performed. Finally, a case study of France is completed as an example of how satirical journalism is handled within the coherent jurisprudence of the ECHR, in a jurisdiction where people, but not religious institutions, have rights.

TABLE OF CONTENTS

INTRODUCTION **3**

1. THEORETICAL FRAME OF HUMOUR AND ITS USE **5**

1.1. Superiority's theory **5**

1.2. 'Permissible' humour in accordance with the principle of harm and 'rational' offence **7**

1.3. Let ink flow, not blood (or positive use of humour) **13**

1.3.1. Incongruity theory **13**

1.3.2. Relief (release) theory **17**

1.3.3. From theory to reality **18**

2. REFLECTIONS IN REALITY: HUMOUR AS A 'RISKY BUSINESS' **22**

2.1. Danish cartoons crisis **22**

2.2. Evaluation of Danish cartoon crisis: negative and positive impacts **27**

3. THE SCOPE OF FREEDOM OF EXPRESSION UNDER ARTICLE 10 OF ECHR AND ITS RELATION WITH ARTICLE 17 OF ECHR **31**

3.1. Freedom of Expression and its duties and responsibilities **31**

3.2. Abusive jokes under the Article 17 of ECHR **41**

4. CASE STUDY: FRENCH LAICITY, *CHARLIE HEBDO* AND ITS RIGTHS TO SATIRE AND BLASPHEMY À LA FRANÇAISE **48**

4.1. Caricaturing religion **48**

4.2. Disparity between belief and believer **53**

CONCLUSION **59**

BIBLIOGRAPHY **61**

Primary Sources **61**

Statutes and statutory instruments: **61**

Cases: **62**

Secondary Sources **65**

Books: **65**

Journal articles: **66**

Online journals: **68**

Websites and blogs: 71

INTRODUCTION

The legend says that philosopher Chrysippus laughed himself to death (literally)[1]. Maybe this is one the reasons why the first known debates on humour considered it as a negative phenomenon and laughter was compared to a dishonourable act for a good citizen[2]. However, during the ages the concept of humour has changed several times (from negative perception to positive and vice-versa), the theories of humour and its use were developed and the new modes of humour's employment have emerged. Therefore, these days the humour and the comic act are typically considered as a form of artistic expression which falls under the scope of the freedom of expression.

Freedom of expression covers a lot of forms of expressions including humoristic, comic, ironic or even satiric acts. Therefore, the term 'humour' in this paper is used as a form of freedom of expression, which contains all categories of the funny or at least which supposed to be funny including irony, wordplay, satire, cartoons, ridicule and other kinds of comic acts.

Typically because of its funny and amusing nature, humour is taken as a 'non serious activity' in which 'we are not trying to discover the truth or even make sense of what we experience … all that matters is the mental jolts are enjoyable'[3]. However, in this paper new-old approaches based on humour's perception will be discussed starting with theoretical (and ethical, moral) part of the use of humour and then moving towards legal regulation under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) while providing the most known case studies in Europe.

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[1] Schmitt Gavin C., 'Top Ten Philosopher Deaths', (2011) The Framing Business < http://framingbusiness.net/archives/1014 >, accessed July 12, 2017

[2] Morreall John, 'Philosophy of Humor' (2016) Stanford Encyclopedia of Philosophy <https://plato.stanford.edu/entries/humor/> accessed July 12, 2017

[3] Watson Cate, 'A Sociologist Walks into a Bar (and Other Academic Challenges): Towards a Methodology of Humour' (2014) Sage Journals, P.412 < http://journals.sagepub.com/doi/abs/10.1177/0038038513516694> accessed July 12, 2017

Thus, the aim of this paper is to re-discuss and rediscover the role of humour in our community[4] while challenging the frivolous nature of humour and providing the examples when the use of humour became 'serious business', especially in the cases of provocative comic acts where the freedom of expression confronted the freedom of belief or other rights (for instance: the publications of Danish cartoons, the case of *Charlie Hebdo* and others). Consequently, in order to have a full image of humour and its application in the frame of human rights the theoretical approaches of humour and its concept is discussed in the first part. The second point of this paper is the case of Danish cartoon crisis which was chosen of its importance, the impact given and a 'pioneer' role of restarting the debate on the limits of freedom of expression including 'blasphemous' humour. In the third part legal boundaries under the Articles 10 and 17 of ECHR with the European Court of Human Rights (ECtHR, the Court, the Strasbourg Court) case law is analysed in order to establish what kind of humour is legally acceptable. The French case study was chosen for the last part because of its crucial and unique context: the principle of *laïcité*, extremely satirical and provocative journalism and cartooning and finally, the confrontation between freedom of expression (plus freedom to satirise) and freedom of religion.

Finally, a commentary on the theoretical and practical analysis of the humour use is provided in the conclusion and hopefully, the place of 'correct' or 'right in sense it is not wrong' humour will be determined within the frame of human rights.

[4] The term 'community' in this paper means the geographical scope of the Council of Europe

1. THEORETICAL FRAME OF HUMOUR AND ITS USE

1.1. Superiority's theory

Humour and laughter have been studied not only as a form of amusement from ancient times. Already in Ancient Greece humour (or more specifically laughter), its influence and 'ethical' dangers to the State were examined by Plato, Aristotle, stoics and others.

Plato is considered as one of ancestors of so-called superiority theory. According to him, humour is comparable to the malice or even some kind of evil. In *Laws* (*Book V*) he argues that, every man must to restrain from laughter because it causes the anger of Gods[5]. Furthermore, Plato says that 'comedy should be tightly controlled'[6] and differently from the poetry which in certain cases can be allowed, laughter should be avoided because it does not serve anything beneficial and 'always produces a violent reaction'[7]. Yet, 'the view of laughter that started in Plato <…> dominated Western thinking about laughter for two millennia.'[8]

Another big critique on humour and the pillar of superiority theory emerge from *Leviathan* where Thomas Hobbes supports Plato at this point, that humour is some kind of malicious action: 'And therefore much laughter at the defects of others is a sign of pusillanimity.'[9] In order to avoid the appearance of superiority and scorn 'the great minds refrain from it[10] [laughter]'. Only weak people who cannot achieve self-assurance laugh at failures and misfortunes of others. Furthermore, Hobbes' idea about laughter reflects his pessimistic point of view on human nature: human beings are selfish and egocentric. Thus, the laughter is always connected with feelings of superiority, 'the

[5] Plato, 'Laws', Book V, P.341 <http://www.idph.net/conteudos/ebooks/republic.pdf>, accessed July 12, 2017

[6] Morreall John, 'Philosophy of Humor' (2016) Stanford Encyclopedia of Philosophy <https://plato.stanford.edu/entries/humor/> accessed July 12, 2017

[7] Plato, 'The Republic', P. 242 < http://www.idph.net/conteudos/ebooks/republic.pdf >, accessed July 13, 2017

[8] Morreall John, 'Philosophy of Humor' (2016) Stanford Encyclopedia of Philosophy <https://plato.stanford.edu/entries/humor/> accessed July 12, 2017

[9] Hobbes, Thomas., *Leviathan* , P.36

[10] Ewin R.E., 'Hobbes on Laughter' (2001) 202 The Philosophical Quarterly, P.30

imagination of our own odds and eminency'[11] and, therefore, people usually laugh at others.

Consequently, during the ages the remarks on humour were sufficiently negative (at least philosophic thought): humour was taken as a primitive tool to mock someone or to enjoy the misfortunes of others. However, even though the humour was studied by a quite significant number of philosophers, 'the most that major philosophers like Plato, Hobbes, and Kant wrote about laughter or humor was a few paragraphs within a discussion of another topic.'[12] The real beginning of debates on humour and the 'invention' of humour theories can be dated at 20th century. Since then the use of humour has been framed within superiority, relief and incongruity theories.

'The superiority theory holds that we find humour in the misfortunes of others.'[13] According to this theory, people laugh at others in order to create or uphold the feeling of supremacy, in certain cases humour can be used as a tool of bullying or it shapes racial, stereotypical ideas under the shelter of joke. Humour tackles those who are more vulnerable than others, for example: migrants, people with strong religious beliefs, women, ethnic minorities, etc. 'Simply put, our laughter expresses feelings of superiority over other people'[14]. Therefore, it is possible to argue that humour intervenes in the field of human rights with a double role: as a form of freedom of expression and as a destructor of 'public order', morals or feelings (related to a certain 'vulnerable' group). Thus, humour, according to superiority theory, has a negative impact or even provokes a violent reaction. Certain modern philosophers (for instance J. Morreal) point out that 'humour can be irresponsible and can cause harm by promoting

[11] Heyd David, 'The Place of Laughter in Hobbes's Theory of Emotions' (1982) Journal of the History of Ideas < http://links.jstor.org/sici?sici=0022-5037%28198204%2F06%2943%3A2%3C285%3ATPOLIH%3E2.0.CO%3B2-Y> accessed July 12, 2017

[12] Morreall John, 'Philosophy of Humor' (2016) Stanford Encyclopedia of Philosophy <https://plato.stanford.edu/entries/humor/> accessed July 12, 2017

[13] Watson Cate, 'A Sociologist Walks into a Bar (and Other Academic Challenges): Towards a Methodology of Humour' (2014) Sage Journals, P. 412 < http://journals.sagepub.com/doi/abs/10.1177/0038038513516694> accessed July 12, 2017

[14] Morreall John, 'Philosophy of Humor' (2016) Stanford Encyclopedia of Philosophy <https://plato.stanford.edu/entries/humor/> accessed July 12, 2017

inaction in the face of serious problems and can also cause moral harm by showing a lack of compassion.'[15]

1.2. 'Permissible' humour in accordance with the principle of harm and 'rational' offence

Lately, humour has been analysed not only as a malicious act which humiliates others. Certain authors in their philosophical theories analyse the scope of freedom of speech within the boundaries of expression which might be offensive and hurtful. In other words, their analysis is based on 'what is allowed to say' and 'how people should react to that what was said (inquiry whether the reaction was reasonable)'. For example: 'There is a big difference between a Jew telling a Jewish joke, which can be for reasons of social acceptability, and a Nazi telling a Jewish joke, which can be for racial hatred.'[16] Thus, in order to prevent social conflicts and confrontation between freedom of expression and other freedoms (especially in cases of sensitive topics and *bad* or *failed* kinds of humour) certain authors propose to apply a 'method of avoidance' where humour *fits* to its time, society and cultural context (for instance Jason Dittmer in *Humour at the Model United Nations: The Role of Laughter in Constituting Geopolitical Assemblages;* Scott Sharpe & Maria Hynes in *Black-faced, red faces: the potentials of humour for anti-racist action*). This kind of avoidance is universally known as a *principle of harm* which began with John Locke and was developed by J.S. Mill.

J.S. Mill is known as a great promoter of freedom of expression. However, in certain cases J.S. Mill leaves behind *laissez faire* doctrine and agrees that in particular cases freedom of speech can be limited by regulation of authority: 'laissez-faire policy admits of exceptions because speakers can sometimes cause such severe

[15] Cameron John D., 'Can poverty be funny? The serious use of humour as a strategy of public engagement for global justice' (2015) Third World Quarterly, P. 282 < http://dx.doi.org/10.1080/01436597.2015.1013320> accessed July 11, 2017

[16] Rolfe Mark, 'Clashing Taboos: Danish Cartoons, the Life of Brian and Public Diplomacy' (2009) The Hague Journal of Diplomacy, P. 273

damage to others that coercive interference with the speech is justified.'[17] More specifically, the liberal philosopher talks about the 'extraordinary types of expression that cannot be heard or viewed without severe direct and immediate harm to third parties'[18], for example: intimate details of private life. Thus, 'Mill acknowledged that expressing and publishing opinions potentially affects people'[19] and might cause harm. This is the reason why freedom of speech shall be linked to the principle of harm. Shortly, the principle of harm is defined as 'a very simple principle that amounts to the notion that persons are at liberty to do what they want as long as their actions do not harm any other person or society in general'[20]. Following the idea of this harm principle as a universal basis, comedians, cartoonists and other kind of humourists should remain in silence or change their humoristic approach as soon as it causes harm to other individuals. However, the term 'harmful' is problematic because it is very subjective and personalised (this means there is no objective, standard foundation of 'harm', every individual can differently interpret what is harmful according to their own experience). Furthermore, taking into account that these days term 'harmful' is linked to offensive (because it hurts feelings, convictions or beliefs) it seems that any kind of 'offending, shocking, and disturbing ideas'[21] in freedom expression should be eliminated as initiating harm, especially when every joke shall have its target, victim (for example: one online portal started the satirical discussion whether the activity of begging money exercised by migrants from EU Member States should be considered as job ''Should begging be seen as a job and therefore the EU-migrants as labour migrants?'; *Flashback*, 2014'[22]). However, if every form of 'hurtful' and humiliating satire was perceived as a harmful act, this would lead our society to extreme self-censorship

[17] Riley Jonathan, 'J. S. Mill's Doctrine of Freedom of Expression' (2005) Cambridge University Press, P.147 < https://www.cambridge.org/core/services/aop-cambridge-core/content/view/S0953820805001500>, accessed July 12, 2017
[18] *Ibid.,* P. 149
[19] Langer Lorenz, 'Religious Offence and Human Rights. The Implications of Defamation of Religions' (2014) Cambridge University Press, P.290
[20] Du Plessis Georgia, 'The Legitimacy of Using the Harm Principle in Cases of Religious Freedom Within Education' (2016) Human Rights Review < https://www.springerprofessional.de/the-legitimacy-of-using-the-harm-principle-in-cases-of-religious/10271608 >, accessed July 12, 2017
[21] European Court of Human Rights, *Handyside v. the United Kingdom*, December 7, 1976), Para. 49
[22] Malmqvist Karl, 'Satire, racist humour and the power of (un)laughter: On the restrained nature of Swedish online racist discourse targeting EU-migrants begging for money' (2015) Discourse & Society Vol. 26(6), P.739

similar to Plato's *Ideal State* where laughing *at* was a dishonour of a good citizen. Thus, the Millian's principle of harm should be applied in accordance with nowadays standards[23]: 'No doubt people dislike being offended but they dislike all sorts of things. Mere dislike is not enough to justify curtailing the freedom of others. If it were, we might easily be left with very little freedom.'[24] Yet, we can find ourselves in a vicious circle where more tolerance means less tolerance. Thus, the *principle of harm*, as it was perceived in Millian's times, is not sufficient anymore: in a democratic society the language of harm cannot be the only criteria to limit freedom of expression even though this speech is satirical, mocking and from time to time hurtful. In addition, even if J.S. Mill stressed that sometimes freedom of speech had be limited, at the end he 'argued for the great value of dissent, even dissent that you find deeply offensive: it is through the collision of viewpoints, often forcibly and perhaps rudely expressed, that we have the best chance of arriving at truth or at least clarity about what we believe.'[25]

The successive authors (for instance: S. Sharpe, M. Hynes) rephrased J. S. Mill's principle of harm and constructed their idea on the 'effect of prejudice'. S. Sharpe, M. Hynes in their article *Black-faced, red faces: the potentials of humour for anti-racist action* argue that 'the relationship between humour and prejudice is not straightforward'[26], however, the publicist shall read and predict the intention of humourist (check whether humoristic act is 'innocent' or has an aim to offend someone on let's say racial basis ('clear and unambiguous expressions')) and may not allow to publish or broadcast the comic act if it can cause a prejudice to society. Thus, the role of publicists, redactors is vital because 'beyond the content of the expression, the context should also be taken into account. The media context of the utterance is relevant.'[27] Yet, the final responsibility to behave in accordance with social rules belongs to comedian

[23] These permissible standards and abusive expressions will be discussed in following chapter 'THE SCOPE OF FREEDOM OF EXPRESSION UNDER ARTICLE 10 OF ECHR AND ITS RELATION WITH ARTICLE 17 OF ECHR'

[24] Jones Peter, 'Charlie Hebdo, Religion & Not Causing Offence' (2016) The Critique < http://www.thecritique.com/articles/charlie-hebdo-religion-not-causing-offence/>, accessed July 12, 2017

[25] Franco Joshua, Warburton Nigel, 'Should there be limits on hate speech?' (2013) Index on Censorship < http://journals.sagepub.com/doi/abs/10.1177/0306422013495621 >, accessed July 12, 2017

[26] Sharpe Scott, Hynes Maria, 'Black-faced, red faces: the potentials of humour for anti-racist action', (2015) Ethnic and Racial Studies, P. 88 < http://dx.doi.org/10.1080/01419870.2016.1096405>, accessed July 12, 2017

[27] Buyse Antoine, 'Words of Violence: "Fear Speech," or How Violent Conflict Escalation Relates to the Freedom of Expression', (2014) Human Rights Quarterly by The Johns Hopkins University Press , P.795

and he/she cannot use an excuse of 'I'm just kidding' for harmful and racial performances.

