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Religious Offence as a Political Tool.

The Role of Religion in the Limitation of Freedom of Expression.

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*“If liberty means anything,
it means the right to tell people what they don’t want to hear.”*

George Orwell

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Introduction

As new particular cases constantly occur, the relation between religion and politics is present in contemporary international relations in many different ways. At the time of writing the present thesis, in Turkey a trial on banning a ruling Justice and Development (AKP) party is in progress. In the Netherlands another “anti-Muslim” movie “Fitna” was recently released, as banned in many web sites, it renew a discussion on freedom of artistic expression. The conflict between Israelis and Palestinians can be interpreted in terms of religion, where one party claims its right to the land based on the Bible, and the other fights with opponent’s politics through voices of *jihad* – in this case defined as war against unbelievers.

Religion seems to be a powerful tool of political manipulation as well. By attacking believers, authorities can easily influence the masses and support their own ideas. By mocking beliefs, they question basic life principles and bring uncertainty. In history, pointing out not only people of different race or ethnic origins, but also different religion supported the concept of ‘enemy within’. And even if officially the particular conflict was not based on religion, sooner or later the differences were highlighted.

Religion is placed within the private sphere of life. Nevertheless, it is obvious that beliefs influence, up to some point, ideological and political preferences of individuals. Scholars claim that religiously politicized individuals differ from others, especially when it comes to views on aid to the Third World countries, European Integration or partisan preferences. They usually tend to be on the right side of party spectrum, however they also hold a diversity of views. For those reasons it is to be claimed that differences in individual belief systems shape different ideological positions. Therefore religion keeps on being salient in predicting political actions of individuals and group movements.¹

Language is the most powerful tool in communication between people. By using appropriate words media create public opinion, influence the society, and up to some

¹ W.H. Swatos, Jr., *The Kingdom of God and the World of Man: The Problem of Religious Politics* [in:] *Religious Politics in Global and Comparative Perspective*, Greenwood Press 1989, pp. 7-8.

point – tell people what to do. Words can be sometimes more offensive than acts (contrary to popular saying that “actions speak louder than words”), having at the same time a larger scale of response among people, especially when they are used in such a sensitive context as religious beliefs of individuals.

Freedom of expression is one of the most important features of the Western civilization. It is both relevant in societies with long traditions of this freedom, as well as newly democratic states, where free expression was not allowed for many years. The following approach leads directly to a question: are there any limits of freedom of expression? And if so, what are the features relevant to decide upon it?

As it was mentioned in the first paragraph, religion is one of the most sensitive issues for discussion. For this reason, it is often used as a tool for limitation certain freedoms, especially freedom of expression. Individuals, as well as groups or authorities, find contents of publications, public speeches, audio and video releases personally offensive (in terms of their beliefs). Their reaction for such an offence may result not only with public condemnation of a particular act, but also with long-term political, economical and social consequences.

Where is the border between freedom of expression and religious offence? The debate upon this issue is long, and seems to be never-ending. The problem with defining the offence is that “one man’s vulgarity may be another’s lyric”². In democratic countries, law does not sanction religion (in terms of its doctrine). However, there are still countries in the world, where religion and politics are inseparable. The beginning of recent resurgence of religion has been noticed in the 70’s, with the appearance of so-called New Religious Movements. Until then, religion seemed to be some kind of leisure time activity, with almost none societal consequences. Among those movements, special attention has been given to fundamentalist groups, especially in Islamic countries.³

By giving an example of Islam, it is not said that religious offence does not involve feelings of Christian, Jewish or Buddhist believers. Instead, the focus is on most recent and numerous cases in contemporary politics. It may be upon discussion, how the “media effect” theory applies in this case, and how so-called phenomenon of

² *Cohen v. California*, 403 U.S. 15, 25 (1971).

³ W.H. Swatos, Jr., *op. cit.*, p.1.

'Islamophobia' influences the public opinion. Nevertheless, the aim of the present thesis is not to offend anyone's feelings or beliefs, but to point out the close connection between faith and politics in some Muslim countries⁴, and how religious beliefs are used as tools in their domestic and international politics, often in terms of abuse.

The present paper is not as an analysis of how religion and politics are bonded, but rather an attempt to show the complexity of this issue, and how many different social and political problems are involved into it. The aim of this paper is to show how the institution of religious offence is being used (or rather - abused) in contemporary politics, and what consequences does it have for international relations.

The thesis consists of three parts. The first section is an attempt to define the term of 'religious offence'. The theoretical part of the paper is very general, however the aim of the present work is to show and analyze current issues, therefore the theory is supposed to give a general background only, and help to understand the subject of religious offence from different (secular and non-secular state) perspectives.

Section II deals with religious offence used in the context of free speech and its limitation. The examples chosen from current affairs ("The Satanic Verses," Danish cartoons and cases in Netherlands) are presented to show how different results may such an offence bring. While the first case is analyzed in diplomatic context, the Danish and Dutch events appear, apart from being political, also as economical and cultural.

Section III focuses on legal aspects of religious offence, due to the fact that blasphemy laws and prosecutions under those laws very often become legal tools of free speech limitations. In history there has been many cases related to religious offence (especially blasphemy), not all of them influenced domestic and/or international politics of the countries involved. The examples given are to illustrate particular issues within the interest of the following paper, not the matter of religious offence itself. It is worth mentioning that during work on the following paper, in Great Britain, the debate on the blasphemy laws has come to an end. However, the analysis of history, associated events and arguments given during the debate, is relevant in this case as well.

⁴ For the purpose of the following paper, the terms 'Islamic' and 'Muslim countries' will be used interchangeably to describe the states, where the majority of inhabitants is considered as Muslim. Nevertheless, it is necessary to point out that in terms of law some of the states with Muslim majority are secular (e.g. Turkey).

Section I

Defining religious offence

1. Religion in politics – an introduction and historical background.

Religion and politics have always been tied closely, no matter if we talk about relations within secular or non-secular states. The reason for that is the complexity of areas, which have direct or indirect relation to religion, what includes most of the issues involving ethics and morality. The more religion (usually religion of majority) is involved in domestic politics, the more typical features are to be observed in foreign policy of that state. For those reasons it is relevant to introduce characteristics typical for this type of state, determining not only its domestic policy and social relations within the state, but also foreign policy and the type of presence in international relations.

1.1. The meaning of religion in world politics – example of Islamic states. Fundamentalism.

“The idea that religion belongs only to the private sphere is meaningless to the vast bulk of believers of all religions in the world.”

J. Clifford Wallace, *Challenges and Opportunities Facing Religious Freedom in the Public Square* [in:] Brigham Young University Law Review (2005)

In the year 2008, 194 independent states exist in the world.⁵ It is difficult to estimate how many of them are secular and how many are not due to the lack of a fine definition in both cases. On one hand we can make a clear distinction between the states that are constitutionally affiliated to a religion, states with a constitutional principle of secularism, and those of legal systems remaining silent in this issue. On the other however, in the opinion of some, the third category of states is supposed to be considered secular as well, as the silence of legal system in such cases is usually interpreted as lack of affiliation to any religion.

Among non-secular countries, majority of them declares affiliation to Islam⁶. For those reasons the following analysis, pointing out common features of the systems of government, legal systems and foreign policy decision-making process mechanisms, is based on the examples of so-called Islamic states.

There are no complex statistics on how many states in the world are supposed to be considered as Islamic, due to the fact that preparing such a list requires an analysis of all countries' basic legal acts. The biggest problem, however, is caused by the lack of clear definition of what Islamic state really is. The term "Islamic" refers in the present paper to the states officially affiliated to Islam (Shia or Sunni), apart from the type of government established in the country. Wolfgang Merkel, however, basing on the Freedom House organization survey in his presentation⁷, considers Islamic all the states with over 50% of

⁵ The common opinion that the number of the UN member states equals the number of all states in the world seems to be misleading, minding that in 2008 Kosovo declared its independence (although still not recognized by all the countries in the world) and the Vatican See is not the UN member *sensu stricto*, but has only the status of a permanent observer. See further: the official United Nations web site <http://www.un.org/members/list.shtml>, last accessed May 24, 2008.

⁶ The number of Christian states is almost the same as the number of states declaring affiliation to Islam, however there are many different types of religions within Christianity that are the official religions of those states. For those reasons we should consider each of them separately. For the list of predominant religions see: http://www.adherents.com/adh_predom.html, last accessed May 24, 2008.

⁷ W. Merkel, *Religion, Islam, and Democracy*, ECPR Joint Sessions, Granada, Spain, April 14-19 2005, workshop 11: Post Cold War Democratization in the Muslim World: Domestic, Regional and Global Trends, *sic passim*.

Muslim population. Nonetheless it is a misleading approach to place countries like Turkey⁸ or Albania in the same group with Saudi Arabia⁹ or Pakistan¹⁰.

To conceptualize religious-based-value politics, scholars, as well as media, often use the term ‘fundamentalism’. Nevertheless, use of this word in various discourses is on one hand negatively value-laden, as people, whom it is applied to, are due to that considered as narrow-minded or bigoted¹¹. On the other hand, use of this word may also be historically inappropriate.

The term ‘fundamentalism’ itself refers to a Christian Protestant movement, with well-defined theological principles¹², therefore, in the opinion of some, it is somewhat impossible to speak about so-called ‘Islamic fundamentalism’¹³, as the term is related to one specific religion.

There are a few most pronounced characteristics of Christian fundamentalism. First of them is the belief in the inerrancy of the Bible, as well as unacceptability of presence any sort of error in it. Traditional interpretation of the Bible is aimed to prevent making it ‘mean something else’. One of the marks of Christian fundamentalism is also a strong hostility to modern technology and methods of modern critical study of the Bible, as well as a common opinion that

⁸ The Constitution of the Republic of Turkey in the art. 2 states that “The Republic of Turkey is a [...] secular [...] state [...]” For the full text of the constitution see: <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>, last accessed May 20, 2008.

⁹ Saudi Arabia is a Islamic kingdom, governed within the rules of Sharia law. See further: *CIA World Factbook* available at <https://www.cia.gov/library/publications/the-world-factbook/geos/sa.html>, last accessed May 24, 2008.

¹⁰ Pakistan is an Islamic republic governed within the rules of common law in a way as to maintain its Islamic status. See further *CIA World Factbook* available at <https://www.cia.gov/library/publications/the-world-factbook/geos/pk.html>, last accessed May 24, 2008.

¹¹ Christian fundamentalists, especially in Great Britain, are preferred to be called as ‘conservative’ or ‘conservative evangelical’, however some scholars highlight the difference between those terms. See further J. Barr, *Fundamentalism*, SCM Press Ltd. 1977, pp. 2-3.

¹² The word ‘fundamentalism’ has been derived from a series of booklets entitled “The Fundamentals”, published in the United States in 1910-15. The term was used for elements of traditional doctrine, e.g. the authority of scripture, the deity of Jesus Christ or the virgin birth. See *ibid.*, p. 2.

¹³ W.H. Swatos Jr., *Ultimate Values in Politics* [in:] *Religious Politics in Global and Comparative Perspective*, New York: Greenwood Press 1989, pp. 62-63. See also: V. La Porte, *An Attempt to Understand Muslim Reaction to the Satanic Verses*, The Edwin Meller Press 1999, p. 252, footnote 11, where she explains that “in Islam all Muslims are fundamentalists for all interpret the Quran literally”.

those who do not share the same religious point of view are not ‘true Christians’.¹⁴

Symbolic function of the Bible puts it in a similar position to the place of Quran in Islam. As the Bible is a part of religion itself, also Quran takes the center point of it. According to J. Barr, the symbolic function of both holy books has a deep effect on person’s behavior (e.g. endless reiteration of verses/suras)¹⁵. It is worth to keep this fact in mind while analyzing types of acts considered by Muslims as religious offences. Particular case studies are going to be analyzed in the section II of the present paper.

American theologian H. Richard Niebuhr gave an interpretation of fundamentalism in terms of sociology. In his opinion, the origins of fundamentalism are in the old rural culture, while the opposing liberalism belongs to the rising industrialized urban culture: “fundamentalism in its aggressive forms was most prevalent in those isolated communities in which the traditions of pioneer society had been most preserved and which were least subject to the influence of modern science and industrial civilization”.¹⁶ According to Barr however, Niebuhr’s theory applies only to limited number of manifestations of fundamentalism. He gives an example of E.R. Sandeen, who claims that the fundamentalist leadership came from the same social groups as the liberal leadership.¹⁷

Minding both of the presented opinions, one shall take a closer look to the situation in current international relations. There is no general rule one can apply while investigating the origins of fundamentalism. Social explanation given by Niebuhr is inadequate when we look at fundamentalist movements in the United States - a country considered as one of the most developed societies in the world. However, the argument concerning religious fundamentalism as a result of low level of education in a society seems to be convincing, nevertheless the issue requires further research.

¹⁴ J. Barr, *op. cit.*, p. 1.

¹⁵ W.M.Watt, *Islamic Fundamentalism and Modernity*, Routledge 1988, p. 37.

¹⁶ *Encyclopedia of the Social Sciences* [quoted in:] J. Barr, *op. cit.*, pp. 90-91.

¹⁷ E.R. Sandeen, *The Roots of Fundamentalism*, Chicago University Press 1970, *sic passim*.

The fundamentalist approach varies depending on the culture it rises in. Life of Christians is defined by the religion in such a way as to provide the acceptance for the secularization of the surrounding culture. The religion in this case does not interfere with secularity of the society, what also includes the examples of Christian fundamentalism.¹⁸ However, as the relation between the state and religion in Islamic states is much stronger, this case is apparently limited only to the case of Christian fundamentalism appearing in secular society, or more precisely – to evangelical Protestantism. The situation looks also a little bit different in the case of Catholic fundamentalism, due to the fact that Roman Catholic religion is strongly influenced by the tradition and the authority of pope.

Despite all the arguments above relating the term ‘fundamentalism’ with Christianity, some sources connect Islamic fundamentalism with an 18th-19th century movement, arose as a reaction to disintegration of political power, asserting that Islam is central to both the state and society. The socio-cultural context, usually given to explain the revival of fundamentalist movements, is based on the term ‘modernization’, which describes the social and cultural changes taking place at that time.¹⁹ The term ‘fundamentalism’ is also currently used to describe different kinds of resistance movements among Muslim believers to Western cultural and political values.²⁰ It became popular in media especially as a term describing the changes taking place during the Iranian revolution in 1979²¹.

Eugen Schoenfeld uses in case of Islamic fundamentalism the term ‘militant religion’²², what applies to a religion, which denies both the separation

¹⁸ J. Barr, *op. cit.*, pp. 99-103.

¹⁹ G. ter Haar, *Religious Fundamentalism and Social Change. A Comparative Inquiry* [in:] G. ter Haar, J.J. Busutti (ed.), *The Freedom To Do God's Will. Religious Fundamentalism and Social Change*, Routledge 2003, p. 1.

²⁰ *Ibid.*, p. 3.

²¹ *Ibid.*

²² E. Schoenfeld, *Militant Religion* [in:] *Religious Sociology*, W.H. Swatos (ed.), Jr., Greenwood Press 1987, pp. 125-137.

of church and state and the superiority of state over church²³. Due to the fact that the Islamic states are strongly influenced by tradition, it is important to highlight that fundamentalist movements are neither new, nor permanent in those societies, and fundamentalism itself is not an instant phenomenon, but a developing process. Some scholars highlight post-Islamism as a recent phenomenon, combining some ideas of classical Islamism and modernism.²⁴ It does not mean, however, that in all the cases the influence of religion in politics is decreasing, but rather that the movement's policy gains new elements.

To explain the idea of 'Islamism', used as a synonym for Islamic fundamentalism, various terms are being applied. Therefore Islamic integristism and political Islam are one of the interchangeable expressions for the radical stream based on Islamic traditions. However, the ideas described with those terms may vary according to the political option represented by the writer. Wolfgang Merkel for example, in the context of Islamic fundamentalism, writes not only about anti-modernization, orthodoxy or anti-pluralism, but also intolerance, which term may be disputed by some theoreticians.²⁵

Some scholars make a distinction between radical political fundamentalism, its apolitical type and areligious political fundamentalism, among which only the first one is in the concern of the present paper. For this reason it is important to give a few characteristics typical for the radical fundamentalist groups. Their most visible aim is a radical, rapid and comprehensive transformation of the society they live in. They believe in the ultimate source of authority in the cosmos and engage in politics to achieve their purposes.²⁶ That is why fundamental groups are often transformed into political parties or other types of political organizations.