Thus, according to these authors, the humourists and especially cartoonists de-commit themselves under the clichés as 'I am just kidding' or 'it was a joke'[28]. However, not all kinds of laughter are so innocent and their actions are not harmless even though we can't see bleeding wounds. Widely known cartoons of the Prophet Mohammed in *Jyllands-Posten*, drawings of Syrian child Alan Kurdi (cartoon suggesting Kurdi might have grown up to be a sexual abuser following the sexual assault cases in Cologne[29]), 'Earthquake, Italian-style' also known as 'Human lasagne' (depiction of victims of the 6.2-magnitude quake in Amatrice with varying degrees of injury, each linked to an Italian recipe[30]), 'Russian plane' (drawing of a sinking jet with the words 'Bad news... Putin wasn't on board'[31]) and other examples prove that freedom of expression is capable not only attack feelings but harmfully insult people and their beliefs. Thus it is clear that humour can produce the prejudice as well (in this case 'prejudice' is perceived as a psychological harm). Thus, there are opinions[32] that at least offensive humour, blasphemous and defaming cartoons shall be limited on the basis of *effect of prejudice* in order to avoid conflicts and society's dissension. Shortly, this assumes that people should think before saying something and humourists cannot de-commit themselves under 'I'm just kidding'. 'There are many contexts in which self-

[28] Sharpe Scott, Hynes Maria, 'Black-faced, red faces: the potentials of humour for anti-racist action', (2015) Ethnic and Racial Studies, P. 94 < http://dx.doi.org/10.1080/01419870.2016.1096405>, accessed July 12, 2017

[29] Meade Amanda, 'Charlie Hebdo cartoon depicting drowned child Alan Kurdi sparks racism debate' (2016) The Guardian https://www.theguardian.com/media/2016/jan/14/charlie-hebdo-cartoon-depicting-drowned-child-alan-kurdi-sparks-racism-debate, accessed July 12, 2012

[30] Hume Tim, 'Charlie Hebdo slammed for 'lasagne' cartoon on Italy earthquake victims' (2016) CNN: <http://edition.cnn.com/2016/09/02/europe/charlie-hebdo-italy-earthquake/>, accessed July 12, 2017

[31] Stewart Will, 'Bad news... Putin wasn't on boar': Charlie Hebdo magazine is branded 'inhuman' in Russia over cartoons 'mocking' Black Sea plane disaster' (2016) Dailymail < http://www.dailymail.co.uk/news/article-4072724/Bad-news-Putin-wasn-t-board-Charlie-Hebdo-magazine-branded-inhuman-Russia-cartoons-mocking-Black-Sea-plane-disaster.html#ixzz4dNHGam6f>, accessed July 12, 2017

[32] For example: Final communique of the eleventh session of the Islamic Summit Conference: OIC/SUMMIT-11/2008/FC/Final, Para. 177: 'The Conference strongly condemned the publication of offensive, provocative, irresponsible, and blasphemous caricatures of the Prophet Mohamed (Peace Be Upon Him) in the media of some western countries. The Conference authorized the Secretary-General to constitute a Group of Experts to develop the draft of a legally-binding international instrument to promote respect for all religions and cultural values and prevent discrimination and instigation of hatred vis-à-vis the followers of any religion.'

restraint is wholly and obviously desirable, and something that would not be thought to stand in need of special justification in the way that self-censorship might be thought to do.'[33] Thus, if a comic act can possibly provoke a serious damage to members of society (even if this damage is not physical) or demonstrate a harsh intolerance, the perpetrator should abstain from this act because 'words only matter if they are heard, and they depend on a specific context to entail specific consequences.'[34]

All in all, the criteria of the *effect of prejudice* seems to be analogical the *principle of harm* just put in another wording. However, these criteria aren't sufficient to describe the possible ethical and moreover legal limits of humour in the frame of human rights. That's the reason why some theorists (for example Peter Jones is his article *Religious Belief and Freedom of Expression: Is Offensiveness Really the Issue?*, David Keane in the article *Cartoon Violence and Freedom of Expression* and others) suggest applying *the test of reasonableness* in parallel to the principle of harm and the effect of prejudice.

Basically the test of reasonableness examines whether people have a right to feel offended on *objective* basis or not. In other words, this test verifies if the reaction to a joke or another comic act was reasonable. In order to evaluate the offensiveness of humour it is necessary to look at the nature of offense and its outcome. In theory offense covers: 1) negative experience; 2) mental state of this negative experience (badness of offense or bad tendencies such as produced fear)[35]. Furthermore, an offense shouldn't be mixed up with annoyance, 'something wrong situation' or displeasure. In other words, the offense has to be profound: 'The offended feel moral shock, indignation and revulsion.'[36] However, analogically to the principle of harm and the effect of prejudice, the proof that people have the 'right to feel offended' is not sufficient to shut down an offensive humour because it might possibly be an unlawful interference with the freedom of expression. On the other hand, *homo sapiens* is not a robot or cyborg, and

[33] Horton John, 'Self-Censorship', (2011) Res Publica, P. 98
[34] Langer Lorenz, 'Religious Offence and Human Rights. The Implications of Defamation of Religions' (2014) Cambridge University Press, P.291
[35] Jones Peter, 'Religious Belief and Freedom of Expression: Is Offensiveness Really the Issue?' (2011) Res Publica, P. 80 < http://link.springer.com/article/10.1007/s11158-011-9144-4>, accessed July 11, 2017
[36] Cohen-Almagor Raphael, 'The Charlie Hebdo Affair Between Speech & Terror' (2016) The Critique < http://www.thecritique.com/articles/the-charlie-hebdo-affair-between-speech-terror/>, accessed July 12, 2017

injured feelings have nothing to do with reason, adequate and proportional reaction. As J.S. Mill's wrote in his *On Liberty:* 'there is no parity between the feeling of a person for his own opinion, and the feeling of another who is offended at his holding it; no more than between the desire of a thief to take a purse, and the desire of the right owner to keep it.'[37]

Hence, this classic approach based on superiority theory and principles of harm/prejudice/effect on society do not appear to be sufficient, especially when the typical use of humour use has changed. In order to have a better understanding of humour concept and its use in nowadays society it is necessary to discuss 'the positive' theories of humour application and their impact.

[37] Mill, John Stuart, 'On liberty', para. IV.12 Liberty Fund < http://www.econlib.org/library/Mill/mlLbty4.html>, accessed July 12, 2017

1.3. Let ink flow, not blood (or positive use of humour)

In general, humour is perceived as 'something fun' but not thoughtful phenomena in daily life. Moreover, in the field of human rights humour is more known for having a negative role because of few tragic events (*Charlie Hebdo, Danish Cartoons*) or because of its 'non serious nature' (natural understanding about humour is that it has no additional value except making people laugh). However, step by step the perception of humour and its use has started to change. For example, within the movement *Cartooning for Peace* humour works as promoter and advocate for human rights and freedoms, certain TV shows as *Last Week Tonight with John Oliver* advertise human rights and provide information on the most serious issues in more attractive and interesting way (for instance the episodes on death penalty, Erdogan's referendum, migrants and refugees, Paris agreement and others). In some countries there are political movements which use humour as a tool to aware a voter about static, bureaucratic or even corrupted state's governance and abusive policies.[38] That is why it is significant to re-discuss humour's role in a theoretical level and study few cases where humour was used as a strategy for a public engagement or some kind of form of resistance in the real life.

1.3.1. Incongruity theory

Differently from supremacy theory, the main feature of incongruity and relief theories is not laughing *at* but laughing *with* or laughing at no one. For example: 'Morreall (1989: 248) suggests that what makes someone slipping on a banana peel funny, as considered within the superiority theory, is our feeling superior to the person

[38] The trend of these political movements or separate politicians is noticeable all around Europe, for example: 'Strong Party' in Kosovo, 'The Best Party' is Island, 'Rising Nation Party' in Lithuania, etc.

who slipped; while in the incongruity theory, it is funny because it 'clash[es] with our idea of someone walking.'[39]

In Oxford English dictionary the term *incongruous* is described as 'Not in harmony or keeping with the surroundings or other aspects of something.'[40] Consequently, 'the Incongruity Theory says that it is the perception of something incongruous—something that violates our mental patterns and expectations.'[41] In other words, according to this theory, funny things happen when created expectation is breached in a very unpredictable way, for example: words play, change of spelling, etc. For instance, one of the greatest illustrations of incongruity theory is Serbian's *Otpor* movement action against former dictator Slobodan Milosevic: 'Mira Markovic, the wife of Milosevic and herself a politician in the Communist party, said in a statement that the Communists came to power with blood, so they would not leave power without blood. The Otpor activists then went to the hospital to donate blood and say "Here is our blood, now you can go."'[42] And as it is common to the incongruity theory, the sequence of events is so absurdly unexpected that makes people laugh or at least smile.

The big names of incongruity theory are Immanuel Kant and Arthur Schopenhauer. According to I. Kant, the absurdity of joke amuses people. In his *The Critique of Judgment* Kant wrote that 'something absurd (something in which, therefore, the understanding can of itself find no delight) must be present in whatever is to raise a hearty convulsive laugh. Laughter is an all action arising from a strained expectation being suddenly reduced to nothing. This very reduction, at which certainly understanding cannot rejoice, is still indirectly a source of very lively

[39] Watson Cate, 'A Sociologist Walks into a Bar (and Other Academic Challenges): Towards a Methodology of Humour' (2014) Sage Journals, P.411 < http://journals.sagepub.com/doi/abs/10.1177/0038038513516694> accessed July 12, 2017

[40] The English Oxford Living Dictionaries, in <https://en.oxforddictionaries.com/definition/incongruous>, accessed July 12, 2017

[41] Morreall John, 'Philosophy of Humor' (2016) Stanford Encyclopedia of Philosophy <https://plato.stanford.edu/entries/humor/> accessed July 12, 2017

[42] Sorensen Majken Jul, 'Humor as a Serious Strategy of Nonviolent Resistance to Oppression', (2008) Peace & Change, P.181

enjoyment for a moment.'[43] Thus, humoristic action happens when there is an incongruity between what ought to be and what really occurs.

Schopenhauer's explanation of incongruity theory slightly derives from Kant's one. 'While Kant located the lack of fit in humor between our expectations and our experience, Schopenhauer locates it between our sense perceptions of things and our abstract rational knowledge of those same things.'[44] This means, according to Schopenhauer, that there is a difference between concept of the real objects (how they are understood in general, actual knowledge of things) and impulsive perception that these 'real object' might have a wider and unexpected sense (thus, the breach between what happened and 'ought to have happened' makes the situation comical: concept versus perception). For example, after *Jyllands-Posten* of Danish cartoons British Muslims gathered next to Danish embassy in London in order to protest over cartoons. One of the protestors had poster with the slogan 'Freedom of expression go to hell!'[45]. The absurdity and amusing moment of this poster is that Muslim protestor wanted to decline and ban freedom of expression while exercising his right to free speech in a very open, quite drastic and 'Western' manner.

Another example of discovering the incongruous moment is cartoons. The term 'cartoon' as it is understood these days was employed by British magazine *Punch* which was known for its satirical depictions from the middle of 19th century.[46] Since then cartoons have played an important role to provide the sharpest commentary on political and social matter in quite simple and humoristic way. Furthermore, the editorial cartoon has been one of the first tools to monitor and impact the public life, to highlight the vices and defaults of people in power. Consequently, cartoon 'acquired the meaning of a pictorial parody, humorous and often satirical in its portrayal of social and political events.'[47] Thus, popularisation of cartooning has started with first newspapers

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[43] Kant, I., 1790 [1911], Critique of Judgment, James Creed Meredith (tr.), P.332 < http://www.davidbardschwarz.com/pdf/kant.pdf >, accessed July 12, 2017

[44] Morreall John, 'Philosophy of Humor' (2016) Stanford Encyclopedia of Philosophy <https://plato.stanford.edu/entries/humor/>, accessed July 12, 2017

[45] Photography of this poster was made by Bruno Vincent/Getty Images (2005), London

[46] New World Encyclopedia contributors, 'Cartoon', (2017), New World Encyclopedia, <http://www.newworldencyclopedia.org/p/index.php?title=Cartoon&oldid=1002744>, accessed July 12, 2017

[47] *Ibid.*

and magazines where cartoons had provided a visual joke and had bought a socially important message at the same time.

Actually cartoon is described as 'a simple drawing showing the features of its subjects in a humorously exaggerated way, especially a satirical one in a newspaper or magazine.'[48] Even if the forms of media have changed a lot from the 19th century, cartoons have saved their essential aim: to bring a socially important message or/and attack an idea, person or event while hoping that certain depiction would make people laugh. 'Newspaper and magazine editors use cartoons to portray a specific issue because of their simplicity in reader comprehension. Readers can understand their message faster than any political commentaries or editorials. Clever cartoons are often the motivator for a consumer to actually read editorial viewpoints, ideas, and beliefs.'[49] Thus, cartoons are eye-catching because of their simplicity and accessibility, ability to demonstrate an issue in ridiculous and surprising way. Moreover, cartoons attract more attention because it takes just a couple of minutes to perceive an information being depicted (differently than reading a whole article on political, sociological or other issues which is normally written in a quite sophisticated style).

However, as already known, cartoons can play a double role in our society and be representors of supremacy and incongruity theories. Therefore, sometimes cartooning is perceived as a tool of Western oppression: 'some cartoons often promote stereotypical attitudes about a people being represented or made the subject matter of humor. Worse yet, such stereotyping has not gone without its ensuing devastating results in the sense that it vilified a people and made their descendants a target of numerous heinous attacks, especially in many different Western countries.'[50] Nevertheless, it wouldn't be fair to characterise cartooning as a purely negative phenomena: as already noticed, cartoons bring a socially important message, can advocate for politically important issues and educate people about the biggest concerns worldwide in less heavy and more attractive way than depressive documentaries or

[48] Oxford internet dictionary < https://en.oxforddictionaries.com/definition/cartoon >, accessed July 12, 2017

[49] Alessandro Bigi, Kirk Plangger, Michelle Bonera and Colin L. Campbell, 'When satire is serious: how political cartoons impact a country's brand' (2011) Journal of Public Affairs P. 152

[50] Belamghari Mohamed, 'Cartooning Humor: How Arabs are Laughably Derided in Animations' (2015) KOME, P.67

articles, finally, cartoons may work as a voice of protestor and a very important component of press. Thus, cartooning can be perceived as an amusing messenger or a destructor of society.

All in all, this theory gives a very important role to 'the structure of jokes and the cognitive side of humour, at the expense of other important factors, such as subject-matter, and the attitude and feelings of the laugher.'[51] Hence, people feel amused because a situation is incompatible to their expectations. 'The core meaning of "incongruity" in various versions of the Incongruity Theory, then, is that some thing or event we perceive or think about violates our standard mental patterns and normal expectations.'[52]

1.3.2. Relief (release) theory

The last theory on humour, which supplements the incongruity theory, is called the relief or release theory. This theory is not so widely spread and is associated to the big names such as S. Freud and H. Spencer. The main claim of relief theory is 'that we laugh to release emotional or psychic tension and this produces pleasure'[53], thus we laugh when the tension or pressure is released. Ironically it is possible to say this tension-release model appears when a situation could be described as 'being funny because it's sad'.

In *The Physiology of Laughter*, Herbert Spencer provides a lot of technical and biological (and even neurological) details on how laughing works. However, his theory can be simplified into ordinary language while giving the main idea that people laugh in order to reduce stress in difficult situations and everyday stress. 'For example, one often hears it said that humor allows one to "blow off steam" after a stressful day at

[51] Lippitt John, 'The humour and incongruity', P.9 < http://uhra.herts.ac.uk/bitstream/handle/2299/3989/900211.pdf?sequence=1 >, accessed July 12, 2017

[52] Morreall John, 'Philosophy of Humor' (2016) Stanford Encyclopedia of Philosophy <https://plato.stanford.edu/entries/humor/> accessed July 12, 2017

[53] Watson Cate, 'A Sociologist Walks into a Bar (and Other Academic Challenges): Towards a Methodology of Humour' (2014) Sage Journals, P.411 < http://journals.sagepub.com/doi/abs/10.1177/0038038513516694>, accessed July 12, 2017

work.'[54] Thus, taking into account Spencer's claim that 'emotions take the physical form of nervous energy'[55], the humour and laughter might be used to reduce negative experiences and as a tool of surviving (for instance, Jew 'jokes' and parody culture under the regime of Third Reich such as 'Hitler and Göring are standing on top of Berlin's radio tower. Hitler says he wants to do something to cheer up the people of Berlin. -Why don't you just jump? -suggests Göring'[56]).

Sigmund Freud analysed relief theory from a bit diverse angle than Spencer, furthermore Freud examined different origins of laughter such as comic, jokes and witty comments as well humour. 'According to Freud (1928), humour serves as a coping mechanism to overcome difficult situations by protecting oneself from being overwhelmed by the negative emotions associated with those situations.'[57] This means that laughter helps to avoid emotional burn-outs and to manage the stressful situations. Moreover, the application of humour, especially the black one, makes even the worst situations of life easier to experience and might be an adaptive mechanism of surviving in extremely difficult conditions. Thus, humour might be used as a self-defence mechanism.

1.3.3. From theory to reality

Differently from superiority theory, incongruity and relief theories show optimistic effect of humour at least in theory. Here, from humiliation we are moving to the helpful role of humour. John D. Cameron and other authors (Ho Sammy K., Cate Watson and others) argue that humour might work as a form of public engagement. For instance: John D. Cameron upholds that 'creativity and humour is key to getting people

[54] Smuts Aaron, 'Humor' Internet Encyclopedia of Philosophy < http://www.iep.utm.edu/humor/#SH2c>, accessed July 12, 2017

[55] Morreall John, 'Philosophy of Humor' (2016) Stanford Encyclopedia of Philosophy <https://plato.stanford.edu/entries/humor/> accessed July 12, 2017

[56] Crossland David, 'Did You Hear the One About Hitler?' (2006) Spiegel Online < http://www.spiegel.de/international/new-book-on-nazi-era-humor-did-you-hear-the-one-about-hitler-a-434399.html >, accessed July 12, 2017

[57] Ho Sammy K., 'Relationships among humour, self-esteem, and social support to burnout in school teachers' (2015) Spencer, P.42 < http://link.springer.com/article/10.1007/s11218-015-9309-7>, accessed July 12, 2017

involved in the fight for human rights'.[58] This statement can be confirmed through the social actions or solidarity movements such as 'Red Nose Day' which has an aim to raise money for children in poverty around the world. Also humour can work as icebreaker and help to establish or reinforce social relationship or even work as a mediator: 'Having a good sense of humour may facilitate the development of interpersonal relationships, reduce social distance between persons, and thus result in greater social support received.'[59] Also through joking culture we discover the habits of other nations, stereotypes of people behaviour (and not always negative ones), etc. 'Jokes about neighbouring countries are good examples of how humour functions as a sociocultural tool through which national identities are maintained.'[60]

It is worth to mention one more time that education and 'advertising' of human rights through humoristic content messages are much more preferable to society because 'amusing form' of message does not cause hard and depressive feelings, plus information seems to be stress-free to perceive. Therefore, cartoons, TV shows and other comic acts promoting and informing society about human rights issues are way more preferable than very serious and strict tone messages. 'Recent research provides compelling evidence that certain forms of humour, in particular the combination of self-deprecation and irony, not only attract attention and contribute to source liking, but also enhance source credibility and the overall persuasive power of a message more effectively than non-humorous messages.'[61] Thus, humour can be very useful to announce about serious concerns and encourage critical thinking and civic debates in more attractive way than severe or emotional appeals.

One more approach of humour use is that humour might be helpful as a nonviolent tool of resistance to oppressor. This idea seems to be very interesting and

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[58] Cameron John D., 'Can poverty be funny? The serious use of humour as a strategy of public engagement for global justice'(2015) Third World Quarterly, P. 275 < http://dx.doi.org/10.1080/01436597.2015.1013320> accessed July 11, 2017

[59] Ho Sammy K., 'Relationships among humour, self-esteem, and social support to burnout in school teachers' (2015) Springer, P.44 <http://link.springer.com/article/10.1007/s11218-015-9309-7 >, accessed July 12, 2017

[60] Ridanpää Juha, 'The media and the irony of politically serious situations: consequences of the Muhammed cartoons in Finland' (2012) Media, Culture & Society, P. 132

[61] Cameron John D., 'Can poverty be funny? The serious use of humour as a strategy of public engagement for global justice'(2015) Third World Quarterly, P. 278 < http://dx.doi.org/10.1080/01436597.2015.1013320> accessed July 11, 2017

intriguing, however hard to accomplish in the cases of dictatorship or other similar severe regimes. M. J. Sorensen suggests that theoretically oppression could be challenged, when 'three things happen more or less simultaneously: (a) the humor used is confrontational; it provokes, mocks, or ridicules, which escalates the conflict and puts pressure on the oppressor. (b) Although an increased pressure raises the chances of repression, paradoxically the use of humor reduces fear within the resistance movement. (c) Humor reduces the oppressor's options for reacting in a way he can later justify.'[62] However, in reality the only one more or less successful example of *Otpor* might be taken. Yet, *Otpor* was not the main and not even a secondary reason why Slobodan Milosevic lost his leadership in Serbia. Of course, comic protest actions make the violations of human rights more visible, the authority of a dictator or another kind of leader seems to be more vulnerable and people's perception about regime and its gravity might change, but in particular regimes such as Soviet Union or Third Reich even an innocent mockery at governor could lead to imprisonment or death penalty.

In conclusion, it is clear that humour has a potential to work in more than one dimension while promoting human rights: humour can be involved in educational process about human rights; it can be used as a strategy of public engagement in social movements or protest actions; and finally, humour can release the tension and work as a mediator in a tolerance building process. However, the actual impact of humour is very arguable in these activities. And unfortunately, there is no as such a thing as universal sense of humour and ethics of it. 'What is considered funny in one cultural context may fall flat or even be seen as offensive in another setting – and responses to humour can also vary widely within specific cultural settings. Attempts to use humour to promote public engagement must thus be grounded in local popular culture and must also run the risk of being misunderstood.'[63] Maybe that's the reason why it is so difficult to use humour as a pillar of public engagement and just a very little research on the application

[62] Sorensen Majken Jul, 'Humor as a Serious Strategy of Nonviolent Resistance to Oppression' (2008) Peace & Change, P.180

[63] Cameron John D., 'Can poverty be funny? The serious use of humour as a strategy of public engagement for global justice' (2015) Third World Quarterly, P.286 < http://dx.doi.org/10.1080/01436597.2015.1013320> accessed July 11, 2017

of humour within human rights from positive perspective was done. Hence, at this moment we can find our way to peace through laughing just in a theoretical level.

2. REFLECTIONS IN REALITY: HUMOUR AS A 'RISKY BUSINESS'

The big debate on humour use reached its zenith at the end of 20th century within the famous case of Danish Cartoons (The Muhammed Cartoon Crisis) and still hasn't descended. In this part, where humour is perceived not only as an innocent form of amusement, the case study of Denmark will be discussed. This case study was chosen because of the reactions provoked: particular groups of people did feel inferior, offended and insulted, their fundamental beliefs were humiliated, and they felt that a 'dominant' group laughed in scorn at theirs. In other words, humour was used to laugh at someone but not with someone.

As already mentioned, humourists and cartoonists have more possibilities to use superiority theory in their comic acts because humour can have a characteristic of disengagement and de-commitment, thus cartoonist can say and do things that others cannot say or do. 'Cartoons thrive on simplification and exaggeration; a respectful or even laudatory caricature is an oxymoron.'[64] Consequently, humour may possibly be harmful and cause negative feelings (even humiliation) because of challenged sustainable ideas, particular beliefs, etc. Thus, seriousness of humour is not a joke, especially of the message being brought; and the humour can be considered as a 'risky business' when we talk about human rights because 'humor is "an especially sensitive indicator of social attitudes".'[65]

2.1. Danish cartoons crisis

In 2005 the Danish newspaper *Jyllands-Posten* published the series of 12 satirical cartoons about Prophet Mohammed. One of the most insulting moments from the viewpoint of Islamic culture was that *Danish cartoons* showed the face of Prophet which was something extremely sacrosanct for Muslim society. Furthermore, these

[64] Langer Lorenz, 'Religious Offence and Human Rights. The Implications of Defamation of Religions' (2014) Cambridge University Press, P.38

[65] Keane David, 'Cartoon Violence and Freedom of Expression' (2008) 30 Human Rights Quarterly, P. 849

Mohammed cartoons stereotyped Islam as a religion: certain cartoons judged the women's status in community, others showed Muslims (more exactly the Prophet) as potential terrorists. Thus, 'the cartoons were highly offensive to Muslims because Islam is understood to prohibit graphic depictions of the Prophet and because most of the depictions were extremely derogatory, for example, by associating him, and by implication all Muslims, with terrorism.'[66]

The visible outcomes around the world could be compared to the situation in Catholicism when in the name of religious views many books(for example: *Tartuffe affair* as well as the prohibition of the *Philosophical Dictionary* (*Dictionnaire philosophique*), the novel *Madame Bovary*, and Charles Baudelaire's *Fleurs du mal*)[67], opinions and speeches were subject to censorship and public outrage. However, the Danish Cartoon crisis provoked not only outrage, boycotts of Danish products, mass protests and manifestations of Muslim communities around the world, but this *Jyllands-Posten* publication was strongly linked to destruction of diplomatic property, violence or even loss of life: 'An attack on the Danish embassy in Islamabad, Pakistan, in June 2008, strongly associated with the cartoon crisis, killed six people. Staff from Danish embassies in Afghanistan and Algeria was evacuated in April 2008 following a terror threat linked to the reprinting of the cartoons.'[68] Moreover, the Organisation of the Islamic Conference condemned Danish Government for failing to apologise and called UN to draft a resolution which should ban attacks based on religious beliefs[69]. Thus, the publications in Denmark and republications around the world divided the society in two parts: 'Opinions as to who was to blame for the mayhem following the cartoons were sharply divided along confessional lines. Muslims both in Europe and elsewhere overwhelmingly blamed Western for the controversy. On the other hand, most non-

[66] Human Rights Watch, 'Questions and Answers on the Danish Cartoons and Freedom of Expression When Speech Offends' (2006) <https://www.hrw.org/legacy/english/docs/2006/02/15/denmar12676_txt.htm> accessed July 11, 2017

[67] Alicino Francesco, 'Freedom of Expression, Laïcité and Islam in France: The Tension between Two Different (Universal) Perspectives' (2016) Islam and Christian–Muslim Relations, P.57

[68] Keane David, 'Cartoon Violence and Freedom of Expression' (2008) 30 Human Rights Quarterly, P.845-846

[69] Final communique of the eleventh session of the Islamic Summit Conference: OIC/SUMMIT-11/2008/FC/Final, 13-14 March, 2008, Dakar

Westerners who had heard of the cartoons put the fault with Muslim intolerance.'[70] Consequently, both parties waited for the answer from 'authority' in order to decide which one has been officially 'right'.

UN didn't remain in silence and answered to the Organisation of the Islamic Conference call in order to investigate Mohammed's cartoon crisis and control it. Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, issued a report on the manifestations of defamation of religions and in particular on the serious implications of Islamophobia on the enjoyment of all rights[71]. In this report D. Diène did not provide a deeper contextual analysis on cartoons and condemned the publication in a quite straightforward way: 'the Special Rapporteur urged the media: to pay greater heed to the deep historical and cultural roots of racism and xenophobia; to oppose the use of freedom of expression as intellectual justification for those phenomena; and to reflect more deeply the pluralism and multicultural dynamics of most societies today in the content and structure of their articles and programmes and in their staff.'[72] Additionally, in one of his interviews D. Diène blamed Danish political atmosphere as being not sufficiently tolerant: 'the cartoons illustrated the increasing emergence of the racist and xenophobic currents in everyday life. But the political context in Denmark was what had given birth to the cartoons.'[73]

However, even if Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance condemned *Jyllands-Posten* publication as racist and Islamophobic, the Special Rapporteur on freedom of religion or belief, Asma Jahangir took a different point of view about Danish cartoons. Both Special Rapporteurs reconfirmed the existence of clash among societies and their

[70] Langer Lorenz, 'Religious Offence and Human Rights. The Implications of Defamation of Religions' (2014) Cambridge University Press, P.46

[71] United Nations Human Rights Office of High Commissioner, 'Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, on the manifestations of defamation of religions and in particular on the serious implications of Islamophobia on the enjoyment of all rights' (2007)

[72] *Ibid*., Para 32

[73] United Nations News Center, 'Racism and racial discrimination on rise around the world, UN expert warns (2006) <http://www.un.org/apps/news/story.asp?NewsID=17718&Cr=racis&Cr1#.WNpAiKKkLIU> accessed July 11, 2017

cultural, religious, ideological differences which might lead to radical confrontation between freedom of expression and freedom of religion and 'the key limitations and restrictions that accompany the exercise of these rights, carefully formulated in the pertinent international instruments, have been wiped out by the new ideological winds of political and cultural polarization.'[74] However, differently from D. Diène, A. Jahangir (the Special Rapporteur on freedom of religion or belief) constituted that 'the rigorous protection of religions as such may create an atmosphere of intolerance and can give rise to fear and may even provoke the chances of a backlash.'[75] Thus, freedom of expression can be limited just in cases when it is absolutely necessary for democratic society and the forms of this liberty must be tolerated even though they seem to be offensive.