²³ W.H. Swatos, Jr. gives examples of Islamic jihad, the New Christian right, Latin American liberation theology, Zionism etc. See further W.H. Swatos, *Ultimate values in politics* [in:] *Religious Politics in Global and Comparative Perspective*, p. 63.

²⁴ P. K. Tremblay, *Conceptualizing Turkey right: Post-Islamism vs. neo-secularism* [in:] *Turkish Daily News*, 26.05.2008, p. 15.

²⁵ W. Merkel, *op. cit.*, pp. 13-15.

²⁶ G.F. Treverton, H.S. Gregg, D. Gibran, C.W. Yost, *Exploring Religious Conflict*, RAND 2005, p. xiii.

Fundamentalism has been present in the history of Islam since centuries, described, as already mentioned, with different terms. The first political and theological discourse concerning this matter is dated around 10th century²⁷, but the issue appeared a few centuries before. The relation between Islam and politics is pointed out as one of the most relevant problems causing democratic deficit in Islamic countries. The Islamic legitimacy of the state became a problem after the death of the Prophet Muhammad in 632. Conflict over Medina Caliphate resulted – in terms of politics – with civil war, and in terms of religion – with the separation between Sunni and Shia Muslims.²⁸

In Islamic states religious influences in politics are visible through particular institutionalized forms, however in the early centuries their organization was informal in structure. Nowadays those institutions consist of so-called clergy, whose members are mainly jurists and lawyers.²⁹ Until 19th century, within the Ottoman Empire, the main religious institution was Sheikh al-Islam, the third most powerful person after the Sultan and the Grand Vizier. Under the Sheikh al-Islam the religious scholars were varied in a number of grades, where the highest ones consisted of professorships and senior judgeships. Apart from this organization there was a separate status of Mufti, who was qualified to pronounce fatwa. The main function of those institutions was to control the higher education, as well as to formulate laws and control the juridical system.³⁰

The Quran is considered as a primary source of Sharia³¹ law. Due to its unorganized structure and complexity of issues explained, the role of people in interpreting Quran and implementing Sharia is crucial. It is considered by some as an extremely difficult intellectual exercise, devoted to finding ‘the mind or will of

²⁷ *The Elucidation of the Fundamentals of the Religion* by al-Ash’ari. The exact date of publication is unknown, but the author died in 935.

²⁸ A.A. An-Na’im, *Islamic Fundamentalism and Social Change. Neither the ‘end of history’ nor a ‘clash of civilizations’* [in:] G. ter Haar, J.J. Busutti (ed.), *op. cit.*, pp. 29-30.

²⁹ W.M. Watt, *op. cit.*, p. 24.

³⁰ *Ibid.*, p. 25.

³¹ *Sharia* – a social and legal modality of a people based on Islamic sources. See further: M.A. Khan, *Human Rights in the Muslim World. Fundamentalism, Constitutionalism and International Politics*, Carolina Academic Press 2003, p. 468.

God'.³² The tensions between Islamic legitimacy and political expediency were mediated in history mostly by 'al-umara' – the rulers, and 'al-ulema' – the scholars of Sharia, where the consensus was based on the theoretical supremacy of Sharia and practical political authority of the rulers.³³

As after the collapse of Ottoman Empire, in the Turkish republic all Sharia courts were replaced by so-called independent courts, in Arabic provinces of the empire religious institutions retained some legal responsibilities until 1949, however some ulema became judges also in newly established 'national courts'.³⁴

There was no common direction of changes in institutional systems of former Ottoman Empire provinces at the end of 19th century. After the collapse of the Empire a wide range of institutional models were established, from secular Republic of Turkey to the most conservative form of Sharia in Saudi Arabia – the only country, where the position of ulema stays at the same level of importance since many decades.³⁵ Complicated political situation in the region led to demand for political changes. Islamic reformists, as an opposition to 'fundamental movements', apart from science and rational thought, wanted to introduce European notions of political authority, administration and bureaucracy.³⁶ In the 19th century in the Middle East there were some reforms undertaken by Muslim rulers or European colonial governors, resulting with closer integration of regional economies with western economic system. Nevertheless, the states of the region lost their ability to stage an effective response to what was happening in the world economy at that time. Islamic reformists however, had not been criticized for their ideas and reforms, but for the way they were putting them into practice.³⁷

³² *Ibid.*, p. 110.

³³ A.A. An-Na'im, *Islamic Fundamentalism and Social Change* [in:] G. ter Haar, J.J. Busutti (ed.), *op. cit.*, p.31.

³⁴ *Ibid.*, pp.36-37.

³⁵ *Ibid.*, pp. 42-43.

³⁶ In many parts of the world two reactions to XIX century modernity were observed: on one hand – following modernization and reforming the country according to new tendencies, on the other – various forms of orthodoxy and traditional approach to many aspects of private and public life. See example of Israel in: A. Cohen, B. Susser, *Israel and the Politics of Jewish Identity. The Secular-Religious Impasse*, The John Hopkins University Press 2000, pp. 2-3.

³⁷ Y.M. Choueiri, *Islamic Fundamentalism*, Pinter Publishers 1990, pp. 53-54.

Islamic agitation around the preservation of proper Islamic practices and beliefs is focused on the area of public morality. Morality is tied closely to the production of religious ‘orthodoxy’, which is defined as the true understanding of religion, the correct way of performing rituals, and the right code of conduct.³⁸ What constitutes orthodoxy in reference to a particular activity or belief is often subject to contestation. Hence, orthodoxy is an outcome of power struggles.³⁹ Intensification of Islamic political activism somehow signals the development of the area of convergence between the state and various Islamic forces. This type of Islamist politics revolves around questions of morality and is based on cultural domain. It deploys mechanisms and practices of societal regulation with the aim of controlling the public space.⁴⁰

Various state institutions are involved in the production of public morality compatible with Islamic vision. In this case one cannot only talk about state-sponsored religious television programs and publications, including new state regulations investigating censorship power, but also about the court engagement in the cultural battle in relation to morality.⁴¹

As mentioned before, among representatives of Islamic fundamentalism, not only political parties play an important role on the political scene, but also so-called new religious movements that usually influence them. These groups can be seen as global networks having a transcendent vision that draws support in the defense of Islam, characterizing with a high degree of tension between the society and the group itself, as well as with a high degree of control exercised by leaders over the members of the group.⁴²

The ‘militant religions’, having the same idea on internal politics of the states, may have, however, different approaches to international politics. The clash of two main ways of thinking in 20th century led Islamic countries to somewhat identity dilemma. It was difficult for them not only to follow the

³⁸ I. Salwa, *Rethinking Islamist Politics. Culture, the State and Islamism*, London 2003, pp. 60-61.

³⁹ *Ibid.*, p. 61.

⁴⁰ *Ibid.*, p. 80.

⁴¹ *Ibid.*, p. 81.

⁴² G.F. Treverton, H.S. Gregg, D. Gibran, C.W. Yost, *op. cit.*, p. xiv.

traditional rules at the time of rapid social and cultural changes in the world, but also to participate in world affairs, providing at the same time fair justification of their action to the population.⁴³ W.H. Swatos gives two contrasting examples: Saudi Arabia, enforcing strict religious norms within the country, but participating in the world oil market, and revolutionary Iran, proclaiming the extension of Islam to every place in the world, and claiming not to care about world oil market at all.⁴⁴

Religion is one of a number of resources that a group can use to assert (or reassert) and maintain its identity in relation to other corporate actors in the international system.⁴⁵ Using a headscarf (religious sign) as a political symbol during colonial times in Algeria, Egypt or Afghanistan can be a good example of the following.⁴⁶ The other example from current international relations is the case of Turkey's future membership in the European Union, as one of the arguments given against the integration process is the fact that Islam is in Turkey the religion of majority, despite the fact that secularism is one of the principles of Turkish constitution.

Religion frequently seems to be a response to powerlessness of individuals in liberal democratic states, as well as in their historic predecessors, e.g. totalitarian⁴⁷. Individuals or groups very often turn to religion as to express their frustration against the dominant power in world politics⁴⁸, what in theory results with creating opinions of 'the clash of civilizations' taking place, and other similar.

⁴³ W.M. Watt, *op. cit.*, p. 71.

⁴⁴ W.H. Swatos, *op. cit.*, p.64.

⁴⁵ *Ibid.*

⁴⁶ D. McGoldrick, *Human Rights and Religion: The Islamic Headscarf Debate in Europe*, Hart publishing 2006, p. 17.

⁴⁷ One of the best examples here can be a situation in Poland. During cold war the solidarity movement (often given as one of the main features of communism collapse in this country) was very much affiliated to the Catholic church. Currently the frustration against dominant parties is expressed within catholic religious movements, who are openly supporting particular parties (e.g. the League of Polish Families in 2001 election or the Law and Justice party in both 2005 and 2007 elections).

⁴⁸ W.H. Swatos, *op. cit.*, p. 66. Israeli-Palestinian conflict as the most important example; national-ethnic origins of conflict in the end turned it into religious conflict as well.

As one can see, the importance of religious institutions in public life of Islamic societies has not change dramatically since hundreds of years. The influence remains mainly in the area of legislation and jurisdiction, despite the new institutions established in many countries within the last 60-70 years for this purpose. Those institutions, by using legal tools, are influencing not only domestic policy of a particular state, but also moral aspects of public (and in most cases – private) life of the society.

According to traditionalist Muslims in Islam religion and politics are inseparable. Nevertheless, the answer to a question whether it is possible to be a Muslim in a secular society is affirmative. On the other hand, however, creation the state of Pakistan could be an opposite example – of establishing a separate state in the interest of Muslim minority⁴⁹. As in the latter case the state is the body protecting religious beliefs and practices of the citizens (but mainly those within the predominant religion), in case of secular society – the law is suppose to give all the religions equal rights.

1.2. Theory of secularism.

Current scholar discourse, also Muslim, very often places the secular as the antithesis of the Islamic.⁵⁰ As, in terms of religion, there are two types of states – secular and non-secular – it is important to present both of them, following the opinion of Talal Asad that “the secular has been an inseparable twin of religion in modern cultural discourse”.⁵¹ On one hand, they seem to be opposite to each other, on the other – we can recently observe that secular societies become a soil in which fundamentalism flourishes perfectly well. For this reason the aim of the following chapter is to present the idea of secularism, main features of secular state and an attempt to find the answer to the question of relation between secularism and fundamentalism.

⁴⁹ The official arguments for Pakistan were largely secular, thou not supported by conservative Islamic theoreticians of law, e.g. Mawdudi.

⁵⁰ A. Tayob, *Reading Religion and the Religious in Modern Islam* [in:] *ISIM Review* 15/2005, p. 56.

⁵¹ *Ibid.*

Secularism as a political doctrine arose in modern Euro-America. The term itself was introduced by the freethinkers in 19th century, to replace other negatively-valued expressions like ‘atheism’ or ‘infidelity’.⁵² It stands for the idea that some institutions or practices should exist apart from religious matters, as well as for the separation of public and private sphere of life and promotion of secular values. Basically secularism supports the idea of a state neutral in terms of beliefs, and declares that all political decisions should be based on fact and evidence, rather than on religious feelings.⁵³

Secularism is considered nowadays as a response to increasing role of religion among the policy actors. The clearer the separation between religion and politics is, the more difficult for religious fundamentalists (or other religious groups) it is to influence non-religious matters. Accordingly, if one religion has a special status, based for example on a constitution or other legal source, such a situation provides certain privileges also for the fundamentalists within it.⁵⁴

The state can be considered as secular, despite the fact that separation of church and state is not obvious in all areas of private and public life. For example secularization of legislation does not have to mean however the secularization of governance, which is the *conditio sine qua non* for democracy. The case of Pakistan is a good example of a state based on common law on one hand, but on the other – maintaining all the characteristics typical for Islamic state in its governance. Secularization also does not have to mean a full separation of state and church, but rather freedom of elected government from religious intervention and freedom of religious communities to be present in the society.⁵⁵

Implementing the principles of secularism depends on countries’ traditions. As in Europe most of the states declare secularism and successfully execute its rules, among the states of Muslim tradition Turkey seems to be the

⁵² T. Asad, *Formations of the Secular. Christianity, Islam, Modernity*, Stanford University Press 2003, p. 23.

⁵³ B.A. Kosmin, A. Keysar, *Secularism & Secularity: Contemporary International Perspectives*, Hartford: Institute for the Study of Secularism in Society and Culture (ISSSC), 2007, p. 12.

⁵⁴ J.J. Busutti, Policy Responses to Religious Fundamentalism [in:] ter Haar G., Busutti J.J. (ed.), *op. cit.*, p. 232.

⁵⁵ W. Merkel, *op. cit.*, p. 15.

only victorious example. In the opinion of Abdulkarim Soroush, Iranian historian and philosopher, the rational philosophy characterizing early Islam disappeared in Muslim culture in the Middle East due to disproportion, resulting with disability to accommodate new theories and ideas into politics.⁵⁶ According to Jamal al-Suwaidi Muslims assume that only a religious leader can provide good governance for the Muslim community.⁵⁷ This opinion is also confirmed by Samuel Huntington, who points out that in Islam, unlike in the ancient Roman times, and in contrast to dualism common in the Western culture, “god is Caesar”⁵⁸.

The general idea of secularism presented above is not aimed to analyze the issue, but only to present the contrasting option to the fundamentalist movements mentioned in the first chapter. It is relevant to highlight that the idea of secularism, introduced by Muslim reformists, is not considered as contradictory to basic principles of Islam. Nevertheless, as the role of a man in the process of interpretation of Quran is essential, one can only speculate about the reasons of unpopularity of the idea in the Muslim world.

2. Definition of a religious offence.

It is very easy to offend one’s religious feelings. When the situation takes place in private, avoiding it is a matter of personal taste. In public, however, the problem is caused not only by the offense itself, but also by a response to it. Offending a particular religion by its believers is theoretically impossible, at least not in a way excluding from the group of addressees the offender himself. For this reason the offense being a subject of the present thesis, takes place in current international relations mostly within so-called ‘clash of civilizations’. As, according to Samuel Huntington, the borders of civilizations remain the same as borders of religious influences, only the representatives of different religion (or

⁵⁶ L. Herrera, *Religion and Modernity* [in:] *ISIM Review*, 15/2005, p. 53.

⁵⁷ M.S. Fish, *Islam and Authoritarianism* [in:] *World Politics*, 55 (October 2002), p. 20.

⁵⁸ S. Huntington, *The Clash of Civilizations and the Remaking of the Modern World*, New York: Simon & Schuster 1996, p. 70.

none of them) can offend other person's religious feelings. This remark points out the specificity of the following analysis.

2.1. What is sacred nowadays?

Before starting the analysis of the offense itself, one should answer the question of its subject. As there is no universal catalogue of protected values, even in the case when the legal system shields the freedom of religion, one can only depend on one's own knowledge.

In terms of religion the sacred is the holy, what means that among all the values connected with particular religion, the deity – obviously - takes the first place. Nevertheless, in every religion there are also other 'holy' elements, e.g. places, persons, practices and objects.

The Latin word '*sacer*' referred to anything owned by a deity, what was taken out of the area of '*profanum*' by the action of the state, and moved into the sphere of *sacrum*.⁵⁹ In early modern English usage the term 'sacred' was generally used to describe individual things, persons or occasions that were set apart and entitled to veneration.⁶⁰ Nowadays the definition has been extended. As before it used to apply only to terms related to God(s), currently it embraces all the values that people consider as important for them, sometimes with no religious connotations at all.

The 'sacred' is the basic idea underlying the conception of blasphemy, which is considered to be one of the most common verbal religious offenses. However currently, the term 'sacred' is used in a reference to anything that is hallowed by association with divine or the consecrated, entitled to reverence and respect. In a broader sense, the sacred is any object (no matter religious or not), which is thought to be entitled to the highest respect. In other words, the sacred is

⁵⁹ T. Asad, *op. cit.*, p. 30.