Yet, even after 'intervention' of Special Rapporteurs the Danish Cartoon case left unresolved on the global level. Consequently, the international 'judgement' of the publication of the prophet Mohammed was based on political, moral, ideological, legal, Western, Islamic and other opinions.

By the way it is worth to mention that it is not the first time when the 'racist speech' issue arises in Denmark. Just this time Danish newspaper *Sunday News magazine* published an interview made by Mr J. O. Jersild with a group of young people, calling themselves *the Greenjackets* (*grønjakkerne*) who were known because of the racial attitudes. Next to the interview it was decided to produce the documentary about *Greenjackets*. During this documentary a couple of members of this youth group made abusive and derogatory remarks about immigrants and ethnic groups in Denmark[76]. After the translation of interview Mr Jersild was convicted of 'Following the broadcast of the interview, the applicant [Mr Jersild] was charged and convicted of helping to spread the racist statements.'[77]

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[74] United Nations Human Rights Office Of High Commissioner, Human Rights Council, 'A/HRC/2/3 (2006) Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, further to Human Rights Council decision 1/107 on incitement to racial and religious hatred and the promotion of tolerance', (2006) P. 5

[75] *Ibid*., P.11

[76] European Court of Human Rights, *Jersild v. Denmark* , September 1, 1994, Para.10

[77] *Ibid*., Para. 10

However, Mr Jersild succeeded to challenge Denmark's position and his punishment in the European Court of Human Rights. The Court emphasized that 'the punishment of a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so.'[78] However, Denmark's government tried to argue its position on the basis of International Convention on the Elimination of All Forms of Racial (Denmark is a State party of both conventions – ECHR and CERD). Yet, the Strasbourg Court decided that measures taken by State Party had been disproportionate and there had been a violation of Article 10 of Convention. Furthermore, it was agreed that journalist's position was neutral and didn't have any racist intentions.

Finally, returning to the Danish cartoons it is noticeable that 'no prosecutions resulted from the publication of the Danish cartoons'[79] because there weren't any grounds to start the trial (no violation of the blasphemy or racism clause). Furthermore, it was concluded that 'while freedom of expression had to be exercised with the respect of other human rights, including the right to protect against discrimination, insult and degradation, the public prosecutor argued that *Jyllands-Posten* concerned a matter of public interest, and that according Danish case-law, journalists benefited from extensive editorial freedom when addressing such matters.'[80] However, group Moroccan nationals tried to complain about the *Jyllands-Posten* publication of Mohammed Cartoons in ECtHR. 'The Court found no jurisdictional link between any of the applicants and the respondent State, nor could the applicants come within the jurisdiction of Denmark on account of any extra-territorial act.'[81] Thus, ECtHR found the complaint inadmissible[82].

[78] *Ibid.*, Para.35
[79] Keane David, 'Cartoon Violence and Freedom of Expression' (2008) 30 Human Rights Quarterly, P.863
[80] Langer Lorenz, 'Religious Offence and Human Rights. The Implications of Defamation of Religions' (2014) Cambridge University Press, P. 65
[81] European Court of Human Rights, 'Information Note No. 92 on the case-law of the Court' (2006) P.9 < http://www.echr.coe.int/Documents/CLIN_2006_12_92_ENG_822341.pdf > accessed July 11, 2017
[82] European Court of Human Rights, *Ben El Mahi and Others v. Denmark*, December 11, 2006

2.2. Evaluation of Danish cartoon crisis: negative and positive impacts

Even though the publication of Mohammed Cartoons 'succeeded' to avoid the prosecution on the national and ECHR level, the re-publication of these depictions and other acts challenging religious belief caused either the censorship or the numerous manifestations against them. 'Shortly afterwards, the Berlin Opera cancelled its production of Mozart's *Idomeneo,* fearing the reaction of Muslims to a scene in which the King of Crete severed and held aloft the head of Mohammed along with those of Jesus, Buddha and Poseidon'[83], Christian community protested and even tried to bring blasphemy charges targeted to Jerry Springer's *The Opera,* etc. Probably one of the most known prominent examples before *Charlie Hebdo* events is Lars Vilks's depiction of Muhammed as a 'roundabout dog'. Immediately after the publication, Vilks received a bunch of negative reactions; his drawn caricatures were called irresponsible and malicious and he was blamed for an attempt to insult Islam and Muslims. The Secretary General of the OIC, Professor Ekmeleddin Ihsanoglu strongly condemned the publication of L. Vilks in the *Nerikes Allehanda* newspaper. Furthermore, the organisation linked to Al-Qaeda group proposed a $100,000 bounty on Vilks' head. Since then Swedish artist Lars Vilks has survived several death threats since gaining international notoriety for a cartoon portraying the Prophet Mohammed as a dog[84]. Another Nordic example is *Kaltio,* a minor cultural journal produced in northern Finland, which published a satirical comic strip, '*Muhammed, pelko ja sananvapaus' ('Muhammed, fear and the freedom of speech')*[85]. This publication was censored by Finnish government in order 'maintain public safety' and to avoid the hostilities which its neighbour Denmark had to deal with (in Western media this prohibition was also

[83] Jones Peter, 'Religious Belief and Freedom of Expression: Is Offensiveness Really the Issue?' (2011) Res Publica, P.76 < http://link.springer.com/article/10.1007/s11158-011-9144-4>, accessed July 11, 2017

[84] Douglas Murray, 'Lars Vilks Should Not Have to Fight Alone' (2015) Wall Street Journal,< https://search-proquest-com.kuleuven.ezproxy.kuleuven.be/docview/1659840492?rfr_id=info%3Axri%2Fsid%3Aprimo>, accessed July 11, 2017

[85] Ridanpää Juha 'Geopolitics of Humour: The Muhammed Cartoon Crisis and the Kaltio Comic Strip Episode in Finland' (2009) Geopolitics < http://www.tandfonline.com.kuleuven.ezproxy.kuleuven.be/doi/abs/10.1080/14650040903141372>, accessed July 11, 2017

called Finlandization[86] but this time Muslim society was taken as a potential 'threat'). Finally, the cruel massacres in *Charlie Hebdo's* office in 2015 when 11 journalists and satirists were killed are also strongly linked to the cartoons of Mohammed.

However, even if the lesson of Danish Cartoon crisis was really tough, not all impact led to restrictions of freedom of expression by national governments or by artists themselves (self-censorship). In order to change the negative reactions on Mohammed Cartoon crisis and warn against 'getting into a kind of a cartoon war' Kofi Annan, the former UN Secretary General, and French cartoonist Plantu organised a symposium 'Unlearning Intolerance' in October 2006[87]. During the 'Unlearning Intolerance' meeting it was decided to take positive actions in order to change the role of cartoons: from the society's destruction to the tolerance building. As a result *Cartooning for Peace/ Dessins pour la Paix* – an international network of committed press cartoonists, aiming to achieve the respect of cultures and freedoms with humour, was created[88] under the French law of 1st June 1901 on the Contract of Association[89] . This network started with 12 the most known cartoonists who fought for freedom of expression and tolerance (obviously leaded by Plantu) and now holds around 162 editorial cartoonists from 58 countries all over the world.

'Cartooning for Peace is a tool serving freedom of expression: a forum and a meeting place for all those who challenge intolerance and all forms of dogmatism.'[90] In order to achieve this aim, since the very beginning of the network's creation, a solid number of conferences, symposiums, forums, festivals, meetings and workshops were held. Since *Cartooning for Peace* has entered into the partnership with European Union, the development and visibility of this cartoonists' network has obtained different acceleration. The Commission's Implementing Decision on the

[86] Finlandization is understood as 'The process whereby a country is induced to favour, or refrain from opposing, the interests of a more powerful country, despite not being politically allied to it (originally with reference to the influence of the former Soviet Union on its neighbour Finland)' – Internet Oxford dictionary <https://en.oxforddictionaries.com/definition/Finlandization >, accessed July 11, 2017

[87] Keane David, 'Cartoon Violence and Freedom of Expression' (2008) 30 Human Rights Quarterly p.874

[88] Official website of Cartooning for Peace, 'Presentation' < http://www.cartooningforpeace.org/en/presentation >, accessed July 11, 2017

[89] Loi du 1er juillet 1901 relative au contrat d'association, Version consolidée au 17 mai 2017 < https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069570>, accessed July 11, 2017

[90] Official website of Cartooning for Peace, 'Presentation' < http://www.cartooningforpeace.org/en/presentation >, accessed July 11, 2017

Multi-Annual Action Programme for the years 2016 and 2017 for the European Instrument for Democracy and Human Rights (EIDHR) to be financed from the general budget of the European Union[91] provides that EU shall promote respect for cultures and tolerance through use of the press cartoons. This is the reason why the Annex 13 on the adoption of an Annual Action Programme 2016 for the European Instrument for Democracy and Human Rights (EIDHR)[92] was adopted and since then the European Union has been one for the main partners supporting *Cartooning for Peace*. The Annex 13 re-frames *Cartooning for Peace* activities and its appendix lists particular activities, targets and their outputs to be reached, for example: talking about awareness raising activities in sensitive places, there were 68 workshops held in schools and 15 public meetings were organised in 12 countries in 2014-2015. However, geographically these workshops were not widely spread, so for the next 2-3 years is it expected to organise a 100 workshops in over 15 countries for schoolchildren and 10 workshops in more than 5 countries for prison inmates as well as 20 public meetings per year in more than 15 countries. Next example also can be related to geographical enlargement of *Cartooning for Peace*: in 2015 less than 20 % of NGO's activities were beyond Europe borders. The goal is to transfer a half of these activities out of European border. Finally, the capacity building and reinforcement through accession of new members and partners can be given as the last example of this appendix: within the end of action document period it is expected to have around 200 cartoonists from 80 countries with 25% of women members in *Cartooning for Peace* network. Thus, it is clear that Annex 13 focuses on the educational projects and the support of cartoonists as human rights defenders and watchdogs of democratic values and *Cartooning for Peace* activities and responsibilities covers: the promotion of the editorial cartoon as a means of defending human rights and freedom of speech through events, publications, exhibitions and educational projects; as well as teaching tolerance and awareness about global problems through humour; and

[91] European Commission, C(2015) 8548 final, Commission Implementing Decision of 7.12.2015 on the Multi-Annual Action Programme for the years 2016 and 2017 for the European Instrument for Democracy and Human Rights (EIDHR) to be financed from the general budget of the European Union

[92] European Commission, Action Document for supporting respect of culture and freedoms using press cartoons as a media of universal expression - Cartooning for Peace, Annex 13 of the Commission Implementing Decision on the adoption of an Annual Action Programme 2016 for the European Instrument for Democracy and Human Rights (EIDHR)

finally monitoring and reporting of environment of freedom of expression in states where cartoonists might be in danger (for ex.: Russia, Turkey, Venezuela, Malaysia, Burkina Faso, Jordan, Egypt and others).[93]

Unfortunately, the activities and the *real* impact of this network are barely visible outside the European Union's headquarters in Strasbourg and Brussels. Also the biggest part of forums, festivals and conferences took part in France. Of course, *Cartooning of Peace* is relatively young organisation and needs more time to spread its field of activities and influence around the world.

[93] Cartooning for Peace and European Union, 'Report on the Cartoonists Worldwide 2016/2017', (2017) Cartooning for Peace, P.8

3. THE SCOPE OF FREEDOM OF EXPRESSION UNDER ARTICLE 10 OF ECHR AND ITS RELATION WITH ARTICLE 17 OF ECHR

From the theoretical perspective is seems that it is impossible to establish *objective* boundaries on what is socially/morally/reasonably/ethically acceptable in global society. The problem is that the third party as an autonomous decision maker is needed in order to decide if an expression was profoundly harmful, what an intention of speaker was and to what extent he should be held responsible[94]. Therefore, in the following chapter the most famous cases of provocative humour and speech will be discussed while trying to find the legal limit on what is funny in sense 'it is not wrong' and what kind of humour are taboos under the Articles 10 and 17 of European Convention on Human Rights.

3.1. Freedom of Expression and its duties and responsibilities

The Article 10 of Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, European Convention on Human Rights) provides the right to the Freedom of expression for all States Parties of the Council of Europe:

'1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.'[95]

[94] Lemmens Koen, 'Hate speech in the case law of the European Court of Human Rights. Good intentions make bad law?' (2015) Eleven, P. 139

[95] The Council of Europe, 'Convention for the Protection of Human Rights and Fundamental Freedoms', 1950, Rome

As it is common to the Articles 8-11 of ECHR the first paragraph establishes the content of specific right and the second paragraph provides legal basis of State's interference (when the specific right can be legally limited). Taking into account the topic of this paper, the scope of freedom of expression will be discussed in the frame of its content related to artistic and satirical expression, possible limitations under the clause of 'protection the morals' and the relation with the article 17 'Prohibition of abuse of rights' of ECHR.

Differently, than in US where the First Amendment of the US Constitution categorically defends the value of free speech, the Article 10 of ECHR explicitly lists reasons when free expression can be constrained[96]. However, even if freedom of expression is not an absolute right, because of its constitutional importance and foundational value for democratic society this right enjoys a broad freedom of application and consequently the restrictions of Article 10 of ECHR have to be kept as an exception to the general rule: 'The right to freedom of expression set out in the article's first paragraph, including freedom to hold opinions and to receive and impart information and ideas without any interference by the State, is extremely broad.'[97] Thus, 'freedom of expression is considered as one of the most valuable fundamental rights and protected under national and supranational levels.'[98] Following the European Court of Human Rights case law a huge variety of forms through any intermediate is protected: 'handing out leaflets to the spectators of an official state ceremony and showing a poster above demonstrator's rucksack, a puppet show satirical of politicians, use of historical flag, which was also used as a symbol of Hungarian fascism, a painting depicting crude sexual acts of far-right politicians at an exhibition, and a planned workshop on women's reproductive rights on a boat in territorial waters'[99] as well 'paintings, books, cartoons, video-recordings, statements in radio interviews, information pamphlets, and the

[96] Bleich Erik, 'Freedom of Expression versus Racist Hate Speech: Explaining Differences Between High Court Regulations in the USA and Europe' (2013) Journal of Ethnic and Migration Studies, P. 285 < http://dx.doi.org/10.1080/1369183X.2013.851476 >, accessed July 12, 2017

[97] Jacobs, White, Ovey, 'The European Convention of Human Rights', Oxford University Press (Fifth edition) (2010) P.426

[98] Morange Jean, 'Histoire et liberté d'expression', (2012) Les Cahiers de droit, P. 716
Original text: 'La liberté d'expression y est en effet considérée comme un des droits fondamentaux les plus précieux et elle est protégée au niveau national ou supranational.'

[99] Harris, O'Boyle, Warbrick, 'Law of the European Convention on Human Rights', (2014) Oxford University Press , Third edition, P.615

internet; and with any content, including racist hate speech and pornography'.[100] Thus, 'Article 10 (1) ECHR protects every form of communication.'[101]

However, differently from other formulations of articles in the European Convention on Human Rights, the paragraph 2 of Article 10 holds 'duties and responsibilities' for those who exercise freedom of expression. For example, in the case *Bladet Tromsø and Stensaas v. Norway* the Court declared 'Under the terms of paragraph 2 of the Article the exercise of this freedom carries with it "duties and responsibilities", which also apply to the press. <…> By reason of the "duties and responsibilities" inherent in the exercise of the freedom of expression, the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism.'[102] This means that individuals and especially journalist shall act responsibly and in good faith while exercising their freedom of expression in order not to exaggerate permissible limits of Article 10 of ECHR. 'The ethics of journalism would require that their free speech right must not disseminate information and ideas inciting violence or hatred among the public, or aggravate the tense climate through their gratuitously offensive expression in the context of inter-ethnic tension.'[103] Furthermore, these duties and responsibilities apply even in employment relations and do not violate the acceptable limits of 'the right to criticize', especially when the individual seeks to offend and make serious unconfirmed accusations 'in early organised and conscious form.'[104] The same rule applies for artists and consequently they cannot claim an unlimited freedom[105].

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[100] Jacobs, White, Ovey, 'The European Convention of Human Rights', Oxford University Press (Fifth edition) (2010) P.426

[101] Kirchner Stefan, 'Outlawing hate speech in democratic States: the case against the inherent limitations doctrine concerning Article 10 (1) of the European Convention on Human Rights', (2015) Brazilian Journal of International Law, P.417

[102] European Court of Human Rights, *Bladet Tromsø and Stensaas v. Norway*, May 20, 1999, Para.65

[103] Harris, O'Boyle, Warbrick, 'Law of the European Convention on Human Rights', (2014) Oxford University Press , Third edition, P.687

[104] European Court of Human Rights, *De Diego Nafria v. Spain*, March 14, 2002, Para. 37
Original text: 'de manière réfléchie en ayant pleinement conscience de la portée de son contenu.'
The Court held the same position in the decision of the case *Palomo Sanchez & others v. Spain*. The applicants who were trade union members were dismissed because of engaging in offensive and insulting expression in a union newsletter: cartoon and 2 articles. Court reaffirmed that 'in expressing their opinions, trade-union organisations should respect the limits of propriety and refrain from the use of insulting language' (Para. 67) and 'moreover, the remarks, made by the applicants, did not constitute an

The use of humour generally falls with all its 'duties and responsibilities' under the form of artistic expression (normally in media). 'The Court's dictum that the protection of Article 10 extends to expressions which 'offend, shock or disturb the state or any sector of the population' is of special importance to artistic work.'[106] Taking into account that freedom of expression plays a central role in the protection of other rights under the Convention, the higher protection to publications and speeches which contribute to social, political and critical debate might be given. 'Freedom of expression also has to be able to allow shocking effects in order to transport a message.'[107] Thus, the artists, cartoonists, satirists and other 'watchdogs' of democratic and pluralistic society should enjoy their right to exercise freedom of speech, media, and artistic expression and freely challenge static ideas while provoking society and creating critical and new way of thinking: 'Journalists should even be free to use the degree of exaggeration and provocation.'[108] However, these critical types of ideas are not always pleasantly acceptable and sometimes even are linked to disrespectful acts or offenses, thus in particular cases freedom of expression can be limited by State. According to the European Convention and Strasbourg Court's jurisprudence based on it, the rights provided in Convention can be limited just under the 'Trinity's' kit of restrictions. Thus, the freedom of expression is legally limited when the limitation is: 1) prescribed by law;

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instantaneous and ill-considered reaction, in the context of a rapid and spontaneous oral exchange, as is the case with verbal exaggeration. On the contrary, they were written assertions, published in a quite lucid manner and displayed publicly on the premises of the company' (Para. 73). Thus, Spanish public authorities did not violate the applicants' right to freedom of expression.
However, this Court's judgement may be criticised taking into account that trade-unions play an important role in employment relations ('watchdogs' of workers); the right to satirical speech wasn't discussed profoundly with the ideas which may 'shock, offend and disturb' and finally, the dismissal of trade-union's members might give a chilling effect for the future cases where trade-union members would like to express their critiques towards employees.

[105] Reid Karen, 'A Practitioner's Guide to the European Convention on Human Rights', (2004) Sweet & Maxwell second edition, P. 328

[106] Harris, O'Boyle, Warbrick, 'Law of the European Convention on Human Rights', (2014) Oxford University Press , Third edition, P.632

[107] Kirchner Stefan, 'Outlawing hate speech in democratic States: the case against the inherent limitations doctrine concerning Article 10 (1) of the European Convention on Human Rights', (2015) Brazilian Journal of International Law, P.419

[108] Jacobs, White, Ovey, 'The European Convention of Human Rights', Oxford University Press (Fifth edition) (2010), P. 433

2) has a legitimate aim (‘national security, public morals, etc.) and; 3) necessary in a democratic society (followed by proportionality)[109].

The European doctrine of ‘offensive’ and satirical speech, artistic expression and the protection of freedom of others is mainly built on ECtHR case-law of *Handyside v. UK*[110] and *Otto-Preminger-Institut v. Austria*[111]. With these cases Strasbourg Court basically said that freedom of expression did not mean to publish everything. However, already in 1976 ECtHR agreed that the ideas which could shock, offend, disturb shall be tolerated and acceptable by democratic, broadminded and pluralistic society[112]. In addition the paragraph 49 of Court’s decision in *Handyside v. United Kingdom* became a starting point for spreading different and maybe not so likeable by majority ideas: ‘Subject to paragraph 2 of Article 10 (art. 10-2), it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society".’[113] Moreover, the Court went further and said the freedom of expression constituted the progress and development not only for ‘democratic society’ but every individual as well. This Court’s decision was highly supported and developed by other legal philosophers. For example, Ronal Dworkin – one of the greatest legal philosophers, remarked: ‘Freedom of speech is not just a special and distinctive emblem of Western culture that might be generously abridged or qualified as a measure of respect for other cultures that reject it, the way a crescent or menorah might be added to a Christian religious display. Free speech is a condition of legitimate government.’[114] Furthermore, according to him, the right to ‘shock, offend and ridicule’ shall be upheld more or less without consequences and it is impossible to expect humour to be less damaging and

[109] Greer Steven, ‘The exceptions to Articles 8 to 11 of the European Convention on Human Rights’, (1997) Council of Europe Publishing, < http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-15(1997).pdf > , accessed July 12, 2017

[110] European Court of Human Rights, *Handyside v. the United Kingdom*, December 7, 1976

[111] European Court of Human Rights, *Otto-Preminger Institut v. Austria*, September 20, 1994

[112] European Court of Human Rights, *Handyside v. the United Kingdom*, December 7, 1976), Para. 49

[113] *Ibid*., Para.49

[114] Dworkin Ronald, ‘The Right to Ridicule’ (2006) The New York Review of Books <http://www.nybooks.com/articles/2006/03/23/the-right-to-ridicule/>, accessed July 12, 2017

attacking because its nature is offensive. In consequence, even if an expressed idea is shocking and unpleasant, it cannot be eliminated just because of its disagreeable nature. Pluralistic and broadminded society shall be an environment where different kinds of expressions and ideas flourish.

However, in the case *Otto-Preminger Institut v. Austria* Court reaffirmed that the user of this right should take into account that freedom of expression 'undertakes "duties and responsibilities". Amongst them - in the context of religious opinions and beliefs - may legitimately be included an obligation to avoid as far as possible expressions that are gratuitously offensive to others and thus an infringement of their rights, and which therefore do not contribute to any form of public debate capable of furthering progress in human affairs.'[115] Following Court's reasoning 'improper attacks on objects of religious veneration' might be considered as *gratuitously offensive* and can be a subject of legitimate limitation. However, ECtHR did not provide any explicit list of offending acts when the expressions shall be limited under Article 10 para. 2 of ECHR. Thus, all possibly unlawful expressions are judged case by case.

Even though Strasbourg Court decided that freedom of expression could be limited in the case of gratuitous offense it does not mean that since the *Otto-Preminger Institut v. Austria* decision the Court has excluded the critical, satirical and mocking forms of expression from the scope of protection under Article 10 of Convention (even if the critique targets the religious sanctity): 'Those who choose to exercise the freedom to manifest their religion, irrespective of whether they do so as members of a religious majority or a minority, cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith.'[116] Yet, 'the Court has also made it clear that the freedom of religion or belief cannot be used by

[115] European Court of Human Rights, *Otto-Preminger Institut v. Austria*, September 20, 1994, Para.49
[116] *Ibid*., Para 47

individuals or groups to, in effect, "gag" others from expressing views which run counter to their own or which they find offensive.'[117]

In the following case *Wingrove v. UK* Court reaffirmed 'the absence of consensus on appropriate measures to balance the freedom of expression and the rights of third persons to religious faith.'[118] In this case British Board of Film Classification refused to grant the certificate to the applicant because his short film 'Visions of Ecstasy' was blasphemous – 'the idea for the film was derived from the life and writings of St Teresa of Avila, the sixteenth-century Carmelite nun and founder of many convents, who experienced powerful ecstatic visions of Jesus Christ'[119] which led to erotic sensation. The Court held that national authorities had been in the better position to determinate legitimate aims (morals, protection of rights of others) than international judge. 'What is likely to cause substantial offence to persons of a particular religious persuasion will vary significantly from time to time and from place to place, especially in an era characterised by an ever growing array of faiths and denominations. By reason of their direct and continuous contact with the vital forces of their countries, State authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirements with regard to the rights of others as well as on the "necessity" of a "restriction" intended to protect from such material those whose deepest feelings and convictions would be seriously offended.'[120]

In *Klein v. Slovakia*[121] the applicant was convicted of defamation and had to pay a fine because his published article criticised an Archbishop who had demanded a ban on the poster advertising the film *The People vs. Larry Flynt* for the reason that this poster profaned God ('In the poster the main character had the flag of the U.S.A. around his hips and he was depicted as crucified on a woman's pubic area dressed in a bikini'[122]). In this case the Court reaffirmed the jurisprudence of *Handyside*

[117] Evans Malcolm D., 'From Cartoons to Crucifixes: Current Controversies Concerning the Freedom of Religion and the Freedom of Expression before the European Court of Human Rights' (2010) Journal of Law and Religion, P. 347
[118] Harris, O'Boyle, Warbrick, 'Law of the European Convention on Human Rights', (2014) Oxford University Press , Third edition, P.670
[119] European Court of Human Rights, *Wingrove v. UK*, November 25, 1996, Para. 8
[120] *Ibid*., Para. 58
[121] European Court of Human Rights, *Klein v. Slovakia*, November 8, 2005
[122] *Ibid*. Para 8

and *Otto-Preminger Institut* and added that 'in the context of religious opinions and beliefs – may legitimately be included an obligation to ensure the peaceful enjoyment of the rights guaranteed under Article 9 to the holders of such beliefs including a duty to avoid as far as possible an expression that is, in regard to objects of veneration, gratuitously offensive to others and profane.'[123] However, in this case applicant didn't intend to offend another person's belief but rather wanted to criticize the Archbishop at the personal level and his article was a reaction to the Archbishop's statement: 'The applicant's strongly worded pejorative opinion related exclusively to the person of a high representative of the Catholic Church in Slovakia. Contrary to the domestic courts' findings, the Court is not persuaded that by his statements the applicant discredited and disparaged a sector of the population on account of their Catholic faith.'[124]

Finally, talking about 'religious cases' under the scope of Article 10 it is worth to mention the *Danish Cartoons* case again. The Court might have had a 'real' opportunity to re-establish the jurisprudence on the balance between freedom of expression and religious liberty in the case *Ben El Mahi and Others v. Denmark* [125] where applicants had challenged Denmark's authorities position about *Jyllands-Posten* publication on the Prophet Mohammed (Danish public authorities did not find any grounds of prosecution). 'The applicants complained that the publication of the cartoons in issue had breached their rights under Article 9 of the Convention taken in conjunction with Article 14 of the Convention. They also relied on Article 17, taken together with Article 10 of the Convention.'[126] However, the applicants didn't succeed to establish the link with Denmark and its jurisdiction so consequently the complaint was declared inadmissible under Article 1 of ECHR. Hence, the new doctrine wasn't built and the line between freedom of expression and freedom of religion is still dubious. Yet, following *Wingrove* case the State can still enjoy its margin of appreciation within the Article 10 (2) of ECHR: 'the national authorities were in principle in a better position than the international judge to give an opinion on the exact content of

[123] *Ibid*., Para. 47
[124] *Ibid.*, Para. 51
[125] European Court of Human Rights, *Ben El Mahi and Others v. Denmark*, December 11, 2006
[126] European Court of Human Rights, *Ben El Mahi and Others v. Denmark*, December 11, 'The Law', P.7 <2006http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-78692&filename=001-78692.pdf&TID=ihgdqbxnfi>, accessed July 14, 2017

the requirements regarding protection of the rights of others is for national judge to decide.'[127]

As already said next one of legitimate aims to restrict freedom of expression under Article 10 paragraph 2 is the protection of 'public morals'. Even if there is no uniform European moral, the Court holds its right to take the final decision in the cases where the question on limitation's validity and protection of morals arises. 'In the area of freedom of expression, the Strasbourg organs have been confronted with diverse moral values, encompassing obscenity, abortion, and the significance of religion.'[128]

Handyside and *Müller* cases are the milestone judgements in the frame of 'public morals' under Article 10 para. 2. Strasbourg Court did not derive from *Handyside's* parameter of 'shocking, offending and disturbing' ideas in democratic, pluralistic and broadminded society and in the case of *Müller and Others v. Switzerland*[129] stressed that: 'the view taken of the requirements of morals varies from time to time and from place to place, especially in our era, characterised as it is by a far-reaching evolution of opinions on the subject.'[130] Furthermore, 'what matters most is the degree of consensus or lack of it within a given state about the issue in question, the importance which ought to be attached to particular forms of sexual expression, how "pressing" the social need is and how proportionate the restriction or penalty is to the activity to which it has been applied.'[131] Bearing in mind the applicants published the paintings of obscene nature (crude manner sexual relations, particularly between men and animals[132]) in the exhibition which was accessible freely to public

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[127] Council of Europe, Human Rights files no. 18, 'Freedom of expression in Europe. Case-law concerning Article 10 of the European Convention on Human Rights', (2007) Council of Europe Publishing, P.105 < http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-18(2007).pdf>, accessed July 12, 2017

[128] Harris, O'Boyle, Warbrick, 'Law of the European Convention on Human Rights', (2014) Oxford University Press , Third edition, P.656

[129] European Court of Human Rights, *Müller and Others v. Switzerland*, May 24, 1988

[130] *Ibid*. Para 33

[131] Greer Steven, 'The exceptions to Articles 8 to 11 of the European Convention on Human Rights', (1997) Human Rights files no. 15 Council of Europe Publishing, P.24-25 <http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-15(1997).pdf>, accessed July 12, 2017

[132] European Court of Human Rights, *Müller and Others v. Switzerland*, May 24, 1988, Para.36

audience (no age limit and warrant on the content of exhibition), Swiss authorities had a right to interfere under 'pressing of social need' and use the margin of appreciation in order to protect public morals. However, the Court's jurisprudence on morals is still controversial and evaluated on a case-by-case basis.