⁶⁰ *Ibid.*, p. 31.

not something to be joked about or treated lightly, but something beyond mockery, presumption and indignity.⁶¹ Most of the things considered as sacred, remain sacred for both atheists and theists.⁶² It means that nowadays the sacred values are not so much related to religion, as it was before, and their meaning is understandable for most of the members of the society.

It is important to highlight the differences in setting the limits between the sacred and profaned within different cultures. Syed Shahabuddin, in his article in *The Times of India* wrote, that the factor separating Islam from secular West is the differentiation between those two areas.⁶³ According to that, Muslims seem to be more sensitive in terms of their religion, due to the fact that its principles regulate almost all spheres of private and public life. The importance of sacred symbols of culture is also emphasized by William E. Paden, who claims that “the intensity of sacred things derives from the intensity of the collective identity”, which is very strong in Muslim culture.⁶⁴ The position of individual is quite limited in the society, what could be confirmed by the example of the little importance given to the individual human rights.

Due to the fact that every manifestation of religious beliefs has to take place in a particular space, the space itself becomes ‘sacred’. For those reasons, we can talk about religious offence not only in terms of verbal offence, but also as the profanation of the sacred space. The ability to designate a particular place as sacred has become one of the keystones of religious liberty.⁶⁵ In terms of legality and internal politics, this issue has been always creating some tensions between the believers and the lawmakers.

There are a few important characteristics designating the place as sacred. First of all, the place has to occupy a physical space within its boundaries. It has

⁶¹ J. Feinberg, *The Moral Limits of the Criminal Law. Offence to Others*, Oxford University Press 1985, pp. 192-193.

⁶² *Ibid.*, p. 193.

⁶³ S. Shahabuddin, *You Did This with Satanic Forethought, Mr. Rushdie* [in:] *The Times of India*, 13.10.1988, p. 2.

⁶⁴ W.E. Paden, *Interpreting the Sacred: Ways of Viewing Religion*, Beacon Press 1992, p. 73.

⁶⁵ P.W. Edge, *The Construction of Sacred Places in English Law* [in:] *The Journal of Environmental Law* vol. 14 no. 2, p. 161.

to carry a special religious significance. In practice its meaning is related to the deities rather than to the particular group of believers. Nowadays however it is difficult to defend a theory concerning some kind of metaphysical elements.⁶⁶ For this reason the places affiliated to the deity contain also a historical element, while newly established 'sacred places' usually refer to something 'more rational'. One can even claim that secular societies lose the sense of the sacred. And a society, where there is nothing worthy to reverence, must eventually dissolve into nihilism. In such a society no meaning can finally be affirmed.⁶⁷

As religious offence in particular remains within the interest of the present thesis, all the values considered by the society as 'sacred' in terms of culture, history or tradition are not going to be discussed. Nevertheless, as mentioned above, the Muslim states are a special case, where religion influences more spheres of life than in any other culture, that is why the scope of a religious offence is very broad. Mushahid Hussain wrote: "Every society has certain values which are sacrosanct. Western societies, since they are secular, accord less of a priority to religion than is accorded to Islam by Muslims."⁶⁸ In other words, what is not considered as offensive in some culture, may be found an extremely insulting in others.

2.2. Religious offence and its role in history. Blasphemy.

Religious offence is a term used to describe different kinds of offences related to faith or religion. Some of those offences may be verbally addressed towards believers, other – to the religion itself, its dogma or practices. They may also appear as non-verbal insults, especially profanations, however the aim of the present paper is to focus on verbal offences, which later result with limitations of freedom of speech in particular cases.

⁶⁶ *Ibid.*, p. 164.

⁶⁷ Ahsan M.M., Kidwai A.R., *Sacrilege Versus Civility. Muslim Perspectives on The Satanic Verses Affair*, The Islamic Foundation 1991, p. 95.

⁶⁸ M. Hussain, *Index on censorship*, 4/90, pp. 12-13.

The term ‘offence’ can be defined in two ways: general – as a reference of any of disliked mental states (e.g. disgust, shame, hurt, anxiety), or specific – referring to those states only when caused by the right-violating conduct of others. According to that, ‘to offend’ means to cause another to experience a mental state of a universally disliked kind (e.g. those mentioned above).⁶⁹ As we can notice, the term ‘offence’ specifies an objective condition – the unpleasant mental state must be caused by a wrongful conduct. However, ‘offence’ in the strict sense of ordinary language, specifies a subjective condition, which is that the offending act must be taken by the offended person to wrong him or her, no matter if in fact it does it or not.⁷⁰

Combining the two given definitions one can say that offence takes place when the following conditions occur:

- the offended person suffers a disliked state,
- the person attributes the state to the wrongful conduct of another,
- the person resents the other person’s role in causing him/her to be in that disliked state.⁷¹

To cause an offense in terms of law, all three conditions must apply, however in some special cases the addresser cannot be pointed out directly.

Seriousness of the offence can be various, however there are some determinants deciding upon that, e.g.:

- intensity (the more intense an offence is, the more serious its actual instance),
- duration (the more durable as offence is, the more serious it becomes),
- extent (the more widespread the susceptibility of an offence is, the more serious its instance),
- the standard of reasonable avoidability (the more difficult to avoid the offence is, the more serious it becomes),
- ‘the Volenti maxim’ (a person, who was voluntarily incurred, is not to count as offended),

⁶⁹ J. Feinberg, *op. cit.*, pp. 1-2.

⁷⁰ *Ibid.*, p. 2.

⁷¹ *Ibid.*

- the discount of abnormal susceptibilities (offence occurs due to a person's abnormal susceptibility to offence).⁷²

Among verbal religious offences the most common one is known under the term 'blasphemy'. It comes from the Greek word '*blasphemia*' meaning a malicious statement, which in the Christian and Hebrew vocabulary is translated as an offence against divinity.

The term blasphemy has a different meaning in different religions. Moral theologians described blasphemy as a sin against faith. Modern theologians however define it more specifically as the act of claiming for oneself the powers and rights of God, but also – any profane act, utterance or writing against God.⁷³ In Judaism only God can be blasphemed, however the punishment for this type of offence – death by stoning – was applicable only if the blasphemer offended the name of God. In other cases excommunication was the most common punishment, however two witnesses were necessary to warn the person about the consequences of his or her action.⁷⁴ According to The Jewish Encyclopedia, blasphemy is “evil or profane speaking of God. The essence of the crime consists in the impious purpose in using the words, and does not necessarily include the performance of any desecrating act”. In the Mosaic Law the crime of blasphemy was understood as widely as “showing disrespect for God, doubting his powers, even disobeying his commandments”.⁷⁵

In Christianity there are two main types of blasphemies: against the Son of Man and against the Holy Spirit.⁷⁶ Due to the New Catholic Encyclopedia, blasphemy is not only verbal, but “any expression by word, sign or gesture that is insulting to the goodness of God”. In the past, when religion was severe, original blasphemies seemed to offend much more than any other verbal vulgar insult might have offended. The penalty for blasphemy in biblical times was death by

⁷² *Ibid.*, p. 35.

⁷³ M. Mozaffari, *Fatwa. Violence and Discourtesy*, Aarhus University Press 1998, p. 130.

⁷⁴ *Ibid.*, p. 131.

⁷⁵ L.W. Levy, *Blasphemy: Verbal offence Against the Sacred from Moses to Salman Rushdie*, New York: Knopf 1993, p. 3.

⁷⁶ M. Mozaffari, *op. cit.*, pp. 131-132.

stoning, what suggests that the words were not only offensive, but, above all, considered as harmful in terms of collective interest.⁷⁷ Other punishments applied later in these types of cases were, e.g. public condemnation, exile, beating, or tongue piercing.

In Islam there is no such an offence as blasphemy *sensu stricto*. Quran uses the term ‘statement of impiety or infidelity’ instead. True blasphemy consists in apostasy and infidelity, however in Quran there is no direct punishment for the blasphemy itself. Islamic law recognizes two kinds of apostasy: *irtidad* – apostasy to heresy or unbelief, and *ridda* – leaving Islam for other religion.⁷⁸ The interpretation of the offence changes according to legal school’s approach, however there may be some differences in the interpretation within the same school, e.g. Hanafi, where blasphemous acts against God are considered by some as infidelity, and as apostasy by others.⁷⁹ Blasphemy in the case of “The Satanic Verses” for example was defined as a piece of writing that dissents from, or poses doubts upon the religious beliefs of Islam.⁸⁰ The case will be discussed further in the net chapter of the present paper.

According to the classical definitions, many Muslims in the world should be considered as apostates, what includes e.g. Muslim rulers who do not apply Sharia law, Iranians celebrating Nawruz (Iranian New Year), and so on.⁸¹ For those reasons it is difficult to draw a line between what a religious offense in Islam really is, as most of the conditions are subjective. In Islamic worldview, sacred and secular are not completely separable, what is often pointed out by Islamic scholars. That is why the term of blasphemy seems to get a little bit different meaning from what has been said until now. Islam has a semi-formal structure of authorities (Ulema), most of who are playing important roles on political scenes of their countries. Their influence on the society is immeasurable.

⁷⁷ J. Feinberg, *op. cit.*, p. 194.

⁷⁸ D. Pipes, *The Rushdie Affair. The Novel, the Ayatollah and the West*, Transaction Publishers 2006, p. 87.

⁷⁹ M. Mozaffari., *op. cit.*, p. 135.

⁸⁰ V. LaPorte, *An Attempt to Understanding the Muslim Reaction to the Satanic Verses*, The Edwin Meller Press 1999, p. 3.

⁸¹ D. Pipes, *op. cit.*, pp. 88-89.

For those reasons, legal and political strictures against unbelief in Muslim countries are fundamentally religious, finding their paradigms in Quran.⁸²

Blasphemy, in wide sense, is any irreverence shown towards anything that is regarded as sacred. The word originally referred only to the act of cursing or reviling God. In wider sense, however, blasphemy does not have to be limited to disrespect shown to God, but can also include any indignity offered to God in words, writing or signs, or the act of claiming the attributes of God.⁸³ In some traditions it is blasphemous even to mention the name of the deity.⁸⁴

There are a few philosophical and sociological theories concerning the origins of blasphemy. One of the most famous ones was created by French philosopher and writer - Michel Foucault. By analyzing different opaque areas, e.g. sexuality, forms of madness and deviancy, he investigated the functioning of sexuality as an analytics of power, related to the emergence of a science of sexuality. Moreover, his analysis led to one of the central arguments in his "History of Sexuality", pointing out the relation between this set of insights and the subject of blasphemy.⁸⁵ It is noticeable that all the most famous and recent attempts to use blasphemy as an instrument of censorship has centered on the area of sex. Let me give a few examples: "The Gay News" case and a matter of homosexuality, the movie "Visions of Ecstasy" (sodomasochism), "The Last Temptation of Christ" by Martin Scorsese (explicit fantasy), "Submission" by Theo van Gogh (sexual exploitation and violence). Particular cases will be analyzed in the further part of the present paper.

Due to the fact that the term 'blasphemy' is directly related to individual's private sphere of life, its definition meets problems similar to the term 'pornography' or 'obscenity'.⁸⁶ According to J. Disney to blaspheme is "to deny, reproach or insult the being and attributes of God, the person or character of Christ, the Operations of the Holy Spirit, or the truth and authority of the

⁸² R.C. Martin, *Unbelief Within Islam* [in:] *The Encyclopedia of Unbelief*, p. 351.

⁸³ J. Feinberg, *op. cit.*, p. 192.

⁸⁴ *Ibid.*, p. 193.

⁸⁵ D. Nash, *Blasphemy in Modern Britain. 1789 to the Present*, Aldershot: Ashgate 1999, pp. 55-56.

⁸⁶ G. Stein, *Blasphemy Laws* [in:] *The Encyclopedia of Unbelief*, p. 59.

Scriptures; to ascribe to any of these what is unworthy of them, and degrading; or to any creature, an Excellence which can only belong to God.”⁸⁷

Blasphemy is usually understood as a verbal offence or misuse of the name of God.⁸⁸ However nowadays the definition of this expression has been somehow extended. The term is used in literature and media as a description of an offence against religious sensibilities of individuals.⁸⁹ Blasphemy however is not an offence against humans, but the one committed exclusively against God.⁹⁰ Therefore it is easy to notice that blasphemy has been misused in contemporary times, as an ancient term, covering, however, different modern problem.⁹¹

People often use the term blasphemy, both in politics and private sphere of life, to cover other problematic issues, especially own fears: fear of others (racism, xenophobia, homophobia) or, as mentioned before, fear of own sexuality (deviant sexual needs and fantasies). As S. Maitland says, “it is a bit depressing, though not uninteresting, to be living in a culture which acts out a belief that the imagined sexual practices of a set of deified or semi deified figures are more central, and therefore more threatening, than the shape of the cosmos, the shape of the civic state or the shape of salvation. Nonetheless, we live in such a society. There is neurotic sensitivity about sex, and writing that rises questions about and explores the connection between sex and religion touches raw nerves”.⁹²

History of blasphemy is as long as the history of religion. It existed as a crime since biblical times.⁹³ The most famous example could be the conviction of Jesus under the Jewish blasphemy law in the first century.⁹⁴ The Old Testament says that the blasphemers should be sentenced to death by stoning. The New Testament underlines blasphemy against the Holy Spirit as unforgivable.

⁸⁷ J. Disney, *A View of the Ancient Laws Against Immortality and Profaneness*, Cambridge 1729, p. 201.

⁸⁸ D. Nash, *op. cit.*, p. 21.

⁸⁹ N. Cox, *Blasphemy and the Law in Ireland*, The Edwin Mellen Press 2000, p. 2.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*, p. 3.

⁹² S. Maitland, *Blasphemy and Creativity* [in:] *The Salman Rushdie Controversy in Interreligious Perspective*, p. 124.

⁹³ G. Stein, *Blasphemy Laws* [in:] *The Encyclopedia of Unbelief*, p. 59.

⁹⁴ N. Cox, *op. cit.*, p. 3.

Therefore, basing on the bible and its tradition, blasphemy was one of the most serious crimes for many ages.⁹⁵ Within centuries blasphemy was spotted in many different areas, not necessarily directly connected to religion, minding the examples of Darwin and his theory of kinship of humans and animals, Galileo and non-geocentric universe, or Dante for placing in “Divine Comedy’s” hell one of the canonized popes.⁹⁶

The first legal definition of blasphemy appeared in 1676 in England, in the sentence of so-called “Taylor’s case”⁹⁷. Sir Matthew Hale, presiding the King’s Bench, defined blasphemy as “contumelious reproaches of God or the religion established”. What is more, Hale also stated that blasphemous words are not only an offence to God and religion, but also a crime against the laws, state and government, as “Christianity is a parcel of laws of England and therefore to reproach the Christian religion is to speak in subversion of the law”.⁹⁸ This statement was effective in English law until 1917.⁹⁹

The R. v. Hetherington case in 1841 became a turning point in classifying offences as blasphemy in England. The court pointed out that the offence of blasphemy lays “not altogether on the matter of opinion, but is to a great degree a question as to the tone and style and spirit”¹⁰⁰. From this time mere denials of the truth of Christian doctrine, without use of insulting language, could not ground a conviction for blasphemy.¹⁰¹ In Scotland for instance, legal definition of blasphemy, adopted in 1661, included cursing or reviling God and denying its existence or the doctrine of the trinity without repentance.¹⁰²

Another type of religious offence is heresy, which can be understood as a belief or opinion contrary to orthodox religious doctrine. The identification of heresy with blasphemy was especially visible during the Middle Ages, when the

⁹⁵ For quotes from Old and New Testament see: *The Encyclopedia of Unbelief*, p. 59.

⁹⁶ S. Maitland, *op.cit.*, p. 124.

⁹⁷ Taylor’s case (1676) 1 Vent 293, 3 Keble 607 (1676).

⁹⁸ R. Simpson, *Blasphemy and the Law in a Plural Society*, Bromcote Grove Books 1993, p. 9.

⁹⁹ N. Cox, *op. cit.*, p. 7.

¹⁰⁰ R. v. Hetherington (1841) 4 St. Tr. (n.s.) 563, pp. 590-591.

¹⁰¹ N. Cox, *op. cit.*, pp. 12-13.

¹⁰² *Ibid.*, p. 8.

following offence was strictly punished in most of the European countries. In 1414 in Britain, the “*Statute of de heretico comburendo*” enhanced clerical control over the offence of heresy, what was especially unacceptable for those in favor the secular power.¹⁰³ Christian definition of this offence was following the rabbinical conception, due to the fact that the first conception did not recognized the crime of heresy as a separate offence.¹⁰⁴

In the 21st century, when religion lays within the private sphere of life, and in most of the countries – at least theoretically – religious authorities are not suppose to be involved in politics anyhow, it should be obvious that blasphemy is something to which only extremists could take a real offence.¹⁰⁵ It often happens however that the fundamental groups become influential enough as to cause changes in areas theoretically beyond their control, therefore a personal religious offence can turn into a political tool used by a group or a state for their own purposes.

¹⁰³ D. Nash, *op. cit.*, p. 24.

¹⁰⁴ *Ibid.*, pp. 21-22.

¹⁰⁵ N. Cox, *op. cit.*, p. 4.

Section II

Religious offence in the context of freedom of expression

Freedom of expression is the first element in the process of analyzing the justification of blasphemy laws that are going to be discussed in the section III of the present paper. Basing on the distinction made in section I, as the types of states differ from each other, also their ideas on freedom of speech vary. As in secular state the principle does not include any limitations, in non-secular society free speech is limited by all the values considered as “sacred”. As the term remains subjective, there is always a possibility that the sacrosanct value will become a tool political of abuse.

3. Freedom of expression as a human right.

Freedom of speech and freedom of artistic expression are among the basic human rights, placed in the catalogs of all the most important international treaties and conventions. Free speech is a fundamental element of every democratic system, as its presence helps to control the government and influence its decisions, making the citizens indirectly participate in the decision-making process. But before analyzing the meaning of free speech, one should try to understand the main reasons given for its unlimitedness in secular states, and limitations, present usually in non-secular states.

3.1. What is the freedom of expression? Freedom of expression vs. freedom of speech.

Freedom of expression is usually explained as the extended version of freedom of speech. As the latter one stands for the free verbal expression only, the first one refers to any way of expressing ideas and thoughts, regardless of the medium used. In both cases, however, there is a lively discussion about the limits

of those freedoms, as – according to some – freedom of one ends where it becomes an offence to another.

The freedom of speech, as an inseparable part of every democratic system of governance, is very often highlighted in literature. The best example, usually given to prove this theory, is the First Amendment to the Constitution of the United States. According to that, S. Kleinberg defines freedom of speech in 3 main points:

- all citizens should be at liberty to express their opinion about the government of their own country,
- they should also be at liberty to express their opinion about actions that individuals ought to undertake in support of/opposition to the government, and
- all citizens should be at liberty to take part in peaceful gatherings for the purpose of expressing their views on these matters.¹⁰⁶

It is important to notice in this case, that the following definition excludes such important matters as freedom of artistic or religious expression, or even the right to be critical of the governments of other states.¹⁰⁷ Moreover, the amendment, being the most quoted example of liberal approach towards freedom of speech, contains serious limitations itself. The given definition is not, however, the most common interpretation of that issue.

In the West we can generally notice the presence of “being able to say everything” principle, drawn by the application of freedom of speech, placed in the majority of national and international legal acts. It does not mean, however, that this principle is not being violated in the Western culture. The wide range of court decisions concerning freedom of speech issues is the best prove of that.¹⁰⁸ It means that not only those offended by free speech are in favor of its limitations,

¹⁰⁶ S. Kleinberg, *How Sacred Is Free Speech?* [in:] Gerry Maher (ed.), *Freedom of Speech: Basis and Limits*, Association for Legal and Social Philosophy, 12th Annual Conference, University of Glasgow 29-31 March 1985, Stuttgart 1986, p. 37.

¹⁰⁷ *Ibid.*

¹⁰⁸ J. Kuortti, *Place of the sacred. The rhetoric of the satanic verses affair*, Peter Lang 1997, p. 22.

but also those, whose free speech was illegally limited by some authorities. Particular cases are going to be discussed in the next section of the present paper.

In Islamic culture the definition of freedom of speech seems to differ from the Western one. M.M. Ahsan and A.R. Kidwai define Muslim approach as freedom of expression “through a sound chain of authority”¹⁰⁹. While the Western principle was founded on the basis of secular and liberal texts of the Enlightenment, Muslim principle is based on the ultimate text of Quran. In both cases one can talk about free speech, however the two definitions differ from each other, and the dissimilarity can be difficult to understand in the Western culture. Micheal Ignatieff, in an interview for the Observer, said that the disagreement between Muslims and their opponents is over “incompatible conceptions of freedom, one in which freedom’s limit is the sacred, one in which it is not”.¹¹⁰ The Western idea of freedom of speech developed in history so much that now it is impossible to imagine that any authority could intervene in the name of ‘public morality,’ as it takes place in many Muslim countries.

Many scholars and intellectual authorities bring up the idea that freedom of speech is an essential element of self-governance and democracy. Alexander Meiklejohn wrote: “When men govern themselves, it is they – and no one else – who must pass judgment upon unwisdom and unfairness and danger...The principle of the freedom of speech is not a Law of Nature or of Reason in the abstract. It is a deduction from the basic American agreement that public issues shall be decided by universal suffrage.”¹¹¹ Meiklejohn’s concept has been criticized in many different ways. One of the arguments against him was that in this context even the most private speech would have public aspects¹¹². It was also seen as possibility of excluding protection of artistic expression, however if it did cover it, it could cover also all forms of expression.¹¹³ On the other hand,

¹⁰⁹ M.M. Ahsan, A.R. Kidwai, *Sacrilege Versus Civility. Muslim Perspectives on The Satanic Verses Affair*, The Islamic Foundation 1991, p. 27.

¹¹⁰ S. Akhtar quoting M. Ignatieff’s interview for the Observer on April 2,1989 [in:] *Impact International*, 20/4, 23.02.- 8.03 1990, pp.9-11.

¹¹¹ A. Meiklejohn, *Free Speech and Its Relation to Self-Government*, Harper New York 1948, pp. 24-27.

¹¹² Z. Chafee, *Book Review*, 62 *Harvard Law Review*, 899-900, (1949).

¹¹³ *Ibid.*

however, the idea was supported e.g. by professor L. Bollinger, who claimed that freedom of speech is indicative of a tolerant society.¹¹⁴

One of the most important voices on the issue of freedom of speech came from John Stuart Mill. In his opinion freedom of speech ensures so-called ‘marketplace of ideas’ in the society, from which truth can be distinguished from falsehood. On individualist ground, freedom of expression is integral to self-fulfillment and autonomy.¹¹⁵ According to Mill “the only purpose for which power can be rightfully exercised over any member of a civilized community against his will, is to prevent harm to others”¹¹⁶. This idea applies also to the matter of freedom of speech, however in the debate on its limitations and blasphemy, Mill gives no real indication as to what limits we can talk about ‘harm’. This idea met criticism as well, due to the fact that the following approach gave some kind of legitimization to acts being immoral, but literally producing no real harm.¹¹⁷ At the same time it leaves an open door for censorship and intervention of the authorities in cases which they find ‘uncomfortable’ or not getting along with their politics.

There are two main types of arguments supporting unlimited freedom of speech. The so-called “argument from truth”, given by Mill and introduced above, states that human beings cannot hope to attain truth if their beliefs are to be protected from the criticism of opponents.¹¹⁸ Main criticism this opinion meets is, on one hand, a concern of having an unrealistically high expectation of the degree of rationality level in the community. On the other, Kleinberg gives additional explanation, saying, “There is a limit of open-mindedness”. Having good relations with other people has to involve a certain degree of trust, what involves having a good faith in them.

Second argument for free speech, given by J. Meiklejohn, comes from self-government. Self-governing people cannot be deprived of access to the

¹¹⁴ L. Bollinger, *The Tolerant Society*, Oxford Clarendon Press 1986, pp. 9-10.

¹¹⁵ N. Cox, *op. cit.*, p.96.

¹¹⁶ J.S. Mill, *On Liberty and Other Essays*, Penguin 1985, p. 14.

¹¹⁷ N. Cox, *op. cit.*, p. 119.

¹¹⁸ S. Kleinberg, *op. cit.*, p. 38.

available political options due to the characteristics of the system, which requires that citizens are at liberty to make their own choices.¹¹⁹ This argument seems to be more convincing, as it is possible to give examples of democratic states to prove the theory.

European approach towards the freedom of speech includes some kind of limitations, based however not on the construction of that particular freedom, but on other rights and freedoms guaranteed in the region. The Council of Europe is the main creator of the European regional legal system of public international law. The organization underlined the importance of free speech in many of its legal acts, including the most important one – 1953 Convention for the Protection of Human Rights and Fundamental Freedoms. That is why the matter of freedom of speech has been discussed not only during working sessions of the Council, but also in the European Court of Human Rights¹²⁰. However, the specific construction of the Convention's article provides certain restrictions, what means that not all the cases of unlawful limitation of free speech are considered by court as unjustified.

In 1994 and 1989 cases involving movies (Austrian “Council in Heaven” and British “Visions of Ecstasy”) were brought to the European Court of Human Rights. In the first case the Court underlined the right of an individual “not to be offended in respect of religious feelings”¹²¹, operating on the principle established in the Convention, affording states a margin of appreciation in respect of moral matters.¹²² In the second case, however, the Court found a violation of Article 10, at the same time pointing that prescribed restrictions were necessary in a

¹¹⁹ *Ibid.*, p. 40.

¹²⁰ Among the sample cases the issue of free speech and freedom of expression was discussed also in: *Gündüz v. Turkey*, Application no. 35071/97, Judgment of December 4, 2003; *Ukrainian Media Group v. Ukraine*, application no. 72713/01, judgement of March 29, 2005; *Wilson, National Union of Journalists and Others v. the United Kingdom*, applications nos. 30668/96, 30671/96 and 30678/96, judgment of July 2, 2002. Judgements available in European Court of Human Rights HUDOC Database at <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en>, last accessed on June 13, 2008.

¹²¹ (1995) 19 EHRR 35, p. 56.

¹²² N. Cox, *op. cit.*, p. 67.

democratic society.¹²³ As in Austrian case the movie was allegedly blasphemous, in Britain its blasphemous character was proved by a legal advice required by British Board of Film Classification – the institution granting certificates of release in the UK. The opinion stated that release of “Visions of Ecstasy” would be a violation of the criminal law of blasphemy.¹²⁴

There were also a few cases including both: problem of unlawful limitation of freedom of speech and the matter of blasphemy and religious offence, tried in the national courts. One of them was brought to court after a publication of blasphemous poem in the British “Gay News” magazine. The question, whether the freedom of speech should be restricted when the expression is blasphemous, received in this case a positive answer. As the article 10.2 of the Convention states that “the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such [...] restrictions [...] 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”¹²⁵, in case of the “Gay News” limitation of freedom of speech was legitimate under those terms.¹²⁶

The examples given above prove that freedom of speech does not mean that anyone can say whatever one likes. The rational use of language must, because language itself is rational, involve truth-value. No one is allowed to tell lies in the interests of the free speech.¹²⁷ The same condition applies when an

¹²³ *Ibid.*, p. 68.

¹²⁴ *Ibid.*, p. 67.

¹²⁵ Art. 10.2. *Convention for the Protection of Human Rights and Fundamental Freedoms*, 3.09.1953, CETS 005, available online at <http://conventions.coe.int/>, last accessed June 3, 2008.

¹²⁶ N. Cox, *op. cit.*, p. 65.

¹²⁷ P. Mullen, *Satanic Asides* [in:] D. Cohn-Sherbok (ed.), *The Salman Rushdie Controversy in Interreligious Perspective*, Lampeter, The Edwin Meller Press, 1990, pp. 30-1, 33-5.

offence takes place, due to the fact that free speech is not considered as a value itself, but rather as a modern society achievement.

To sum up it is necessary to underline that creating a clear definition of freedom of speech is undoubtedly difficult. A definition that consists of limitations itself is on one hand understandable in terms of functioning of democracy, on the other, however, can be considered by some as a first step to censorship. The problem is to be discussed in the next chapter of the present paper.

3.2. Religious hate speech and its censorship.

“Law does not change the heart – but it does restrain the heartless.”

Martin Luther King

In the society, where the principle of unlimited freedom of speech applies, such a construction of law may lead to a problem of so-called hate speech. The main aim of using hate speech in creating public opinion is to legitimize the negative thinking of minority groups, usually considered as ‘the enemies within’.¹²⁸ One of the examples of such a practice would be presenting religious minorities (e.g. Muslims in Europe) in a way as to highlight the differences between them and the majority group in the society, leading to the preserve of social prejudice.

The main tool used in hate speech to achieve its aim is the language of a limited (discriminatory and selective) vocabulary, and the main function of this use - maintaining national, religious and linguistic stereotypes, leading to differentiation and exclusion in the society.¹²⁹

Hate speech is generally used in the terms of:

- denial of the very existence of any minorities (including religious ones),

¹²⁸ Lenkova M. (ed.), *‘Hate Speech’ in the Balkans*, The International Helsinki Federation for Human Rights 1998, p. 7.

¹²⁹ *Ibid.*, p. 10.

- spreading the negative image of the minority groups,¹³⁰
- verbal attacks and offences of minority activists, journalists or intellectuals,¹³¹
- attacking other enemy as the power supporting the minority (e.g. ‘the West’, The United States),¹³²
- spreading the news based on non-facts, usually denied afterwards,¹³³
- verbal provocation of violence and conflict.¹³⁴

In the context of the present paper it is crucial to point out that due to the principle of free speech, hate speech, as long as no physical harm is caused, is difficult to prove and prosecute. The discussion upon that subject is divided between the supporters and opponents of legal regulation of this area, however the main argument against is that the law can be abused in terms of censorship.

According to the Webster’s dictionary, ‘to censor’ means “to examine in order to suppress or delete anything considered objectionable.” Censorship happens then whenever people succeed in imposing their values on others by suppressing words, images or ideas that they find offensive.¹³⁵ In legal terms, censorship is defined as a state supervision over publications; as an act of official inspection and delete of material considered offensive.¹³⁶ Censorship is no longer institutionalized in a censorship office, but still takes place through a wide range of sites and agencies, especially in non-secular states, where public morality stays within the interests of domestic governments.¹³⁷ One of such institutions is PEMRA – Pakistan Electronic Media Regulatory Authority, which aim is to regulate the operation of all private media in Pakistan. Violation of PEMRA’s ordinance may result with prosecution in the Supreme Judicial Council. As it is

¹³⁰ *Ibid.*, p. 12.

¹³¹ *Ibid.*, p. 20.

¹³² *Ibid.*, p. 24.

¹³³ *Ibid.*, p. 26.

¹³⁴ *Ibid.*, p. 27.

¹³⁵ Heins M., *Sex, Sin and Blasphemy. A Guide to America’s Censorship Wars*, The New Press 1993, p. 3.

¹³⁶ Yulia Timofeeva, *Censorship in Cyberspace. New Regulatory Strategies in the Digital Age on the Example of Freedom of Expression*, Nomos, Baden-Baden 2006, p. 17.

¹³⁷ *Ibid.*, p. 18.

upon the decision of the government to select the people within the authority, all the decisions made by the institution are political.¹³⁸

In the opinion of Islamic scholars, there is a campaign against Islam going on, not only in Europe, but also in the other parts of the world, under the banner of protecting of free speech.¹³⁹ On one hand, the opinion may be justified only up to some point. On the other, the stereotype that all other religions are hostile to Islam since ages, finds its proof in the recent events that are going to be discussed in the present paper. Concerning the conditions of hate speech given above, one can say that the picture of European Muslims, created in the European media, can be analyzed in terms of hate speech, especially in the cases of their reaction for religious offences. The examples are going to be given in the next chapters.