'More than in judgments dealing with other rights in the European Convention on Human Rights (ECHR), the Court has often shown itself to be a house divided when it comes to freedom of expression.'[133] Thus, the Court's case law on Article 10 is characterised by its complexity: 'it has become an extremely difficult to understand the rationale underlying the Court's case law in the field of freedom of speech.'[134] Consequently, from the short analysis of the Court's case law in this paper it is possible to conclude that there is no consensus on public morality and religious sanctity in Europe. In addition, States Parties can justify their acts under the broad application of margin of appreciation. However, this is the European Court of Human Rights who takes the final decision ('European supervision'). The Court stresses the importance of public debate even if it is critical and satirical: 'satire is a form of artistic expression and social commentary which has a nature to exaggerate, hyperbolise the reality and aims to agitate the discussion on social issues.'[135] Conferring to the Court's jurisprudence it is possible to distinguish that humour is not 'harmful' and does not exceed the acceptable limits of freedom of expression when:

1. Does not offend gratuitously and does not cause 'improper attacks on objects of religious veneration'[136] (blasphemous expressions are incompatible with the idea of Article 9 'Freedom of thought, conscience and religion' of ECHR);

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[133] Buyse Antoine, 'Dangerous Expressions: The ECHR, Violence and Free Speech', (2014) Cambridge University Press International & Comparative Law Quarterly, P.492 < https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/dangerous-expressions-the-echr-violence-and-free-speech/49A85AD61F3BB728BFB8287EFB62147A>, accessed July 12, 2017

[134] Lemmens Koen, 'Hate speech in the case law of the European Court of Human Rights. Good intentions make bad law?' (2015) Eleven, P. 141

[135] European Court of Human Rights, *Alves da Silva v. Portugal*, October 20, 2009, Para. 27
Original text: Elle rappelle que la satire est une forme d'expression artistique et de commentaire social qui, de par l'exagération et la déformation de la réalité qui la caractérisent, vise naturellement à provoquer et à agiter.

[136] European Court of Human Rights, *Otto-Preminger Institut v. Austria*, September 20, 1994, Para.49

2. Brings socially important message, which is worth of public debate (contributes any form of public discussion capable of furthering progress in human affairs[137]). This means that not all kind of speeches are protected, for example, hate speech is excluded from the protection under the scope of Article 10 of ECHR[138].

Thus, the freedom of expression includes the rights to satirize, critique, mock as long as the discussion is socially important and is not gratuitously offensive. In addition, 'satire in the eyes of the Strasbourg Judges has the largest possible meaning since it is not only 'a form of artistic expression', but also 'a social commentary. . . which, naturally aims to provoke and agitate'.'[139]

3.2. Abusive jokes under the Article 17 of ECHR

The Article 17 *Prohibition of abuse of rights* of ECHR provides:

'Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.'[140]

[137] European Court of Human Rights, *Gündüz v. Turkey*, December 4, 2003, Para. 37

[138] It is worth to mention that there is no official definition of hate, however, the concept of 'hate speech' is provided by Council of Europe's Committee of Ministers recommendation 97(20): ' "hate speech" shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other form of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin. Yet, the European Court of Human Rights decides which speech belongs to 'hate speech' category on a case-by-case basis. In legal theory (for example: A. Weber 'Manual on Hate Speech', K. Lemmens 'Hate speech in the case law of the European Court of Human Rights. Good intentions make bad law?') hate speech is classified as: a) racial hatred (*Soulas and others v. France; Féret v. Belgium; Le Pen v. France)*; b) hatred on religious grounds (*Norwood v. UK*) ; c) political hatred (*Schimanek v. Austria*); d) incitement to violence (*Sürek v. Turkey; Gündüz v. Turkey)*; e) sexual orientation (homophobic) hatred (*Veijdeland and others v. Sweden)*; and other possible classifications such as ethnic hatred, apology of terrorism, etc.

[139] Polymenopoulou Eleni, 'Does One Swallow Make a Spring? Artistic and Literary Freedom at the European Court of Human Rights', (2016) Human Rights Law Review, P.530

[140] The Council of Europe, 'Convention for the Protection of Human Rights and Fundamental Freedoms', 1950, Rome

Article 17 has a symbolical value – to protect liberal democracy against totalitarian regimes after World War II. These days this Article basically provides the protection against radical nationalism, incitement of violence (condoning terrorism) and hate speech. Furthermore, 'the Court has labelled certain general and vehement verbal attacks against a specific ethnic group [for example: Jews, Muslims, Roma people] as contrary to the underlying values of the ECHR, which included 'tolerance, social peace and non-discrimination'.'[141] However, Article 17 in legal theory is known as a 'jurisprudential guillotine' in effect it kills an application and it will be declared as ill-founded[142]. Consequently, 'this Article is applicable only on an exceptional basis and in extreme cases.'[143] Therefore, the European Court of Human Rights uses two approaches which are provided for by the European Convention on Human Rights in order to limit freedom of expression: a) Categorical approach, which excludes an expression from the protection of the Convention (Article 17 of ECHR) and; b) balancing approach setting restrictions on protection, provided for by Article 10, paragraph 2, of the Convention.[144] In this sub-chapter the Court's case law of 'comic acts' will be analysed in the relationship between Article 17 ('Abuse of Rights') and Article 10 (2) ('Restrictions of Freedom of Expression').

First case concerning abusive use of freedom of expression and direct application of Article 17 is *M'Bala M'Bala v. France*[145]. Dieudonné M'Bala M'Bala is a controversial French humourist who is known for his *provocative* kind of shows and performances (mostly anti-Semitic ones – in his official website there is even a section of *quenelle*[146] which reminds inverse or quasi Nazi salute followed by particular slogans such as 'IsraHeil'). In France so called *L'affaire Dieudonné* has started at the beginning

[141] Buyse Antoine, 'Dangerous Expressions: The ECHR, Violence and Free Speech', (2014) Cambridge University Press International & Comparative Law Quarterly, P.492 < https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/dangerous-expressions-the-echr-violence-and-free-speech/49A85AD61F3BB728BFB8287EFB62147A>, accessed July 12, 2017

[142] Brems E., Gerards J., 'Shaping Rights in the ECHR. The role of the European Court of Human Rights in Determining the Scope of Human Rights', (2013) Cambridge University Press, P.192

[143] European Court of Human Rights, *Paksas v. Lithuania*, January 6, 2011, Para. 87

[144] European Court of Human Rights, 'Factsheet -Hate speech', (2017) Press Unity, P.1 < http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf >, accessed July 12, 2017

[145] European Court of Human Rights *M'Bala M'Bala v. France* (application no. 25239/13) 20/10/2015

[146] Dieudonné M'Bala M'Bala, 'Quenelles', Official website of Dieudonné M'Bala M'Bala https://dieudosphere.com/quenelles> , accessed July 12, 2017

of this century and now counts around 40 arrests or/and condemnations for violating hate speech laws. Also the performances of this humourist sometimes are compared to the potential threat to public order (for example: In 2014 former interior minister of France Manuel Valls authorised local authorities to cancel Dieudonné's performances because of their anti-Semitic manner and as a strongly offending the memory of Holocaust victims).

In 2008 during one of his performances Dieudonné invited Robert Faurisson, who is famous for his *iconic Holocaust denying,* to join him on stage in order to receive a 'prize for unfrequentability and insolence'. After this 'humoristic act' French authorities prosecuted Dieudonné for publicly insulting persons of Jewish origin or faith and lately found him guilty. The artist did not agree with French courts decisions and tried to defend his expression before ECtHR.

The Court didn't support Dieudonné's point of view, even though it was agreed that satirical speech was protected by Convention[147]. 'In the Court's view, this was not a performance which, even if satirical or provocative, fell within the protection of Article 10, but was in reality, in the circumstances of the case, a demonstration of hatred and anti-Semitism and support for Holocaust denial. Disguised as an artistic production, it was in fact as dangerous as a head-on and sudden attack, and provided a platform for an ideology which ran counter to the values of the European Convention.'[148] Consequently, Dieudonné, as a performer of revisionist and anti-Semitic act did not deserve to enjoy the rights and freedoms protected under the Convention and could not spread his racist views under the provision of Article 10 ECHR, thus Court decided to apply Article 17 of Convention. 'Moreover, in principle Article 17 has been applied for direct and explicit statements and do not require any interpretation, therefore the Court is convinced that hateful and anti-Semitic acts, even if they have an appearance of artistic nature, are as dangerous as straight and sudden

[147] European Court of Human Rights, *M'Bala M'Bala v. France*, October 20, 2015, Para 31: 'La protection conférée par l'article 10 s'applique également à la satire, qui est une forme d'expression artistique et de commentaire social qui, de par l'exagération et la déformation de la réalité qui la caractérisent, vise naturellement à provoquer et à agiter'

[148] European Court of Human Rights, 'Factsheet of Hate Speech' (2017) P.3 < http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf>, accessed July 12, 2017

attack.[149] Thus, the complaint was declared inadmissible under Article 17 of ECHR (*Prohibition of abuse of rights*).

As already noticed, Article 17 prohibits not only racial hatred abuses but incitement of violence as well, because it is contrary to the values protected by Convention: 'the case of *Hizb Ut-Tahrir* shows that calls for violence and destruction of states fall outside the scope of the Convention's rights and within the scope of Article 17.'[150] However, in the case law *Leroy v. France*[151] the Court's reasoning was based on Article 10 (2) of ECHR.

Denis Leroy is a French political cartoonist well known for his publication in Basque weekly newspaper *Ekaitza*. 'On 11 September 2001 he submitted a drawing representing the terrorist attack on the World Trade Centre in New York, with a caption which parodied an advertising slogan: *"We all have dreamed of it… Hamas did it."*'[152] Following this insensitive publication which caused a storm of protests, Mr Leroy was found guilty for condoning terrorism by French authorities. Later cartoonist tried to defend his *artistic* expression in ECtHR because, according to him, he had wanted to decline American imperialism through satirical image and hadn't had any intentions to diminish the dignity of victims their families.

Strasbourg Court admitted that the disputed cartoon provoked a public debate and brought a socially important message[153]. However, the Court argued that '[t]he drawing was itself a good indicator of the applicant's intention<...> By publishing the drawing, the applicant had expressed his moral support for and solidarity with those whom he presumed to be the perpetrators of the attacks, demonstrated approval of the

[149] European Court of Human Right Greffier de la Cours, Communique de Presse 'La Convention européenne des droits de l'homme ne protège pas les spectacles négationnistes et antisémites', (2015) Council of Europe, P.3
Original text: En outre, la Cour souligne que si l'article 17 (interdiction de l'abus de droit) de la Convention a en principe été jusqu'à présent appliqué à des propos explicites et directs, qui ne nécessitaient aucuneinterprétation, elle est convaincue qu'une prise de position haineuse et antisémite caractérisée,travestie sous l'apparence d'une production artistique, est aussi dangereuse qu'une attaque frontale et abrupte. Elle ne mérite donc pas la protection de l'article 10 de la Convention.
[150] Brems E., Gerards J., 'Shaping Rights in the ECHR. The role of the European Court of Human Rights in Determining the Scope of Human Rights', (2013) Cambridge University Press, P.197
[151] European Court of Human Rights, *Leroy v. France*, October 2, 2008
[152] White Aidan, 'To Tell You The TRUTH: The Ethical Journalism Initiative' (2008) International Federation of Journalists, P. 117
[153] European Court of Human Rights, *Leroy v. France*, October 2, 2008, Para. 41

violence and undermined the dignity of the victims.'[154] Furthermore, the Court stressed that the way the drawing and its slogan had been represented could encourage 'a potential reader to consider the success of a criminal act positively.'[155] According to the Court, the circumstances of publication such as timing (just 2 days after the attack) and language used ('We all dreamed about it…Hamas did it') and the nature of expression (apparently, according to Court, this kind of speech could provoke the violence in indirect way) were sufficient to prove Mr. Leroy couldn't enjoy the protection under Article 10 of Convention.

The analysis of these 2 cases leads to conclusion that the Court's approach in *Leroy* in more favourable for the protection and future evaluation of the freedom of expression. 'It is preferable, not only from a democratic, but also from a human rights perspective, to treat all (alleged) hate speech equally under the speech-protective framework provided by Article 10 ECHR (with emphasis on the necessity test of Article 10(2)), without conferring to the abuse clause any decisive impact.'[156] For example, the use of language in *Glimmerveen and Hagenbeek v. the Netherlands*[157] and *Féret v. Belgium*[158] is analogical: both cases concern electoral campaign during which the applicants expressed the racial discrimination and hatred. However, the Court's decisions in these case laws were based on different articles.

In *Glimmerveen and Hagenbeek v. the Netherlands* the applicants distributed leaflets which underlined 'white Dutch people' and had a promise to 'continue its battle for the white people of the Netherlands'.[159] The applicants referred to *Handyside* case and asked to protect their political ideas under Article 10 of Convention. However, the decision was made in favour for Dutch authorities: 'The Commission holds the view that the expression of the political ideas of the applicants clearly constitutes an activity within the meaning of Article 17 of the Convention. The

[154] European Court of Human Rights, 'Leroy v. France' Press Release (2007) <http://hudoc.echr.coe.int/eng#{%22itemid%22:[%22002-1888%22]}>, accessed July 12, 2017
[155] European Court of Human Rights, *Leroy v. France*, October 2, 2008, Para. 42
[156] Cannie Hannes, Voorhoof Dirk, 'The Abuse Clause and Freedom of Expression in the European Human Rights Convention', (2011) Netherlands Quarterly of Human Rights, P.83
[157] European Commission on Human Rights, *Glimmerveen and Hagenbeek v. the Netherlands*, October 11, 1979
[158] European Court of Human Rights, *Féret v. Belgium*, December 10, 2009
[159] European Commission on Human Rights, *Glimmerveen and Hagenbeek v. the Netherlands*, October 11, 1979 (Application no. 8348/78 and 8406/78), P. 192

applicants are essentially seeking to use Article 10 to provide a basis under the Convention for a right to engage in these activities which are, as shown above, contrary to the text and spirit of the Convention and which right, if granted, would contribute to the destruction of the rights and freedoms referred to above.'[160] Consequently, the complaint was declared as inadmissible.

However, the Court's reasoning in the case *Féret v. Belgium* derives from the Commission's decision in 'white Dutch people' case. Analogically as in *Glimmerveen and Hagenbeek v. the Netherlands*, the applicant, the member of Belgian Parliament representing the National Front party, complained that the national authorities had violated his right to freedom of expression under Article 10 of Convention. Mr. Féret was convicted of incitement to racial discrimination because he distributed leaflets carrying slogans such as 'Stand up against the Islamification of Belgium', 'Stop the sham integration policy' and 'Send non-European job-seekers home' during election campaign.[161]

Strasbourg Court declined Belgian Government's argument on inadmissibility under Article 17 and analysed Mr. Féret's complaint under the scope of Article 10 (2) of Convention even if the language used by the applicant was 'manifestly and unnecessarily aggressive and injurious to foreigners or persons of foreign origin'.[162]

According to Court, 'le discours raciste face à une liberté d'expression irresponsable'[163]/ racist speech reflects the irresponsible origin of freedom of expression and might not worth of protection. Furthermore, the applicant's parliamentary status cannot be considered as a condition reducing his liability; politicians have a very important role and they shall defend democracy and its principles.[164] 'States are bound to combat discrimination and racial hatred cannot be 'camouflaged' by electoral processes or campaigns.'[165] Therefore, the Court rejected Mr. Féret complaint and

[160] *Ibid.*, P. 196
[161] European Court of Human Rights, 'Factsheet of Hate Speech' (2017) P.10 < http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf>, accessed July 12, 2017
[162] European Court of Human Rights, *Féret v. Belgium*, December 10, 2009, Para. 49
[163] *Ibid.*, Para. 73
[164] *Ibid.*,, Para. 75
[165] Buyse Antoine, 'Dangerous Expressions: The ECHR, Violence and Free Speech', (2014) Cambridge University Press International & Comparative Law Quarterly, P.499 < https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/dangerous-

confirmed that Belgian authorities did not violate applicant's right to freedom of expression.

From the analysis of these two cases it is clear that the Court took the same decision – did not agreed on applicants' complaints. Yet, the reasoning and approach were completely different: first case was based on Article 17, second one on Article 10 para. 2 even if both applications were related to the exercise of freedom of expression. However, the direct application of Article 17 kills the complaint and does not require the Court to interpret the content of rights being abused: 'the application of article 17 functions as a categorical tool of judicial decision-making: when a situation falls into the category 'abuse of rights', an applicant will not enjoy the protection of the Convention and an application will be declared manifestly ill-founded.'[166] On the other hand, the revision of case law under Article 10 of ECHR might help to obtain more stability on the Court's jurisprudence: it would help to avoid a superficial (formal) examination of content; Court's reasoning would be more clear and predictable for domestic judicial authorities in the future cases. 'One could thus say that in principle every expression should fall within the scope of Article 10 and thus outside that of Article 17.'[167]

expressions-the-echr-violence-and-free-speech/49A85AD61F3BB728BFB8287EFB62147A>, accessed July 12, 2017

[166] Brems E., Gerards J., 'Shaping Rights in the ECHR.The role of the European Court of Human Rights in Determining the Scope of Human Rights', (2013) Cambridge University Press, p. 184-185

[167] *Ibid*., P.208

4. CASE STUDY: FRENCH LAICITY, *CHARLIE HEBDO* AND ITS RIGTHS TO SATIRE AND BLASPHEMY À LA FRANÇAISE

The motto of European Union declares that *In varietate concordia*, however, while the discussion turns about the use of humour we can find ourselves in *maxima discordia.* Ethical and legal dilemma what to say or what not to say, what is funny and what is offending in human rights field probably is as old as the chicken or the egg causality dilemma in biological evolution. Were above mentioned cartoons or so called comic performances bad examples of humour? Should legislator restrict this kind of artistic expressions or satirical speech in order to avoid racism, blasphemy and finally religious intolerance? In order to answer these questions the French case study related to religious offences is analysed because of its satirical journalism and the public reactions it has been producing.

4.1. Caricaturing religion

In France freedom of expression is inseparable from the principle of *laïcité* (which is known as French secularity, secularism). Consequently, because of the strict separation between the religion and State[168], 'France has a strong tradition of such satirical journalism, which in many respects is protected by state law and its "secular" constitutionalism.'[169] Hence, typically, the journalism in France is described as cynical and even offensive: that mocks anything and everything and 'freedom of the press and freedom to satirize are thus part of freedom of expression.'[170] Moreover, freedom of expression permits to express different opinions, discuss, disagree or even ridicule a religion because since France is neutral State - religion is not considered as something

[168] Loi du 9 décembre 1905 concernant la séparation des Eglises et de l'Etat establishes State's secularism in the Republic of France, Legifrance: https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006070169&dateTexte=20080306, accessed July 12, 2017

[169] Alicino Francesco, 'Freedom of Expression, Laïcité and Islam in France: The Tension between Two Different (Universal) Perspectives' (2016) Islam and Christian–Muslim Relations, P.65

[170] *Ibid*, P. 52.

divine but rather as an institution created by human beings. Thus, it shouldn't be surprising that this French perception of religion might be offensive or even blasphemous and cause negative feelings to the believers. However, even if France has a very strong tradition of freedom of expression (and especially freedom of press), this right is not absolute and according to Article 11 of 1789 Declaration of man and citizen[171] can be limited in cases determined by law (for example, actually it is prohibited to deny holocaust[172], incite hate speech[173] and terrorism[174] in France[175]). Yet, there is no actual legislation on blasphemy: 'in France, the offence of blasphemy was abolished in 1791 and has not been reintroduced ever since.'[176] Therefore, the legal means to defend religious convictions in France might be more complicated than in other countries. For example: the depictions of the Prophet are considered as a blasphemy for Muslim society. However, this type of restrictions based on religious grounds is incompatible to rules of the secular state[177].

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[171] L'article 11 de la Déclaration des droits de l'homme et du citoyen: La libre communication des pensées et des opinions est un des droits les plus précieux de l'homme; tout citoyen peut donc parler, écrire, imprimer librement, sauf à répondre de l'abus de cette liberté dans les cas déterminés par la loi. <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/la-constitution/la-constitution-du-4-octobre-1958/declaration-des-droits-de-l-homme-et-du-citoyen-de-1789.5076.html >, accessed July 12, 2017

[172] Legifrance, Loi n° 90-615 du 13 juillet 1990 tendant à réprimer tout acte raciste, antisémite ou xénophobe, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000532990&dateTexte=&categorieLien=id>, accessed July 12, 2017

[173] Legifrance, Loi du 29 juillet 1881 sur la liberté de la presse, https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006070722&dateTexte=20100812, accessed July 12, 2017

[174] Legifrance, Loi n°2014-1353 du 13 novembre 2014 - art. 5, Article 421-2-5 de Code pénal < https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070719&idArticle=LEGIARTI000029755573>, accessed July 12, 2017

[175] However, the direct criminalisation of incitement to terrorism is often criticised, for example: 'Governments have an obligation under international human rights law to prohibit advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. But vaguely-defined offences such as "defence of terrorism" risk criminalizing statements or other forms of expression which, while undoubtedly offensive to many, fall well short of inciting others to violence or discrimination' (Amnesty International, 'France faces 'litmus test' for freedom of expression as dozens arrested in wake of attacks'); 'perhaps ironically, while the threat from Islamists ushered in an era where freedom of expression came under threat from non-state actors, the response of governments also resulted in further restrictions on free speech from the state' (Jacob Mchangama, 'Freedom of Expression and National Security', P.364).

[176] Janssen Esther, 'Limits to expression on religion in France' (2009) Agama & Religiusitas di Eropa, Journal of European Studies, P.27

[177] Derieux Emmanuel, 'L'affaire des « Caricatures de Mahomet » : liberté de caricature et respect des croyances', (2007) La Semaine Juridique Edition Générale n° 19, P.5

Nowadays the most popular and known example of satirical journalism in France is *Charlie Hebdo*. 'Charlie Hebdo has a long history of publishing offending images and lampooning other religions. The magazine describes itself as strictly anti-religion, anti-racist and left wing, publishes articles, jokes and cartoons on religions and extremely right wing supporters (politicians and public figures)'[178] and proudly called as '*Journal bête et méchant'*[179] or satirical, secular, political and jubilant magazine which even has special sectors of 'Trials' and 'Blasphemy' in its homepage. Because of its extremely provocative nature of publications, the magazine quite often divides the world in 'to be' and 'not to be' Charlie[180]. In addition, even if *Charlie Hebdo* is highly supported by the defenders of freedom of speech and right to satire, some authors argue that attacks against the magazine is the natural consequence of its publications: 'There is no question that the Hebdo journal was/is scurrilous and was intentionally provoking Muslims, that the editors had every intention of creating an event of some kind.'[181] Next example is a gala dinner in New York on 5th of May, 2015 where *Charlie Hebdo* received an award for journalism. 'On that occasion, almost 150 well-known writers, including the best-selling novelists Joyce Carol Oates and Peter Carey, wrote a letter protesting against the award.'[182] Protesting writers and journalists were against this award to French magazine because of its mocking and non-ethical practise directed to already marginalised and vulnerable groups of people (especially French Muslims). Thus, quite often *Charlie Hebdo's* cartoons are considered as breaching ethical limits: 'the cartoonists had the (legal) right to publish the cartoons of the Prophet, they (morally) ought not to have done so, knowing the offense that those cartoons would

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Original text: 'Qu'il soit interdit de représenter le prophète Mahomet constitue peut- être, pour les musulmans, un précepte religieux dont la violation serait blasphématoire. Mais cela n'est en rien interdit par un État laḷque qui ne peut se préoccuper de telles règles.'

[178] Ashfaq Ayesha , Shami Savera, 'Freedom to Political Cartoons: Charlie Hebdo & Ethical Dilemmas in Cartoon Communication' (2016) JRSP, P. 128

[179] *Charlie Hebdo*, official website < https://charliehebdo.fr/en/>, accessed July 12, 2017

[180] Ashfaq Ayesha , Shami Savera, 'Freedom to Political Cartoons: Charlie Hebdo & Ethical Dilemmas in Cartoon Communication' (2016) JRSP, P. 130

[181] Walberg Eric, 'Critical look at the Charlie Hebdo affair' (2016) The Critique < https://crescent.icit-digital.org/articles/critical-look-at-the-charlie-hebdo-affair>, accessed July 12, 2016

[182] Alicino Francesco, 'Freedom of Expression, Laïcité and Islam in France: The Tension between Two Different (Universal) Perspectives' (2016) Islam and Christian–Muslim Relations, P. 66

cause to Muslims both in France, and around the world.'[183] Yet, as already discussed in the first part of this paper it is hardly possible to establish ethical and moral limits on freedom of expression. Therefore, the legal regulation with the few examples of case law are analysed in order to have a better understanding on how far humour can go in France.

Unfortunately, *Charlie Hebdo* together with support phrase *Je suis Charlie*[184] reached the peak of its popularity after the cruel massacres in magazine's office in Paris in January 2015 when 11 journalists and satirists were killed. This terrorist attack was linked to republication of *Jyllands-Posten* cartoons of Mohammad and later special edition of more cartoons of Mohammed (in some of them the Prophet was depicted nude). In order to support Danish cartoonist French magazine 'released a special issue, in which, apart from the Danish cartoons many French cartoons about Islam were also published.'[185] The cover of this special edition depicted desperate Mohammed with the words: 'C'est dur d'être aimé par des cons' (It is hard to be loved by idiots)[186]. Following these publications few Muslim organisations in France sued *Charlie Hebdo* (more specifically its chief-editor Phillipe Vals) and asked to prohibit the drawings of the prophet Mohammed. The dispute even reached the Appeal court of Paris. 'With regard to the cover page showing a Mohammed exasperated by fundamentalists, the court agreed with the defendant that <…> the term *con* was clearly offensive.'[187] However, the court did not meet Muslim organisations' request and declared 'the caricatures referred to the Muslims terrorist ['most extreme fundamentalists'] and not a Muslim society as a whole'[188] and in the next paragraph of decision added that 'there is no risk of confusion between Muslims and terrorists who

[183] Weinstock Daniel, 'The (messy) ethics of freedom of speech' (2015) Canadian Public Affairs blog <http://induecourse.ca/the-messy-ethics-of-freedom-of-speech/ >, accessed July 12, 2017
[184] *Je suis Charlie* reflects support to free speech and opposition to violence
[185] Janssen Esther, 'Limits to expression on religion in France' (2009) Agama & Religiusitas di Eropa, Journal of European Studies, 2009, P. 37
[186] Charlie Hebdo's official website, 'Cartoon Trial and People with Beards are of on Crusade' < https://charliehebdo.fr/en/trials/>, accessed July 12, 2017
[187] Langer Lorenz, 'Religious Offence and Human Rights. The Implications of Defamation of Religions' (2014) Cambridge University Press, p.75
[188] Cour d'Appel de Paris, Arret de 12 Mars 2008, Dossier N 07/02873, P.6 < http://www.guglielmi.fr/IMG/pdf/CA_Paris_12_mars_2008.pdf>, accessed July 12, 2017
Original text: 'la communauté musulmane dans son ensemble n'est pas visée mais seulement les musulmanes terrorist'.

invoke Islam as a reason for committing their crimes.'[189] 'Rather than condemning the cartoons, the court thus ended its judgment by a condemnation of militant political Islam.'[190] Thus, the publicised cartoons did not show the Islam as terrorism but rather the vision of Islam and the Prophet that terrorists use as a justification for their illicit actions[191]. Following these arguments the Appeal Court of Paris acquitted Phillipe Vals and confirmed that the *Charlie Hebdo's* publication did not intend to insult Muslim community and was not directly attacking their religion, thus the caricatures did not exceed the admissible limits of freedom of expression: 'The incriminated caricatures had participated in the public discourse over the threat posed to free speech by polemics, intimidations and by certain reactions to the Danish cartoons.'[192] Finally, the French Court reaffirmed the *Otto-Preminger* jurisprudence and stated that 'respect for all beliefs goes hand in hand with freedom to criticize religions.'[193]

It is worth to mention that *Charlie Hebdo* is not the only magazine walking on the marginal line between blasphemy and satire. In April, 2005 the newspaper *Libération* published cartoonist Willem's drawing supporting the prevention against HIV. Because the depiction showed Jesus wearing condom with the written slogan 'Lui-même aurait sans doute utilisé un préservatif!/He would definitely have used a condom!', the complaint was brought by L'Alliance Générale contre le racisme et pour le Respect de l'Identité Française et Chrétienne (French General Association against Racism and for Respect of the French Christian Identity – AGRIF)[194]. This case provoked a big debate on the satirical use of religious sanctity for 'educational'

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[189] *Ibid*., P.6
Original text: 'aucun risque de confusion n'est créé centre les musulmans et les teroristes qui se réclament de l'islam pour perpétrer leurs crimes'.
[190] Langer Lorenz, 'Religious Offence and Human Rights. The Implications of Defamation of Religions' (2014) Cambridge University Press, P. 75
[191] Derieux Emmanuel, 'L'affaire des « Caricatures de Mahomet » : liberté de caricature et respect des croyances', (2007) La Semaine Juridique Edition Générale n° 19, P.5
Original text: 'Dans l'éditorial accompagnant les caricatures, il avait écrit que ce qui était représenté, « ce n'est pas l'islam, mais la vision de l'islam et du prophčte que s'en font les groupes terroristes musulmans »'
[192] Langer Lorenz, 'Religious Offence and Human Rights. The Implications of Defamation of Religions' (2014) Cambridge University Press, P. 76
[193] Derieux Emmanuel, 'L'affaire des « Caricatures de Mahomet » : liberté de caricature et respect des croyances', (2007) La Semaine Juridique Edition Générale n° 19, P.6
Original text: 'le respect de toutes les croyances va de pair avec la liberté de critiquer les religions.'
[194] Janssen Esther, 'Limits to expression on religion in France' (2009) Agama & Religiusitas di Eropa, Journal of European Studies, 2009, P. 34

purposes. However, the Court of Cassation confirmed the Appeal Court's decision 'that the drawing may have shocked the sensitivity of some Christians or Catholics, but it illustrated the debate amongst cardinals about the necessity of the protection against HIV and aimed at calling the attention of the reader to the HIV plague in Africa.'[195] Thus, the French authorities did not find the caricature as offending believers and declared that publication didn't exceed the permissible limits of freedom of expression as guaranteed under the European Convention of Human Rights[196].