Hate speech has been in use as a political tool since a long time, therefore nowadays it is still considered as one of the most influential elements of domestic and international politics. It appeared, however, as side-effect of the political discourse, as the main discussion regarded limitations of free speech due to religious matters, not the hate speech itself. Nevertheless, all the cases resulted with hate speech between the parties involved.

4. Limitations of freedom of expression based on religious issues - case studies.

Religious issues dominate in current international relations, therefore it is not difficult to point out the most relevant cases, which influenced global politics in the last few years. As it was mentioned in the first chapter of the present paper, due to the fact that non-secular states are more sensitive in terms of religious offence, the case studies will consider conflictive situations between the secular and non-secular states, caused by the fact that their catalogues of values differ from each other.

¹³⁸ For details see the official web site of PEMRA at www.pemra.gov.pk, last accessed on June 7, 2008.

¹³⁹ A.B. Soage, *The Danish Caricatures Seen from the Arab World*, *Totalitarian Movements and Political Religions*, 7:3/2006, p. 365.

4.1. The Satanic Verses Affair.

“Simply because the same message goes out to 20 million people, it does not follow that 20 million people interact with it in the same way to get the same meaning and the same understanding.”

John Hartley, *Understanding News*, London 1982, pp. 147-148.

The so-called “Satanic Verses Affair” requires special attention due to the fact that it was not only the first case of this type that drew international attention on such a large scale, involving a number of countries around the world, but also because it gave a new perspective to the understanding of Islamic culture in Europe, and Salman Rushdie – the author of the scandalous book – still remains in hide, in a fear for his life.

“The Satanic Verses” was first published in 1988, by the Viking Press, in Great Britain. The so-called international ‘affair’ did not actually start right after the publication of the based on the story of the prophet Muhammad’s life book. The media pointed out some voices calling on the ban of the book in a few countries, but the signal was not strong enough as to make the publishers to change their mind about the release of the book worldwide, even after the accidents of public burning the book (e.g. in Bradford, England). Nevertheless, political situation became much more complicated after February 14, 1989. On that day Ayatollah Khomeini, the religious leader of Iran, issued a fatwa¹⁴⁰ on Rushdie and people anyhow involved in the publication of the book. The author himself was forced to hide, and Italian and Japanese translators of “The Satanic Verses” were murdered.¹⁴¹

¹⁴⁰ *Fatwa* is “the answer, which a competent and qualified religious authority gives to a question concerning a point of Islamic law”. It is possible to apply *fatwa* by metaphor, to a question that has not been asked directly, but the answer is *fatwa* giver’s own initiative. According to this definition, the declaration issued by Khomeini was not *fatwa* itself, however it was defined incorrectly by Western newspapers, especially *Le Monde*, which introduced the term in such a meaning. In sciences there are 3 main ideas on what Khomeini’s declaration could be (a verdict, an order, a declaration of war). See further: Mozaffari M., *Fatwa. Violence and Discourtesy*, Aarhus University Press 1998, pp. 16-17 and 48-55, and also further in the present paper.

¹⁴¹ Cox N., *op. cit.*, pp. 37-38.

In case of Iran, state's reaction to "The Satanic Verses" influenced international politics on a great scale, involving not only the two directly engaged sides, but also other countries representing similar points of view. As Great Britain – the country of Rushdie's domicile, refused to ban publication of the book, diplomatic relations with Iran has been broken, what in the end led also to a break of relations between Iran and the rest of the European Community.¹⁴² Even though the tension lasted no longer than one month, it was considered as extremely relevant in terms of international politics. On a meeting in Brussels on March 20, 1989 the ministers of EU member states decided to return their ambassadors to Teheran.¹⁴³ This decision from European side was explained in terms of economics, from Iranian side however – as the confirmation of strength of Islam and diplomatic capitulation of Europe, even though the claims of Iran were completely rejected.¹⁴⁴ Such an approach proves that even when the relations between the states are neutral, one can talk about some kind of negative image of Europe, created by the Iranian government for their own purpose.

The international situation seemed to be even more interesting due to its wider context. First of all, the actions of both governments did not get any strong domestic support, including the back up from both parliaments. Second, political situation did not influence anyhow trade relations between the two states, unlike in the case of Danish cartoons, which will be discussed in the next chapter. For those reasons one can only talk about strictly diplomatic moves, which did not affect the general direction of both states' international politics.¹⁴⁵ These type of actions, as mentioned above, are apparently taken only to maintain the negative image of the other side in the domestic society.

A few countries were affected by the controversy surrounding the publication of Salman Rushdie's "Satanic Verses". The book was officially banned in Bangladesh and the government of the country officially condemned

¹⁴² F. Shaikh, *Iran* [in:] Mews S. (ed.), *Religion in Politics: a World Guide*, Longman 1989, p. 115.

¹⁴³ Mozaffari M., *op. cit.*, p. 154.

¹⁴⁴ *Ibid.*

¹⁴⁵ D. Pipes, *op. cit.*, pp.30-38.

the author during the Islamic Conference Organization in March 1989.¹⁴⁶ During the same conference the Saudi Arabian delegation condemned Rushdie as an apostate, but refrained from endorsing Iran's call for death.¹⁴⁷ The conference of 44 states declared that blasphemy can not be justified on the basis of freedom of expression, adopting the opinion of Saudi Arabia, not Iran, as the common and final one for the conference.¹⁴⁸ For this reason one cannot talk about common position of all Muslim states towards the controversy, as the extreme position was taken only by one state, while the others represented a little bit more moderate opinion.¹⁴⁹

Publication of the book caused tensions not only between Muslims and non-Muslims, but also within the same group. On March 29, 1989 in Brussels, one of the imams was killed due to representing more moderate point of view on the whole affair. Abdullah Muhammad al-Ahdal said on Belgian television that despite "The Satanic Verses" being highly blasphemous, there should be a distinction made between Khomeini's state and democratic countries, where everyone has the right to express one's own opinion. The relation between the murder and his voice on Rushdie's book is noticeable, however the real motives of the crime remain disputable.¹⁵⁰

Among the authorities, also representatives of the United States expressed their opinion on the situation caused by the publication of "The Satanic Verses". President George Bush made only one public comment, saying: "However offensive that book may be, inciting murder and offering reward for its preparation are deeply offensive to the norms of civilized behavior". However later president Bill Clinton publicly expressed American support for Salman Rushdie. Some other countries openly admitted that due to economic relations with Iran, they will not stand on any of the sides of the conflict (e.g. New

¹⁴⁶ F. Shaikh, *Bangladesh* [in:] *Religion in Politics: a World Guide*, p. 19.

¹⁴⁷ M. Farouk-Sluglett, P. Sluglett, *Saudi Arabia* [in:] *Ibid.*, p. 233.

¹⁴⁸ D. Pipes, *op. cit.*, p. 34.

¹⁴⁹ This opinion applies only to the group of Muslim states, not all the states in general, as condemning Rushdie as an apostate is not an example of moderate point of view in general.

¹⁵⁰ D. Pipes, *op. cit.*, pp. 35-36.

Zealand). Japan firstly announced the support for EU declaration, but later consulted its position with the advisor of the president of the Islamic republic, declaring that “proper consideration should have been given to the Islamic people.” Vatican See expressed solidarity with those whose beliefs were offended. However not so many commentators were able to find a golden mean in the occurring conflict. Jimmy Carter said: “This is the kind of intercultural wound that is difficult to heal. Western leaders should make it clear that in protecting Rushdie’s life and civil rights, there is no endorsement of an insult to the sacred beliefs of our Muslim friends.”¹⁵¹

It is important to explain in a few words, why Muslims felt offended with “The Satanic Verses”, and why the publication of the book had such a great influence on world politics. There are a few social and political problems appearing in the context of the book. For Muslims its content brought a matter of the loss of identity, which was, and still is, considered by them as the greatest threat coming from the West, especially when one talks about Muslim minorities living in the Western countries. For European states (e.g. Great Britain) the main concern is the growth of Muslim population. This fear, on one hand, is old and based on some stereotypes. On the other hand, however, if one wants to analyze what is “behind” “The Satanic Verses” controversy, the research will lead one to alleged declarations of international conspiracy,¹⁵² instead of reasonable explanations, due to the fact that so-called moderate Muslims’ voices were phased out in the general discussion on this issue.¹⁵³ A daily Guardian editorial for example asked Muslims to recognize that they were living in a secular society,

¹⁵¹ J. Carter, *Are You Being Kept in the Dark: “The Satanic Verses” – Rushdie’s Dilemma*, Jamaica NY, Islamic Circle of North America 1989, p. 6.

¹⁵² More precisely a “zionist conspiracy”. In the opinion of some, the Jewish participation in the debate on “The Satanic Verses” made fascinating reading. Despite the fact that Jewish commentators on that issue presented various opinions, it is difficult to point out voices directly criticizing publication of Salman Rushdie’s book. See: B. Parekh, *The Rushdie Affair and the British Press [in:] The Salman Rushdie Controversy in Interreligious Perspective*, The Edwin Mellen Press 1990, pp. 81-82. See also: *Simon Rushton aka Salman Rushdie, Impact International*, 18/20, 28.10-10.11.1988.

¹⁵³ J. Kuortti, *op. cit.*, pp. 18-20.

and that they must change their ways of thought and life.¹⁵⁴ Iranian commentators however were underlining the idea of Western conspiracy, especially when the other European countries came to the scene to speak one voice with Great Britain. According to the Central News Unit Research Group in Teheran, insulting the Prophet, taking place in Rushdie's book, was aiming to "instigate a cultural confrontation with Islam."¹⁵⁵

The Quran, holy book of Islam, is the ultimate text containing principles of religion and standing for its base. By giving to his book the name of "The Satanic Verses", Salman Rushdie created a doubt about the authenticity of Quran, as well as satirized its rules.¹⁵⁶ It looked like Rushdie's intention was to use blasphemy as a way of attacking unjustifiable forms of political and religious rigidity. However, the effect he achieved was precisely opposite – including the raise of trust in Khomeini's politics, and joining extremist movements by British Muslims, who were not interested in them so far.¹⁵⁷ Keith Vaz wrote in daily *The Independent*: "Devotion is described as fanaticism. Those who have opposed Rushdie's decision to publish a book, steeped in intolerance and religious abuse, are branded as supporters of the fanatics. All those who pray and believe are by their nature fanatics. How strong is your belief in your religion if you don't believe in its fundamental values? Faith is something to be respected and revered: not to be used as an opportunity to humiliate".¹⁵⁸

As one could notice so far, the main political concern in "The Satanic Verses" affair came out after Khomeini's declaration, which did not have a real legal power, but at the same time became a very powerful political tool. The fact is that Islamic law prescribes a death penalty for the crime of abuse or insult of the prophet Muhammad. According to some schools of Islamic law, the one who abuses the prophet cannot be reprieved, even if he repents and resolves not to

¹⁵⁴ B. Parekh, *op. cit.*, p. 79.

¹⁵⁵ D. Pipes, *op. cit.*, p. 128.

¹⁵⁶ J. Kurotti, *op. cit.*, p. 22.

¹⁵⁷ R. Webster, *A Brief History of Blasphemy. Liberalism, Censorship and "The Satanic Verses"*, The Orwell Press 1990, p. 34.

¹⁵⁸ *Lecturing is the Ultimate Cheek* [in:] *The Independent*, 29.07.1989.

repeat the crime.¹⁵⁹ However it does not change the fact that Iranian leader was not the one to decide upon that.

According to the definition of fatwa, the act issued by Khomeini was not a fatwa *sensu stricto*, but, in the opinion of scholars, it could have a few other meanings. Khomeini's declaration could be considered as a judicial act or verdict; however according to the constitution Khomeini could not act as a regular judge as his position was above all the state's institutions; moreover no trial has taken place, as to be followed by a verdict (in Islamic tradition no one has the right to order killing a person without a trial). The declaration could be also considered as some kind of order. As the highest authority in Iran, Khomeini had the right to give orders, however not directly to kill someone, without the approval of the president, prime minister or other authorities. Another opinion on Khomeini's declaration is that it should be treated as a declaration of war. The bill was issued not only against Rushdie himself, but against the whole West (and Rushdie as its 'agent' in particular), however, in terms of international law, declaration of war must be initiated by actions.¹⁶⁰

For these reasons Khomeini's act shall not be called a fatwa, as nothing indicates it to be one. In terms of legality, the act cannot be considered either as a judgment, or as any other legal act that the Leader had the constitutional right to issue. Therefore one can say that Khomeini had no right to order to kill Rushdie in terms of law. Moreover, his act should be considered as null and void from the moment it was published.¹⁶¹

After Khomeini's declaration a lively discussion took place, whether the so-called fatwa had been issued due to political or purely religious reasons. The following paper's aim is not to analyze so-called 'media effect' or its influence on international politics, however in this case its importance has to be underlined. Moderate voices were not interesting enough as to provoke international discussion. Therefore media would always focus on fundamentalist approach, as

¹⁵⁹ M.M. Ahsan, A.R. Kidwai, *Sacrilege Versus Civility. Muslim Perspectives on The Satanic Verses Affair*, The Islamic Foundation 1991, p. 53.

¹⁶⁰ M. Mozaffari, *op. cit.*, pp. 51-56.

¹⁶¹ *Ibid.*, pp. 57-58.

the one leading to intense discussion. The debate upon Khomeini's fatwa seems to be the best example in this case, as it was considered not only as a religious declaration, but also as a part of Iran's internal politics.¹⁶²

In terms of politics, the commentators usually point out the following circumstances that are supposed to explain Khomeini's decision:

- drawing attention of the society to something else than the complications in domestic and foreign policy of Iran,
- criticism of Ayatollah's leadership,¹⁶³
- maintaining the role of Ayatollah as the real faith defender and protector of Islamic causes (Yousef M. Ibrahim),
- Khomeini's will to get the support of the illiterate masses (group of the most unsatisfied with the domestic situation in Iran), by using their highest value (Daniel Pipes),
- providing a focus on national unity following the Iran-Iraq war (Harvey Morris).

According to D. Pipes, fatwa itself could have been politically motivated, but death sentence was a strictly religious move. In his opinion Westerners do not take religion seriously and that is why it is difficult for them to understand religious reasons behind fatwa. Khomeini's move cannot be also explained in terms of apostasy, as there is a large group of Muslims, who, in terms of traditional interpretation of Quran, should be considered as apostates, and no fatwa is issued against them. This issue was already discussed in the chapter 2.2. of the present paper.¹⁶⁴

The novel, up to some point, undoes the achievements of Islamic revolution that took place in Iran not so long before the publication of "The Satanic Verses". While Iran under the rule of Shah was supposed to be a secular state and secular society, the Islamic revolution aimed to create something totally opposite, a society strongly affiliated to Islam and the principles of Islamic faith.

¹⁶² J. Kurotti, *op. cit.*, p. 20.

¹⁶³ W.J. Weatherby, *Salman Rushdie: Sentenced to Death*, Carol and Graf 1990, p. 154.

¹⁶⁴ D. Pipes, *op. cit.*, p. 90.

For those reasons Rushdie's book might have been considered as a serious step towards denouncing the main achievements of Islamic revolution. Putting in doubt the main principles of Islamic religion, "The Satanic Verses" could make people turn their back on Islam, as on religion, which funds turned to be not stable enough.¹⁶⁵ What is worth noticing, the given argumentation comes from Radio Teheran commentators, not from Western sources. For this reason one can claim that religious explanation of Khomeini's move is more convincing. Nevertheless, as Khomeini does not distinguish religion and politics, we cannot say whether his reasons were strictly political or strictly religious.¹⁶⁶

There are a few main reasons given to explain Khomeini's declaration in terms of religion, as well as his religious authority. The most important one is the fact that Iran had no political interest to involve in sensitive international affair at the time, when the country just started to recover from a long war, and at the very beginning of normalization of relations with the West at that time. Khomeini's specific approach towards Islam seems to be a perfect answer to every question of his motivation, including his political dependence on faith.¹⁶⁷ What is more, as he is considering the West as the greatest evil in the world, and openly pointing out the foreign powers standing behind Rushdie (Zionists, British and Americans)¹⁶⁸, political reasons do not seem to matter due to his "unreasonable" approach.