4.2. Disparity between belief and believer

As already mentioned, there is no direct regulation on blasphemy in France. However, in particular cases believers can defend themselves against offensive expressions under Article 29 (2) of the Freedom of The Press Act[197] which states that 'outrageous expressions, contemptuous words or invectives void of any factual allegations constitute an injury.'[198] The Article 23 of the Freedom of The Press Act constitutes the means in which this injury can be committed, for instance: 'speeches, shouts or threats expressed in public places or meetings, or by written words, printed matter, drawings, engravings, paintings, emblems, pictures or any other written, spoken or pictorial aid, sold or distributed, offered for sale or displayed in public places or meetings, either by posters or notices displayed for public view, or by any means of

[195] OHCHR, '2011 Expert workshop on the prohibition of incitement to national, racial or religious hatred-Annex –European Legislations–L-L. Christians' P.7 (2001) <http://www.ohchr.org/Documents/Issues/Expression/ICCPR/Vienna/Annexes/France.pdf > , accessed July 12, 2017

[196] Legifrance, La Cour de Cassation chambre criminelle, Arret de 2 mai 2007, Dossier N 06-84.710 , https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000017830068&fastReqId=525675543&fastPos=11 , accessed July 12, 2017

[197] Nota bene: before 2000 religious beliefs could have been defended under the Freedom of The Press Act and Article 1382 of the Civil Code of France (at that moment Article 1382 allowed to defend the respect of reputation and demand of compensation). However, the Plenary Assembly of the Court of Cassation released in 2000 'established the principle that abuses of freedom of expression defined and punishable under the law of 29 July 1881 cannot be remedied on the grounds of Article 1382 of the Civil Code.' (Alouane Rim-Sarah, 'God, the Pencil, and the Judge: the Paradoxes Regarding the Protection of Freedom of Religion and Expression in France', P. 10). Thus, Article 1382 of Civil Code is not applicable when the expression interferes under the scope of application of Freedom of The Press Act.

[198] Langer Lorenz, 'Religious Offence and Human Rights. The Implications of Defamation of Religions' (2014) Cambridge University Press, P.74

electronic communication.'[199] Additionally in 2006 after the scandalous wave of Danish Cartoons and their republication the deputy Mr. Éric Raoult proposed a provision of law which shall forbid the banalisation of religious blasphemy through caricatures[200]. Luckily, this proposition was refused and right to satirise was not put at stake.

Despite the unsuccessful attempt to ban 'blasphemous' caricatures, certain religious organisations tried to find other legal ways how to defend 'offended' religious beliefs. More specifically, the clause of defamation ('incitement to discrimination, hatred or violence against an individual or a group of individuals on the basis of their origin or membership (or non-membership) to certain religious group'[201] has been used as a tool to protect religious convictions. For example, *Charlie Hebdo* and AGRIF have a 'special relationship' now counting 9 cases so far (with 7 'victories' for the magazine)[202]. Consequently, French jurisprudence on caricaturing and satirising seems to be well established. According to the French Court of Cassation, if the caricature does not aim to make an allegation or defame specific group but rather raises the public discussion or critiques on the basis of grossly satirical character, the freedom of expression cannot not be restricted[203] and 'the offense should not be confused with defamation of religions: indeed, an offense is recognised when the publication offends a believer or group of believers, but not religion, religious rites and symbols or higher

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[199] Article 23 of the Press Freedom Act of 29 July 1881 < http://www.legislationline.org/documents/action/popup/id/15730 > , accessed July 12, 2017

[200] Asamblee Nationale, No 2993, Proposition de loi visant à interdire la banalisation du blasphème religieux par voie de caricature http://www.assemblee-nationale.fr/12/propositions/pion2993.asp, accessed July 12, 2017

[201] Legifrance, Article 29 de la Loi du 29 juillet 1881 sur la liberté de la presse, < https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006070722#LEGIARTI000006419708 > , accessed July 12, 2017

[202] Charlie Hebdo, 'Procès/Trials', accessed < https://charliehebdo.fr/proces/ >, accessed July 12, 2017

[203] Cour de cassation, Chambre civile 2, n° 99-10.490, Avril 26, 2001 < https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000007419725&fastReqId=600828529&fastPos=1 >, accessed July 12, 2017

This case concerns the Pope's John Paul II visit in France and Charlie Hebdo's welcoming article with the slogan 'Bienvenue au Pape de merde/welcome to the shitty pope' where the politics and Pope's personality were discussed)

Original text: 'Que l'arrêt énonce que ces propos ne sont pas révélateurs de la diffamation poursuivie en l'absence d'allégations de faits précis pouvant être imputés à un groupe religieux déterminé et de nature à porter atteinte à l'honneur et à la réputation de celui-ci, qu'il s'agit non d'attaques contre les fidèles d'une religion mais de critiques dont la virulence ne peut être appréciée qu'au regard du caractère ouvertement anticlérical et grossièrement satirique du journal Charlie hebdo, et qui, portant sur le rôle et les positions à travers l'histoire de l'Eglise catholique, en tant qu'institution représentée par le pape, relèvent d'un débat d'opinions qu'il n'appartient pas aux tribunaux d'arbitrer'.

religious authorities.'[204] This jurisprudence also conforms to the European Court of Human Rights case law. 'The Court of Cassation has established and used this distinction for many years and refuses to condemn remarks that deride certain religious practices as long as they 'are not likely to incite hatred, violence or discrimination' against faith communities.'[205]

Yet, it is more or less clear that at least in France 'people have rights, but religions do not (and neither do political convictions, ideologies, deeply held beliefs, and so on)'[206] and there is a distinction between freedom of expression against belief on one hand and freedom of expression against believers on the other hand.[207] Therefore, few examples of case law are provided in order to distinct line between 'personal' offence and defamation of religion.

The first case law concerns Michel Houellebecq, French writer who called Islam the most stupid religion ('La religion la plus con, c'est quand même l'Islam') in one of his interviews in 2001[208]. Few French Muslim organisations brought complaint blaming Mr. Houellebecq for incitement to religious hatred. In the decision of 22 October 2002 Tribunal de Grande Instance de Paris declared that Mr. Houellebecq had not sought to provoke or incite religious hatred but rather had expressed his own personal opinion about the religion of Islam. Furthermore, the announcement of personal opinion related to religion, considered in conceptual sense, and which does not encourages the provocation of hatred, violence and discrimination towards the group of individuals belonging to the same religious does not constitute the religious offence under the article 24 of the Act of 29 July 1881 on Freedom of Press[209].

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[204] Alouane Rim-Sarah, 'God, the Pencil, and the Judge: the Paradoxes Regarding the Protection of Freedom of Religion and Expression in France', (2016) Religion and Human Rights, P. 11

[205] *Ibid*., P.16

[206] Lemmens Koen, 'Larvatus prodeo? Why concealing the face can be incompatible with a European conception of human rights' (2014) European Law Review, P.49

[207] Derieux Emmanuel, 'Liberté d'expression et respect des croyances et des croyants dans la jurisprudence française et de la Cour européenne des droits de l'homme', (2015) LEGICOM, P.72 < http://www.cairn.info/revue-legicom-2015-2-page-71.htm>, accessed July 12, 2017

[208] O'Rourke Breffni, 'France: Reference To Islam As 'Most Stupid' Religion Lands Author In Court' (2002) Radio Free Europe < https://www.rferl.org/a/1100847.html >, accessed July 12, 2017

[209] Tribunal de Grande Instance de Paris, 'Provocation à la haine religieuse, TGI Paris', October 22, 2002 https://www.lextenso.fr/lextenso/ud/urn%3AGP20031002F1876> , accessed July 12, 2017

Original text: 'L'énonciation d'une opinion personnelle relativement à une religion, envisagée au sens conceptuel du terme, et qui n'est accompagnée d'aucune exhortation ni appel à la partager, ne constitue pas une provocation à la haine, la violence ou la discrimination envers un groupe de personnes à raison de

Another case is related to humourist Dieudonné whose one of the cases was discussed above (Sub-chapter 'Abusive jokes'). As already mentioned Dieudonné is a very controversial person in French public life that was charged and condemned more than 30 times. For instance, in 2007 the Court of Cassation found the statements such as 'Racism was invented by Abraham' or 'les juifs, c'est une secte, une escroquerie. C'est une des plus graves parce que c'est la première/Jews are the sect, the fraud. They are ones of the worst because they were first'[210] do not constitute the critiques of religion in order to provoke public discussion but rather seeks to offend and injure the group of individuals sharing the same origin. Therefore, the remark which could not be considered 'as critique on a religion that is allowed as part of public debate, but constituted an insult against a group of people on the ground of their origin'[211] cannot enjoy the freedom of expression in democratic society.

Consequently, the French legislation on defamation means that is allowed to call 'Islam the most stupid of the major monotheistic religions'[212] (French writer's Michel Houellebecq's opinion about Islam as religion in radio interview), but it's forbidden to call Muslims stupid[213]. Thus, according to French doctrine the freedom of expression in the religious cases can be limited on the basis of discrimination and insult of person or group of individuals because of their origin or their membership or non-membership of a specific ethnic group, nation, race or religion but not on the defamation or dishonour of God/Church/religion. The legal consensus in France is

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leur appartenance à cette religion, même si elle peut heurter ces personnes elles-mêmes dans leur attachement communautaire ou leur foi.'

[210] Legifrance, Cour de la Cassation Cour de cassation, Assemblée plénière, 16 February 2007, N° 06-81785, <http://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000017634942&fastReqId=831873254&fastPos=1 >, accessed July 12, 2017

[211] Janssen Esther, 'Limits to expression on religion in France' (2009) Agama & Religiusitas di Eropa, Journal of European Studies, 2009, P. 32

[212] O'Rourke Breffni, 'France: Reference To Islam As 'Most Stupid' Religion Lands Author In Court' (2002) Radio Free Europe < https://www.rferl.org/a/1100847.html >, accessed July 12, 2017

[213] For example, the actress Brigitte Bardot was condemned inciting racial hatred in France for calling her country 'overpopulated by foreigners, especially Muslims' (Michèle Finck, 'Brigitte Bardot's repeated convictions for inciting racial hatred'). Also politician Jean-Marie Le Pen for statements such as 'the day there are no longer 5 million but 25 million Muslims in France, they will be in charge' (European Court of Human Rights, *Le Pen v. France*, April 20, 2010) and others.

established: ‘beliefs, rituals and symbols can be criticized through caricature without incurring censorship.’[214]

From the earlier jurisprudence the case of *Larry Flint* is worth of discussion because the poster of the film *The people vs Larry Flint* was discussed all around the globe and the debate related to this movie even reached the European Court of Human Rights (*Klein v. Slovakia No. 72208/01, 8 November 2005*). Differently from Slovakian example, the French case did not reach international jurisdiction, however complaint for a civil case was brought by AGRIF. ‘In Paris the original poster was placed on the walls of a building at the beginning of the Christian holidays. AGRIF requested the removal of the poster in court.’[215] However, the association did not succeed to prove that the poster demonstrated anti-Christian racism and was gratuitously offensive[216] and the poster was not prohibited.

All in all, the French regulation of freedom of speech is quite flexible and dynamic, promoting the pluralistic and democratic values. Taking into account that ‘France has always maintained complex relations with the European mechanisms of protecting human rights’[217] it is natural French jurisprudence and legislation usually conforms with the standards set by European Court of Human Rights and there are just a small number of exceptions[218]. Similarly to Strasbourg Court standards, French authorities base their case law on the intention (aim of expression) and the target of speech. ‘What frequently causes a case to fail is the lack of two necessary constitutive elements of the offences: 1) the author did not intend to insult, defame or stir up hatred and 2) the expression is not a personal and direct attack on the whole of a religious group.’[219] Thus, France is a great promoter of protection of freedom of expression, which began the protection of freedom of speech with 1789 Declaration of the Rights of

[214] Alouane Rim-Sarah, ‘God, the Pencil, and the Judge: the Paradoxes Regarding the Protection of Freedom of Religion and Expression in France’, (2016) Religion and Human Rights, P. 16
[215] Janssen Esther, ‘Limits to expression on religion in France’ (2009) Agama & Religiusitas di Eropa, Journal of European Studies, 2009, P. 33
[216] Tribunal de grande instance Paris, *AGRIF c. Ste Columbia Tristar Film France*, February 20, 1997
[217] Popelier P., Lambrecht S., Lemmens K., ‘Criticism of the European Court of Human Rights. Shifting the Convention System: Counter-Dynamics at the National and EU Level’, (2016) Intersentia, P.294
[218] For example: *Lehideux and Isorni v. France* (Application No. 24662/94, ECtHR); *Giniewski v. France* (Application no. 64016/00, ECtHR) – restrictions were disproportionate, historical debate should be allowed).
[219] Janssen Esther, ‘Limits to expression on religion in France’ (2009) Agama & Religiusitas di Eropa, Journal of European Studies, 2009, P. 37

Man and Citizen and 1948 Universal Declaration of Human Rights and has perfectionned it with the help of European Convention of fundamental rights and freedoms, International Covenant on Civil and Political Rights and other regional or international instruments.

CONCLUSION

Humour and especially cartooning play more important role in the frame of human rights than it may seem at the first glance. 'Humorists in general and cartoonists in particular, have more latitude to attack established ideas, because the cartoonist "can say and do things that the responsible statesman, and even the responsible journalist, cannot say and do."'[220] Thus, humour as a form of freedom of expression is important of the message being brought which may open a debate on socially significant issues.

However, because humour and especially satire exaggerate things and have a provocative nature sometimes it leads to confrontation between freedom of expression and other rights. The provided examples of Danish cartoons, *Charlie Hebdo* and others show that humour often targets vulnerable groups of society and words may wound seriously: 'The Danish cartoon controversy was considered as a possible example of the alleged conflict between autonomy and respect for diversity. It was suggested that the cartoons can be seen as exemplifying a conflict between autonomy and diversity if they aimed to provoke self-reflection as an end in itself rather than at promoting democratic deliberation and mutual respect.'[221] Yet, the valid restrictions of freedom of expression cannot be established while applying the theories of humour use, the principle of harm or the test of reasonableness. This is the reason why the use of humour shall be based on legal boundaries founded on Article 10 of ECHR which basically means that everyone is allowed to say and mock everything they want as long as expressions being spread do not 'incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance'[222] and 'do not contribute to any form of public debate capable of furthering progress in human affairs'[223].

[220] Keane David, 'Cartoon Violence and Freedom of Expression' (2008) 30 Human Rights Quarterly, P.847
[221] Rostbøll Christian F., 'Freedom of expression, deliberation, autonomy and respect', (2011) European Journal of Political Theory, P. 18
[222] Weber Anne, 'Manual on Hate Speech', (2009) Council of Europe Publishing, P.3
[223] European Court of Human Rights, *Otto-Preminger Institut v. Austria*, September 20, 1994, Para. 49

All in all, humour, like other forms of freedom of expression, may 'offend, shock or disturb'[224] but in general it also contributes to a social comment, thus, sometimes 'individuals must simply cultivate a 'hard heart' as the price to pay for a public life'[225] in order to have democratic, pluralistic and broadminded society. However, 'freedom of expression does not have favourites. Now is not the time for knee-jerk prosecutions, but measured responses that protect lives and respect the rights of all'.[226]

[224] European Court of Human Rights, *Handyside v. the United Kingdom*, December 7, 1976, Para. 49
[225] Bangstad Sindre, 'Fighting Words: What's Wrong with Freedom of Expression?, (2014) Journal of Ethnic and Migration Studies, P.267
[226] Dalhuisen John, 'France faces 'litmus test' for freedom of expression as dozens arrested in wake of attacks', (2015) Amnesty International < https://www.amnesty.org/en/latest/news/2015/01/france-faces-litmus-test-freedom-expression-dozens-arrested-wake-attacks/> accessed July 12, 2017

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