Many commentators say that postwar anti-Semitism was recently replaced by so-called Islamophobia. Moreover, it has been suggested that if "The Satanic Verses" contained material of anti-Semitic nature, the response from the British society would be somehow different and more sympathetic.¹⁶⁹ What was especially surprising, previous defenders of minorities in Britain, liberals, after the publication of "The Satanic Verses" became those who were attacking Muslim

¹⁶⁵ *Ibid.*, pp. 125-126.

¹⁶⁶ The opinion of Kalim Siddiqui quoted in: V. La'Porte, *An Attempt to Understand the Muslim Reaction to The Satanic Verses*, The Edwin Mellen Press 1999, p. 56.

¹⁶⁷ M. Mozaffari, *op. cit.*, p. 61.

¹⁶⁸ Khomeini mentioned them in his declaration on February 22, 1989, a few days after issuing *fatwa*. See further M. Mozaffari, *op. cit.*, pp. 62-63.

¹⁶⁹ V. La'Porte, *op. cit.*, p. 137.

community on a religious level.¹⁷⁰ After rewarding “The Satanic Verses” with Whitbread award for best novel in Britain, some Muslim commentators claimed that this act was only suppose to hurt Muslim community even more.¹⁷¹ Edward Said said: “I have not been able to discover any period in European or American history since the Middle Ages, in which Islam was generally discussed or thought about outside a framework created by passion, prejudice and political interests”.¹⁷²

“The Satanic Verses” affair has also a sociological dimension. It deeply influenced the British society and minority groups within it, basing on the lack of communication between them.¹⁷³ A person is psychologically and spiritually shaped under the influence of culture and religion. Due to the fact that it becomes a way of life, it will affect life no matter where this individual’s domicile is.¹⁷⁴ That is why not only citizens of Islamic states felt offended by the publication of Rushdie’s book, but also many Muslims living abroad. “What he [Rushdie] has written is far worse to Muslims than if he had raped one’s own daughter. Muslims seek Mohammad as an ideal on whom to fashion our lives and conduct, and the Prophet is internalized into every Muslim heart. It’s like a knife being dug into you – or being raped yourself,” said dr. Zaki Badawi, the head of the Muslim College in Ealing, one of Britain’s most liberal Muslim leaders, in the interview for the Guardian daily on February 27, 1989.

Qureshi and Khan give a number of reasons why “The Satanic Verses” should have been banned in the United Kingdom due to the national interest. The motives are as follows:

- endangering the lives of British hostages,¹⁷⁵
- endangering lives of British government officials,

¹⁷⁰ *Ibid.*, p. 5.

¹⁷¹ *Ibid.*, p. 9.

¹⁷² M.M. Ahsan, A.R. Kidwai, *op. cit.*, p. 264.

¹⁷³ A. O. Hirschman, *The Rhetoric of Reaction*, Belknap Press 1991, p. ix.

¹⁷⁴ M. Mashuq ibn Ally, *Stranger Exiled From Home* [in:] “*The Salman Rushdie*” *Controversy in Interreligious Perspective*, p. 142.

¹⁷⁵ At that time Iran held British businessman Roger Cooper, charged for spying in Iran, as a hostage. Cooper was released in 1991, after spending 5 years in Evin prison.

- threats to the British public,
- credibility of the British government (defending freedom of expression on the basis of insult is *de facto* defending the abuse of freedom, not the freedom itself),
- impairing of race relations in the United Kingdom.¹⁷⁶

All the arguments given above are reasonable, however one should keep in mind that Great Britain has allowed the secular virtue of tolerance to prevail over religious rigor. This explains why Muslims are permitted to exercise freely their faith, as long as its code of behavior does not conflict with the British civil law. Due to that, what a secular society thinks of the Prophet becomes its own affair, and any reason apart from law does not permit anyone any aggressive interference, like those noticed after the publication of Rushdie's book.¹⁷⁷

British press represented both radical and moderate opinions on "The Satanic Verses" issue, therefore it is difficult to draw a sharp line dividing the public opinion into two groups. Nicholas Ashford in daily *The Independent* pointed out that "freedom of expression, like all freedoms, carries its own responsibilities and conditions," and civilized society should try to ensure that the right is not abused. He also argued whether the Viking Penguin publishing would release a book if it was considered as anti-Semitic or racist.¹⁷⁸ Opposite voice was represented by George Chryssides, who wrote that "if a novelist writes a work of fiction, he is under no obligation to prove the thesis. Art is art, not necessary the fact."¹⁷⁹ As some columnists were giving strictly political reasons as a defense of the freedom of expression, others were defending the idea using rational arguments. Therefore it is impossible to prove an attempt of manipulation, however such voices were raised in media on both sides of the conflict.

¹⁷⁶ S. Quresi, J. Khan, *The Politics of "Satanic Verses": Unmasking Western Attitudes* [quoted in:] V. La'Porte, *op. cit.*, pp. 96-97.

¹⁷⁷ A. Burgess, *Islam's Gangster Tactics* [in:] *The Independent*, 16.02.1989.

¹⁷⁸ N. Ashford, *Freedom of the Press Also Means Responsibility* [in:] *The Independent*, 18.02.1989.

¹⁷⁹ G. Chryssides, *Fact and Fiction in the Salman Rushdie Affair* [in:] *Discernment: Focus on the Salman Rushdie Affair*, 4/2, 1990, pp. 21-2, 23.

Since 1995 Iran was moderating its stance on the death sentence owing to a fear the European Union may take the lead, set by the United States, in imposing sanctions. In September 1998 Iran publicly announced that does no longer support the fatwa, however in terms of religion – the sentence remains.¹⁸⁰

“The Satanic Verses” affair was definitely the most important one in terms of relations between the freedom of expression and religious offence as its outcome. The responses for the book publication, met all around the world, gave the Western countries an idea of how religious matters are important in Islamic culture. It does not mean, however, that the affair directed a new approach towards Muslim culture. The fact is that Western society remained divided between the defenders of unlimited free speech, and the idea of “adjusting” the immigrants to the “Western values,” and the opponents, who were raising the voices of more tolerance for the distinctness. For those reasons another affair of the same type was not unexpected in Europe, bringing, however, more serious outcome, not only in terms of international politics, but also economy, as well as in inner relation within European society.

4.2. The Danish cartoons affair

“Better that I be dead than see Islam insulted.”

Ayatollah Majlisi

The Danish cartoons affair began after the publication of twelve editorial cartoons, most of which depicted the Islamic prophet Muhammad, in the Danish newspaper Jyllands-Posten on September 30, 2005. The newspaper announced that the publication was a contribution to the debate regarding criticism of Islam and self-censorship. The protests of Muslim organizations became even stronger after the cartoons were reprinted in newspapers in almost 50 other countries.

The cartoons, published in September 2005 in a conservative Danish daily Jyllands-Posten, met the fairly muted protests of Danish Muslims. A few weeks

¹⁸⁰ V. La’Porte, *op. cit.*, p. 31.

later *Magazinet*, a small evangelical Christian newspaper in Norway, has started the series of reprints of the cartoons. Meanwhile the ambassadors of 10 Muslim countries demanded from the Danish government to "take all those responsible to task," however it did not result with any relevant actions. Around the same time, an Egyptian newspaper reprinted the cartoons without drawing any noticeable wrath from Muslim clerics.¹⁸¹

It was only after a December meeting of the 56 member states of the Organization of Islamic Conferences that the outrage really took wing. The states made use of the cartoons as a way of showing that the expansion of freedom and democracy in their countries would lead inevitably to the denigration of Islam. As a result, Saudi Arabia has recalled its ambassador from Denmark, Libya has closed its embassy in the Danish capital - Copenhagen.¹⁸² At that time however, the situation reminded 1988 events that took place after publication of "The Satanic Verses." As the previous affair, except for the diplomatic moves, did not really affect trade relations between the states, current events were also considered as not that relevant.

The public discussion, which has begun with the publication of cartoons, has focused on freedom of expression mostly. The Danish Prime Minister Anders Fogh Rasmussen was often quoted as saying: "Freedom of speech should be used to provoke and criticize political or religious authoritarians."¹⁸³ Also Flemming Rose, the cultural editor of *Jyllands-Posten*, confirmed that statement, saying: "Ideas, cultures and religions should be questioned all the time."¹⁸⁴ Unfortunately, different opinions have been met on the other side of the issue.

¹⁸¹ J.W. Anderson, *Cartoons of Prophet met with outrage* [in:] The Washington Post available online at: <http://www.washingtonpost.com/wp-dyn/content/article/2006/01/30/AR2006013001316.html>, last accessed on June 14, 2008.

¹⁸² *Clash of Civilization. The dictators behind those Muslim cartoon protests.* [in:] The Wall Street Journal available online at: <http://www.opinionjournal.com/weekend/hottopic/?id=110007956>, last accessed on June 14, 2008.

¹⁸³ K. Day, *Denmark's new values* [in:] The Guardian available online at: <http://www.guardian.co.uk/world/2006/feb/15/muhammadcartoons.comment>, last accessed on June 14, 2008.

¹⁸⁴ A. Gorlick, *Danish newspaper editor says free speech is in jeopardy* [in:] news service of the Stanford university, available at: <http://news-service.stanford.edu/news/2008/may14/cartoons-050408.html>, last accessed on June 14, 2008.

Death threats against Kurt Westergaard, the 73-year-old cartoonist, who drew Muhammad with a bomb nested in his turban, have forced him and his wife into hiding. It was revealed that the would-be assassins had a detailed map of his house and were hanging around the place.¹⁸⁵

International reaction has been widespread later on, with the European Union backing Denmark in the dispute, trying to preserve the principle of free speech, and warning that a boycott of Danish products, already affecting some companies running their businesses in the Middle East, would violate World Trade Organization rules. The current level of Danish export to the Middle East countries is in constant decrease. After the first publications of blasphemous cartoons in 2005, during first 6 months after publication, Danish export decreased by 26 per cent. After second publication in 2007, Danish food company Arla Foods, noticed loss, which will probably reach over 174-mln euro, comparing to predicted numbers.¹⁸⁶ In the beginning of June 2008 Libyan government announced that Danish companies are to be excluded from 126 billion dollar investments in the country, as a response to publication of Muhammad's cartoons. The decision includes the participation of Danish firms in 5-year country's development program, however it will not include the pharmacy industry. It is a great disadvantage for Danish industry, since the Libyan market was reopened for foreign investments after denouncing the embargo.¹⁸⁷

According to the information given by International Freedom of Expression Exchange organization, cartoonists and journalists, not only from Europe and the U.S., but also the Arab world, claim that the Danish cartoon crisis is being "manipulated by repressive governments to further restrict freedom of expression," giving an example of Morocco. The Committee to Protect Journalists¹⁸⁸ reported that a leading member of the Moroccan parliament accused the government of instigating anti-cartoon demonstrations in Casablanca in 2006

¹⁸⁵ *Ibid.*

¹⁸⁶ Internet news service <http://www.tvn24.pl/-1,1545994,wiadomosc.html>, last accessed on June 14, 2008.

¹⁸⁷ Internet news service <http://www.tvn24.pl/12691,1553215,0,1,wiadomosc.html>, last accessed on June 14, 2008.

¹⁸⁸ The Committee to Protect Journalists is an independent, nonprofit organization dedicated to the global defense of press freedom. For details see: www.cpj.org, last accessed on June 14, 2008.

against "Le Journal Hebdomadaire", even though the paper was reporting on the controversy and did not re-publish the cartoons. "The authorities did not hesitate to use this international scandal to silence the voice of an independent newspaper that criticized them," said Ali Amar, the newspaper's publisher.¹⁸⁹

Also recent events occurring in Jordan prove that despite quite a long time since the first cartoon publication took place, the Muslim world still remains under its influence. Cartoonists Rights Network International reported that the Jordanian public Prosecutor General, Hassan Abdallat, has summoned one of the cartoonists and 10 editors of the newspapers that reprinted the cartoons, to respond to charges of blasphemy and threatening national peace in the country.¹⁹⁰ The group behind the charges, a union of Jordanian media organizations and individuals, calling themselves "The Prophet Unites Us," says that if the Danes don't appear in Jordan, the group will ask INTERPOL to arrest them.¹⁹¹ The campaign, which was to start June 10, 2008, is also held against Danish and Dutch products exported to the region, what includes the distribution of more than one million propaganda posters in Arab and Muslim countries.¹⁹² Under Jordanian law, reproducing images of the Prophet Muhammad inside, as well as outside the country, is illegal under the Jordanian Justice Act.¹⁹³

In April 2008 a number of Pakistani lawyers took out a protest rally, condemning publication of blasphemous caricatures by Danish newspapers. Addressing the rally, Manzoor Qadir, president of the lawyers' association, said that Denmark was committing blasphemous acts at the behest of America and Israel. He claimed that a ban on the import of Danish products, and severing diplomatic ties with the country, will be enough not only to teach Denmark a

¹⁸⁹ *Governments fomenting Danish Cartoon crisis* [in:] International Freedom of Expression Exchange Platform available at: <http://www.ifex.org/en/content/view/full/94400/>, last accessed on June 14, 2008.

¹⁹⁰ *Ibid.*

¹⁹¹ *Danish editors face trial in Jordan* [in:] The Copenhagen Post available online at: <http://www.cphpost.dk/get/107525.html>, last accessed on June 14, 2008.

¹⁹² *Amman prosecutor summons Danish journalists, editor in cartoon case* [in:] www.chinaview.cn quoted in: http://news.xinhuanet.com/english/2008-06/04/content_8311698.htm, last accessed on June 14, 2008.

¹⁹³ *Jordan summons Danish cartoonist on blasphemy charges* [in:] the Fox News service available online at: <http://www.foxnews.com/story/0,2933,363182,00.html>, last accessed on June 14, 2008.

lesson, but the whole West about not disregarding religious sentiments of the Muslims never again.¹⁹⁴

This type of information appears in Pakistani media quite often, becoming an example of hate speech, according to the conditions given in chapter 3.2. of the present paper. Despite the fact that the Danish publication took place 3 years before, the affair seems to remain in a focus of local authorities. Secretary General Jamaat-e-Islami,¹⁹⁵ Syed Munawar Hassan, has demanded that the issue of blasphemous caricatures of prophet Muhammad should be debated in the national and provincial assemblies, followed by a strong resolution to sever diplomatic ties with the countries involved in the acts. He also claimed that the cartoons were published “to provoke Muslims all over the world.” Hassan asked the people to be “aware of their enemies, present in the county and outside.” “Sometimes they attack Muslims in the name of modernization and secularism; sometimes they launch a war on the pretext of terror and sometimes for the freedom of expression,” he added, pointing out the double standards in Western politics: “They do not allow even a single statement against the Holocaust or Jews, but freely commit blasphemies against Islam and Muslims”.¹⁹⁶

Jyllands-Posten, followed by a dozen of other newspapers, reprinted the cartoons on February 13, 2006, after three men were arrested on suspicion of plotting to kill the cartoonist. Reactions for the reprint were however different from the first ones, and media, among other reasons, were pointing out the fact that the cartoons are available online anyway, what gives an easy access to them for millions of people worldwide.¹⁹⁷ It does not mean, however, tht the second publication did not cause any reactions at all. The organization Reporters Without Borders reported about the suicide bombing of the Danish embassy in Islamabad on June 2, 2008, which has been claimed by a branch of Al-Qaeda, as a reprisal

¹⁹⁴ *Lawyers stage rally against blasphemy* [in:] Pakistani news service available at: <http://www.thenews.com.pk/print1.asp?id=107119>, last accessed on June 14, 2008.

¹⁹⁵ *Jamaat-e-Islami* is the oldest Islamist political party in Pakistan, founded in 1941.

¹⁹⁶ For the full article and an example of hate speech see: Pakistani news service available online at: http://www.thenews.com.pk/daily_detail.asp?id=105341, last accessed on June 14, 2008.

¹⁹⁷ T. Lacey, *OIC debate on Islamophobia Dakar 13-14 March* [in:] Yemen Times available online at: <http://yementimes.com/article.shtml?i=1140&p=local&a=6>, last accessed on June 14, 2008.

for the Mohammed cartoons published in Denmark. The suicide car bombing killed seven Pakistanis and a Danish citizen of Pakistani origin.¹⁹⁸

To sum up it is worth to mention that individuals, as members of democratic societies, do not have to accept or even like every product of the culture. Nevertheless, according to the principle of freedom of speech, one has to hear all the stories one is offered.¹⁹⁹ This is exactly why Karl Popper, in his seminal work "The Open Society and Its Enemies," insisted that one should not be tolerant with the intolerant. Nowhere religions can coexist as peacefully as in a democracy, where freedom of expression is one of the fundamental rights. In Saudi Arabia for example, one can get arrested for wearing a cross or possessing a Bible, while Muslims in secular Denmark can have their own mosques, cemeteries, schools, as well as TV and radio stations.²⁰⁰

In the examples given, coming from Pakistani media, one can easily observe the language of hate speech and manipulation, influencing the public opinion on a great scale. The politicians are abusing the case of cartoons, even though the affair is not fresh itself. There are different motives for the publication pointed out, and the opinion or explanation of the other (Western) side is never quoted or taken into consideration.

¹⁹⁸ *Condemnation for Danish embassy car bombing in reprisal for Mohammed cartoons* [in:] Reporters Without Borders organization web site http://www.rsf.org/article.php3?id_article=27347, last accessed on June 14, 2008.

¹⁹⁹ Maitland s., *op. cit.*, p. 129.

²⁰⁰ F. Rose, *Why I published those cartoons* [in:] The Washington Post online available at http://www.washingtonpost.com/wp-dyn/content/article/2006/02/17/AR2006021702499_2.html, last accessed on June 14, 2008.

4.3. Freedom of expression in the Netherlands. “Submission” and “Fitna”.

Kill me, but do not mock my faith. - ancient Islamic proverb

In the present chapter two cases are to be discussed, both quite recent and both provoking not only the discussion on freedom of speech, but also on the directions of migration policy in Europe. Both cases took place in the Netherlands, the country well known for its tolerant approach towards values not commonly recognized and accepted in the other countries. And both led the citizens and the Dutch government to wonder whether the tolerant approach is the one that should be continued in the Dutch domestic and international politics.

The first of the mentioned cases has started in April 2004 with the broadcast of the movie “Submission.” The 10-minute film, written by Ayaan Hirsi Ali, the member of Dutch parliament, and directed by Theo van Gogh, tells a story of Muslim women, who have been abused in various ways. Through a veil it can be seen that the actress has a naked body painted with verses from the Koran. The film contains monologues, dramatically highlighting the verses of Quran, which authorize mistreatment of women.²⁰¹

Theo van Gogh was known, even before his cooperation with Ali, as a person openly criticizing believers and different religions.²⁰² Van Gogh did not limit himself to Jewish topics, which he attacked at the very beginning of his public career, including later Christian values and symbols as well. And after the death of Pim Fortuyn, the Dutch politician, who warned that Holland’s open culture would clash with its growing Muslim community, Van Gogh turned his attention to Islam.²⁰³

²⁰¹ For the movie see: <http://video.google.com/videoplay?docid=846339861805446088&q=&hl=en>, last accessed on June 14, 2008.

²⁰² A. Moors, *Submission* [in:] ISIM Review 15/2005, pp. 8-9.

²⁰³ L. de Winter’s opinion [in:] The Wall Street Journal USA, Nov. 4, 2004, available online at online.wsj.com, last accessed on June 14, 2008.

“Submission” played an important role in the Dutch society, pointing out the problem of violence against women. On the other hand, the way it described the problem, created another problem itself. Van Gogh was not satisfied with the movie himself, however the idea of the picture was strong enough as to offend Muslim minority in the Netherlands, which was almost 1 million people in a country of a total population of 16 million.²⁰⁴ “Submission” also became a symbol of a fight to protect “Dutch norms and values”, where one of the most important was, apparently, the right to insult others.

On November 2, 2004 Theo van Gogh was shot and stabbed to death in public by a man with dual Dutch-Moroccan citizenship, who left a note containing Islamic text, pinned to van Gogh’s chest.²⁰⁵ The letter, written by the assassin Mohammed Bouyeri, was addressed to Ayaan Hirsi Ali, and called for jihad against *kafir*,²⁰⁶ America, Europe, the Netherlands, and Hirsi Ali herself. Van Gogh had received death threats right after the film was screened on Dutch TV at the end of August, however refused the official protection.²⁰⁷

The murder of Theo van Gogh has been explained in many different ways. It directed the discussion on Dutch migration policy to a new, more radical way. On one hand the supporters of more restricted policy were giving strong arguments proving the failure of assimilation, as the alleged killer was a Dutch citizen. On the other, however, some observers point out one missing element that comes from outside the Western culture: the two others suspects arrested for being involved in the murder were Dutch-Americans converted to Islam.²⁰⁸ The fact proves that religious factor was dominant in this case. Besides Bouyeri, eleven

²⁰⁴ *Ibid.*

²⁰⁵ *Controversial filmmaker murdered* [in:] International Freedom of Expression Exchange platform available at: <http://www.ifex.org/20fr/content/view/full/62414/>, last accessed on June 14, 2008.

²⁰⁶ *Kafir* is an Arabic word for unbeliever, a person who hides, denies, or covers the truth.

²⁰⁷ *Shock at Dutch filmmaker’s murder* [in:] Reporters Without Borders organization web site http://www.rsf.org/article.php3?id_article=11772, last accessed on June 14, 2008.

²⁰⁸ O. Roy, *A Clash of Cultures or a Debate on Europe’s Values?* [in:] ISIM Review 15/2005, pp. 6-7.

other Muslim men were arrested and charged with conspiracy to assassinate Hirsi Ali.²⁰⁹

Following the murder of Van Gogh, tens of thousands gathered in the center of Amsterdam to mourn Van Gogh's death. Meanwhile, starting with four attempted arson attacks on mosques on November 5-7, a significant number of violent incidents took place in the Netherlands. The Dutch Monitoring Centre on Racism and Xenophobia recorded a total of 106 violent incidents against Muslim targets in November that year only. The National Dutch Police Services Agency recorded 31 occasions of violence against mosques and Islamic schools between November 23 and March 13, 2005. The case that drew most attention, was an arson attack that led to the destruction of a Muslim primary school in Uden in December 2004.²¹⁰ By November 8, also Christian churches were targeted in vandalism and arson attacks. A report for the Anne Frank Foundation and the University of Leiden, which counted a total of 174 violent incidents in November, specifies that mosques were the target of violence 47 times, and churches 13 times.²¹¹

The problematic situation in the Netherlands has started before van Gogh's movie was released. Expressing anti-Muslim opinions caused the death of Dutch politician Pim Fortuyn, who attracted support in his country with a political program, rejecting multi-culturalism, socialism, and Muslim immigration.²¹² Fortuyn was assassinated during the 2002 Dutch national election campaign by an animal rights activist Volkert van der Graaf. The assassin claimed in court that he murdered Fortuyn to stop him from exploiting Muslims as "scapegoats," and

²⁰⁹ *English translation - letter left on Theo Van Gogh's body by the militant Islamist killer was 'Jihad Manifesto' -A call to destroy America and all "unbelievers"* [in:] <http://www.militantislammonitor.org/article/id/312>, last accessed on June 14, 2008.

²¹⁰ *Ibid.*

²¹¹ *Muslims in the EU. Cities report – the Netherlands. Preliminary research report and literature survey 2007*, Open Society Institute – EU Monitoring and Advocacy Program, *sic passim*.

²¹² *Pim Fortuyn* [in:] *The Daily Telegraph* available online at: <http://www.telegraph.co.uk/news/obituaries/1393360/Pim-Fortuyn.html>, last accessed on June 14, 2008.

targeting "the weak parts of society to score points" in search of political power.²¹³

Another scandalous movie was released in 2008 by Geert Wilders, the member of the Dutch parliament. Wilders, known for his Islamophobic public statements, announced his 15-minute work "Fitna" as an analysis of Quran-based motivations for terrorism. Before the release he was asked by the Dutch government to scrap the movie, however he refused. The movie has been on the Dutch government's worry list since the very first day it was mentioned in the Dutch media, in November 2007. The Dutch government has tried its best to distance itself from Wilders, distributing even evacuation plans to its consulates and embassies worldwide, in case an emergency should arise in light of the forthcoming film.²¹⁴

Despite all the TV stations in the Netherlands refused to air the movie, Wilders announced the distribution on the internet. In a response to his announcements, the Dutch government had raised the terrorism threat level and expressed its concern about the safety of the Dutch troops in Afghanistan. Wilders was given the 24-hour police protection. Moreover, on the state level, members of the Dutch government met with the representatives of 30 Muslim countries to present the state's official position on the movie, and assure them that Wilders' film has nothing to do with government's policy.²¹⁵

Public opinion was unanimous about the scandalous character of the movie, staying divided at the same time in the area of analysis of the Dutch government's actions. While the Western media were mostly basing on the principle of preserving the free speech, Islamic states pointed out the argument of the Zionist conspiracy, due to the fact that Geert Wilders is also known as a supporter of the state and its politics in the Middle East.²¹⁶ In recent interviews,

²¹³ *Ibid.*

²¹⁴ *Hold your breath: 'Fitna' spreading seeds of hatred* [in:] Today's Zaman available online at: <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=137624>, last accessed on June 14, 2008.

²¹⁵ L.S. Heard, *Hypocrisy over free speech issues* [in:] Gulf News available at <http://www.gulfnews.com/opinion/columns/world/10200054.html>, last accessed on June 8, 2008.

²¹⁶ *Top cleric: Zionists behind 'Fitna'* [in:] Press TV Iranian news service available online at: <http://www.presstv.ir/detail.aspx?id=50229§ionid=351020101>, last accessed on June 14, 2008.

Geert Wilders, more than once, indicated that the Dutch constitution and European Convention on Human Rights should be amended or temporarily suspended to protect citizens from "Islamic extremism," being also in favor of stripping dual-nationality criminals of their Dutch citizenship and deporting them to their country of origin.²¹⁷

What makes the whole issue even more complicated is the fact that the Netherlands has in its legislation the so-called blasphemy laws. Even though no one has been prosecuted under them in the last 40 years,²¹⁸ the discussion on scrapping the laws has started after the series of offensive for Muslims publications. This situation led to an opinion that there is a dual morality among the Dutch lawmakers. The last attempt to take the blasphemy law off was made in 2004, however politicians felt the atmosphere was too tense in the wake of the murder of Theo van Gogh. In the case of Geert Wilder's film, some claim that Muslims abroad may see scrapping of blasphemy laws as a confirmation of Dutch Islamophobia. In fact, the law has never been used to prosecute blasphemy against any other religions, and is also considered by some experts as applicable only to Christianity.²¹⁹

“Fitna” met criticism in many countries. One of the examples was a note to Armenian Foreign Minister Manouchehr Mottaki, written by members of Armenian parliament, calling for review of bilateral relations with the Netherlands in protest at anti-Islam film made by the Dutch.²²⁰

²¹⁷ Interview available at BBC web site <http://news.bbc.co.uk/2/hi/programmes/hardtalk/4833890.stm>, last accessed on June 8, 2008.

²¹⁸ *Move to repeal Dutch blasphemy law* [in:] United Press International service available online at: http://www.upi.com/Top_News/2008/03/15/Move_to_repeal_Dutch_blasphemy_law/UPI-17821205556842/, last accessed on June 14, 2008.

²¹⁹ *Law against blasphemy to be scrapped* [in:] Radio Netherlands online available at: <http://www.radionetherlands.nl/currentaffairs/region/netherlands/080313-blasphemy-mc>, last accessed on June 14, 2008.

²²⁰ *Armenia condemns blasphemy* [in:] Islamic Republic News Agency web site <http://www2.irna.com/en/news/view/line-16/0804129396171544.htm>, last accessed on June 8, 2008. See also: Tehran Times online at: http://www.tehrantimes.com/index_View.asp?code=166081, last accessed on June 8, 2008.

European Commissioner for External Relations and Neighborhood Policy Benita Ferrero-Waldner said that the EU would not develop any new laws against blasphemy as a response to recent cases.²²¹ Moreover, the Slovenian presidency of the European Union stated that freedom of speech should be exercised in a spirit of respect for religious and other beliefs and convictions.²²²

I. Buruma, in the daily Haaretz, was presenting one of common opinions on Wilders, claiming that in his speeches he was not attacking Islamist extremists only, but the whole Muslim population in Europe in general, and the success was based on that “sense of tolerance as betrayal,” especially when he said: “I believe we have been too tolerant of the intolerant.”²²³ Buruma also wrote: “We must fight Islamic extremism, but not by tapping into the darkest gut feelings of the unthinking mob. Nothing good ever came from that.”²²⁴

What makes the Dutch case problematic is the fact that the society has always been open and proud of its tolerance. What happened in the Netherlands proved the failure of state’s past politics. The Dutch began to turn their back on what they have supported so far, becoming more radical in their judgments and approach towards migration policy. In a secular society equal rights were granted to all the believers, as well as to atheists, so each group could not only freely practice its religion, but also express own opinion on the other. Everything remained within the articles of law, until the first victim of free speech was murdered for revealing own thoughts in public.

It is difficult to predict which direction will be taken by the Dutch authorities now, as the weak points of past policy were pointed out. On one hand, the Dutch are great defenders of free speech, and in all the cases religious offence

²²¹ *European Commissioner rules out blasphemy law* [in:] Arab News online available at: <http://www.arabnews.com/?page=1§ion=0&article=109005&d=16&m=4&y=2008&pix=kingdom.jpg&category=Kingdom>, last accessed on June 14, 2008.

²²² *Hold your breath: ‘Fitna’ spreading seeds of hatred* [in:] Today’s Zaman available online at: <http://www.todayzaman.com/tz-web/detaylar.do?load=detay&link=137624>, last accessed on June 14, 2008.

²²³ Geert Wilders in an interview for BBC in 2006. The quotation retrieved from his BBC profile available at <http://news.bbc.co.uk/2/hi/europe/7314636.stm>, last accessed on June 8, 2008.

²²⁴ I. Buruma, *A war on tolerance* [in:] the daily Haaretz online available at: <http://www.haaretz.com/hasen/spages/952504.html>, last accessed on June 8, 2008.

was not an adequate argument as to provide any kind of legal limitations. On the other hand, rejecting people's religious feelings, no matter if the religion is dominant or not, resulted with unprecedented outcome that needs to be taken for future consideration. The debate will definitely shape Dutch migration policy and state's international politics.

Section III

Blasphemy laws in theory and in practice.

Blasphemy laws in a legislative system of a particular country are among the most powerful tools against religious offence. The fact is, however, that they limit free speech grounded on a subjective condition, what in the end may lead to a number of abuses. Blasphemy laws are not universal as well. Most of them are designed in such a way as to protect only the dominant religion, often discriminating other beliefs or cults. For this reason they cannot be considered as a tool of religious protection, but rather as anti-thesis of fundamental rights, such as freedom of speech and freedom of religion.

5. The debate on blasphemy laws in Europe.

“The only purpose for which power can be rightfully exercised over any member of a civilized community against his will, is to prevent harm to others.”

John Stuart Mill

There is a number of states with blasphemy laws in Europe, however among them Great Britain has the longest tradition. The laws, established as a part of ecclesiastic legislation in 1553 were later changed by parliamentary codification in 1648, and remained in force until XXI century, despite the fact that last executions were carried out in 1612, and the last conviction – in 1977.²²⁵ Since 1646 the offence of blasphemy, due to British legislation, was to be punished with death. Capital punishment has been replaced a few centuries later.²²⁶ In Scotland blasphemy was a subject of death penalty until 18th century.²²⁷

The reason for establishing blasphemy laws in the history of Britain was the claim that God must be protected from being offended. However, according to the idea of deity, people do not really know what, if anything, may offend God, and also – God is capable to protect himself from any human offense. The other,

²²⁵ M. Mozaffari, *op. cit.*, p. 138.

²²⁶ G. Stein, *Blasphemy laws* [in:] *The Encyclopedia of Unbelief*, p. 60.

²²⁷ M. Mozaffari, *op. cit.*, pp. 138-139.

more rational motive was the protection of Christianity as a particular part of English law. Nonetheless, due to the following logic, none of the other areas of English law (e.g. taxes) needed any special protection. Also there were no laws claiming that any Christian traditions and practices should be mandatory, as to be treated in a special way. Other reasons also did not seem to be persuasive, like for example protection of the young from hearing public criticism of their religious beliefs, or protection of the blasphemers themselves from attacks of Christian majority.²²⁸

In the beginning of 19th century the first words of criticism for English blasphemy laws appeared. In 1833 in his parliamentary speech, Lord Macaulay said: “It is monstrous to see any judge try a man for blasphemy under the present law. Every man ought to be at liberty to discuss the evidences of religion”.²²⁹ His statement, however, remained critical in terms of limits of freedom of expression.²³⁰ This period of time brought to Britain over 80 prosecutions and as many as 61 convictions under the common blasphemy law.²³¹

Since that time, until 1976, the debate on blasphemy laws in Britain practically did not exist. The discussion came back after publication in the magazine *Gay News* of a poem “The Love That Dares Not Speak Its Name”, describing homosexual acts perpetrated by the centurion on the body of crucified Jesus.²³² Six months later Mary Whitehouse brought a private prosecution against the magazine, its editor and distributor. Court of first instance sentenced the editor Denis Lemon to 9 months imprisonment (suspended), and fined both him and the magazine. The Court of Appeal confirmed the offence has taken place, committed however not under the Obscene Publications Act 1959, but under the blasphemy laws.²³³

²²⁸ G. Stein, *op. cit.*, p. 61.

²²⁹ C.S. Kenny, *The Evolution of the Law of Blasphemy*, 1923 *Cambridge Law Journal*, 127, p. 135.

²³⁰ N. Cox, *op. cit.*, p. 11.

²³¹ R.E. McCoy, *Freedom of the Press and Unbelief* [in:] *The Encyclopedia of Unbelief*, p. 241.

²³² N. Cox, *op. cit.*, p. 23.

²³³ *Ibid.*, pp.24-25.

The most important debate on the meaning of blasphemy laws has started in 1988 with the publication of “The Satanic Verses” in England. Viking Penguin publishing house took the decision despite the warnings given by its editorial consultant about protests and riots in Muslim countries, which might have occurred after the book’s release.²³⁴ In response to first protests in British cities, the Secretary of State for the Home Affairs Department said that prosecution against the author would be damaging, claiming also that the Christian faith no longer relies on blasphemy laws, but rather on the strength of a belief, which is the best armor against blasphemers.²³⁵

Before “The Satanic Verses” affair, British blasphemy laws, as well as the idea of the blasphemy itself, have not been used in terms of international politics. As the legislation was a part of domestic law, its aim was to protect British citizens, pointing out the values common in the British society. Meanwhile, “The Satanic Verses” opened a new debate on the universality of those laws, as the Muslim minority was among those excluded from its protection. Two main directions were pointed out at that time, first – amending the law as to include other religions as well, second – scrapping the existing law completely.

Lord Scarman (a former member of British Law Commission) gave a few arguments on why British blasphemy laws should be abolished. His main reason was that the concept of blasphemy has lost its meaning in a secular society. Also Salman Rushdie wrote in “The Satanic Verses” that where “there is no belief, there is no blasphemy.”²³⁶ The other Scarman’s argument was not about the concept, but about the definition of the offence, due to the fact that what was blasphemous for ones, did not have to be for the others.²³⁷ From legal point of view one of the most important motives for scrapping the laws was the absence of *mens rea* and *actus reus*,²³⁸ because the defendant in a blasphemy case cannot

²³⁴ *Ibid.*, p. 35.

²³⁵ G. Robertson, A. Nicol, *Media Law*, Penguin 1993, p. 163.

²³⁶ S. Rushdie, *The Satanic Verses*, Viking Penguin 1988, p. 380.

²³⁷ V. La’Porte, *op. cit.*, p. 193.

²³⁸ *Actus reus* and *mens rea* are Latin legal terms. The first one, also known as external element, stands for the "guilty act" proved beyond a reasonable doubt in combination with the *mens rea*, i.e., the "guilty mind." Both are necessary to consider particular act as a crime.

give in evidence his or her beliefs and purposes in the questioned piece of writing.²³⁹ The construction of British law's emphasized on the manner rather than the matter of the crime. As manner and matter are so integrally related, it is impossible to distinguish offensive matter from offensive manner of a particular statement.²⁴⁰ According to Scarman, blasphemy laws restricted freedom of expression, and in doing so – penalized non-believers. It was also discriminatory in such a way as to apply only to Christianity (and by implication - only to Church of England).²⁴¹ Establishing a legal act protecting all the religions against blasphemy would be problematic, due to hard to define and qualify which of religious groups shall be considered as religions.²⁴²

Apart from critics, Britain met some voices willing to maintain the existing blasphemy laws. When Frank Dobson of British Labor Party suggested scrapping the law, the Bishop of Oxford said the Church of England had always backed finding a workable alternative, adding: "But you have to ask, is there nothing left that is sacred?" The organization Christian Voice, after the attempt of abolishing the laws announced: "If the committee decides not to keep the law against blasphemy it will be saying, "We do not want the United Kingdom to enjoy the blessing of God, if such exists. We are not God-fearing folk. We care nothing for God or his blessing."²⁴³

British blasphemy laws were created to protect the church established by law. According to dr. D. Nash, the current tendency in aiming blasphemy laws is rather protecting someone's identity, than what one believes in. "There have been some incidents in Britain recently where the director of public prosecutions has refused to proceed, considering that prosecution is not in the public interest," he added. The countries have to keep freedom of expression going, protecting minorities against attacks at the same time, and this is quite a frightening

²³⁹ V. La'Porte, *op. cit.*, p. 194.

²⁴⁰ *Ibid.*, p. 195.

²⁴¹ *Ibid.*, p. 191.

²⁴² *Ibid.*, p. 201.

²⁴³ *BBC Q&A: Blasphemy laws* available online at: http://news.bbc.co.uk/2/hi/uk_news/3753408.stm, last accessed on June 15, 2008.

balancing act for most western countries, Nash stated.²⁴⁴ Bishop Leslie Newbigin, in a letter to the British daily *The Independent*, on February 21, 1989, wrote: “Blasphemy has become a meaningless concept in contemporary British society because it is not seriously believed that God exists. The supreme reality on which we rely for welfare is the nation state. To betray the interests of the nation is therefore a supreme crime, but blasphemy is a joke.”²⁴⁵

For ages blasphemy was considered as a crime in many civil legal systems in Europe. In France first legislation concerning offence of blasphemy was issued by Louis XII in 1510, and later confirmed by Louis XIV in 1651. The punishment provided for this type of crime was cutting the tongue out. Establishing a new penal code in 1791 removed blasphemy from the catalogue of criminal offences in this country, however in 1995 some passages of the Bible were banned due to considered as anti-Jewish.²⁴⁶ The case, however, did not include the offence of blasphemy *sensu stricto*.

As the example of France shows, there is no need to provide certain blasphemy laws in the legal system of a country, due to the fact that rights abused with this type of offence are legally protected by other means (e.g. the principle of non-discrimination).

Also in the present day a number of European states have blasphemy laws. In Denmark the paragraph 140 of the penal code affirms that “anyone who should publicly do violence to legally recognized beliefs, or publicly mock the worship of God, will be punished by imprisonment or by a fine if there are attenuating circumstances.” Danish blasphemy laws were a legal basis for conviction only a few times: in 1938 for anti-Semitic propaganda, in 1971 in case of blasphemous song, as well as in case of Jens Jorgen Thorsten, who obtained a financial support of Danish government to produce a movie on the life of Jesus. The last case was

²⁴⁴ Interview with D. Nash for the Radio Free Europe. Transcript available online at: <http://www.rferl.org/featuresarticle/2006/02/8595A5AA-104E-4CA4-B01D-70C287AFF506.html>, last accessed on June 15, 2008.

²⁴⁵ L. Newbigin, *The Satanic Verses: Blasphemy v. Freedom of Speech* [in:] *The Independent* on February 21, 1989.

²⁴⁶ M. Mozaffari, *op. cit.*, pp. 139-140.

closed in 1989.²⁴⁷ Denmark, where the Mohammed cartoons affair started, punishes blasphemy with fines and up to four months in jail. However, a court case brought against the paper that printed the cartoons, by 11 Muslim groups, was thrown out, with the judges considering that the issue of freedom of expression was more important than the ban on blasphemy.²⁴⁸

Norway has a public order law dating from the 1930s, which in principle outlaws blasphemy with a fine up to six months in jail. Germany has a blasphemy law dating from 1871, which was successfully used in 1994 to ban a musical comedy that ridiculed the Catholic doctrine of the Immaculate Conception, by portraying crucified pigs. Italy has a law against "outrage to a religion," which has recently been used against the journalist Oriana Fallaci over her outspoken statements and writings on Islam. Also Austrian law prohibits the ridiculing of a religion, on pain of up to six months in jail.²⁴⁹

In Germany the current federal regime emphasizes protection of public order, maintaining at the same time the principle of free artistic expression. The amendment of the federal penal code in 1969 replaced the offence of blasphemy with a broader offence of disturbing the peace through ridicule of faiths and ideological groups. The Berlin Tageszeitung was acquitted in 1987 of a prosecution by the Roman Catholic bishop of Berlin for a satirical article. More recent cases have involved unsuccessful prosecution of parodies of Pope John Paul II. In 2006 former prisoner 'Manfred van H' received a suspended sentence of a year in prison and 300 hours of community service after printing 'Quran, der Heilige Quran' on toilet paper, and distributing it to the media and mosques.²⁵⁰

Great Britain, closing the current debate on blasphemy laws in Europe, abolished it on March 5, 2008 in a 148-87 vote in the House of Lords.²⁵¹ The new

²⁴⁷ *Ibid.*, p. 140.

²⁴⁸ *Europe's blasphemy laws* [in:] Deutsche Welle online available at: <http://www.dw-world.de/dw/article/0,2144,1894686,00.html>, last accessed on June 15, 2008.

²⁴⁹ *Ibid.*

²⁵⁰ Analysis of blasphemy laws in Europe by Caslon Analytics available at: <http://www.caslon.com.au/blasphemyprofile5.htm>, last accessed on June 15, 2008.

²⁵¹ K. Murphy, *Britain's house of Lords abolishes blasphemy laws* [in:] The Los Angeles Times quoted in Boston Globe online available at:

law came into force on May 8, 2008. The amendment to abolish the "common law offenses of blasphemy and blasphemous libel," was part of the Criminal Justice and Immigration Act of 2008.²⁵² The amendment was put forth in Parliament by Liberal Democrats.²⁵³

The specificity of European blasphemy laws lays in the context they have been used in. As a legal basis for a private prosecution, they have not been aimed to create a new public morality. Moreover, they were in use rarely enough as one could speak about their real political meaning in a secular society. The case is completely opposite in non-secular states. Particular examples are to be discussed in the next chapter of the present paper.

6. Blasphemy laws in non-secular states – case of Pakistan.

"Everyone shall have the right to express his opinion freely in such a manner as would not be contrary to the principles of the Sharia."

The Cairo Declaration of Human Rights in Islam, art. 22²⁵⁴

It is not only the construction of the legal system, but also the meaning and aim of particular legislations, what differs secular states from the non-secular ones. Blasphemy laws, present in the legal systems of Islamic states, can be usually interpreted in many different ways. For this reason, they are used not only

http://www.boston.com/news/world/europe/articles/2008/03/06/britains_house_of_lords_abolishes_blasphem_y_laws/, last accessed on June 15, 2008.

²⁵² For the information on implementation of the act see: official web site of British Ministry of Justice <http://www.justice.gov.uk/publications/criminal-justice-act-implementation.htm>, last accessed on June 15, 2008.

²⁵³ R.N. Geller, *Goodbye to blasphemy in Britain* [in:] Institute for Humanist Studies web site <http://humaniststudies.org/enews/?id=348&article=0>, last accessed on June 15, 2008.

²⁵⁴ *Cairo Declaration on Human Rights in Islam* adopted during the Nineteenth Islamic Conference of Foreign Ministers (Session of Peace, Interdependence and Development), Cairo, Egypt, 31 July - 5 August 1990 [in:] official website of the Organization of the Islamic Conference <http://www.oicun.org/articles/54/1/Cairo-Declaration-on-Human-Rights-in-Islam/1.html>, last accessed on June 19, 2008.

in creation of public morality, but also in domestic politics, especially in case of dealing with “unwanted” religious and ethnic minorities.

The case of Pakistan deserves to be discussed in a more detailed way as the blasphemy trials taking place in the country are among the most scandalous and most disputable ones. Moreover, the capital punishment for blasphemy is theoretically not executed, however at least 22 individuals have been lynched to death after being accused of that crime. The present chapter is to present the most recent cases, including blasphemy accusations not only against Muslims, but also Christian citizens of the state.

Most of the people in Pakistan adhere to the Hanafi school of jurisprudence of Sunni Islam. It is the oldest, however considered as the most liberal among schools of Islamic legal thought, emphasizing human factor in the religion.²⁵⁵ Hanafi scholars refuse to control religious or spiritual destiny, not giving this right to any human institution as well. Moreover, blasphemy is not listed among the crimes considered as *Hudud*²⁵⁶ by the Hanafi, as according to their philosophy this type of crime cannot be punished by the state. The state should not be involved in deciding upon God-human relations, but rather be concerned with the violation of human rights within the jurisdiction of the inter-human affairs.²⁵⁷ In practice, the current direction of domestic politics does not seem to reveal the liberal approach, but rather the opposite one. Blasphemy laws are not only a theoretical part of domestic legislation, unlike most of the European regulations the same kind, but also in constant use in prosecutions against citizens.

On April 17, 2008 Pakistani government decided to endorse the International Covenant on Civil and Political Rights²⁵⁸, despite its obligations, which may conflict with the article 295C of the Pakistani penal code, dealing with

²⁵⁵ F. Shaikh, *Pakistan* [in:] *Religion in Politics: a World Guide*, p. 204.

²⁵⁶ In Sharia law *Hudud* refers to the class of punishments for certain crimes that are considered to be "claims of God."

²⁵⁷ Based on the information of Global Security web site: <http://www.globalsecurity.org/military/intro/islam-hanafi.htm>, last accessed on June 19, 2008.

²⁵⁸ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

blasphemy against the prophet Mohammed²⁵⁹. Those harsh laws were introduced by the Islamist military dictator General Zia ul-Haq, who ruled the country from July 1977 until August 1988.²⁶⁰ Over the last 22 years²⁶¹ some 892 people have been punished under the article 259C, including not only Christians, but also Muslims, among which over 20 have been killed arbitrarily. The state of Pakistan has never executed anyone for blasphemy, however once a person faces a blasphemy charge, their life is over in terms of what they experience if they are released from prison or freed from charges. Pakistani blasphemy laws failed to adequately define the religious offence, leaving it to further interpretation. Therefore one person could be prosecuted upon the testimony of another person, what also had been used by Islamists to intimidate Christians and other religious minorities in the country.²⁶² As the following cases show, Pakistan blasphemy laws have not only been used by the authorities to deal with particular groups within the country, but also by individuals to “solve” their private problems.

People accused of blasphemy in Pakistan often become the victims of lynch-mobs. On April 8, 2008 a 23-year-old Hindu Jagdesh Kumar was beaten to death by his co-workers after being accused of blaspheming against prophet Muhammad. A contingent of police witnessed the whole incident not reacting to it anyhow. The three arrested workers were in the end charged not with murder but with failure to inform the police that blasphemy was underway. According to the Human Rights Commission of Pakistan report, the real reason behind the death was an argument that Kumar had with his two colleagues, who spread the word

²⁵⁹ Article 295C, amended by the Criminal Law Amendment Act 111 of 1986 states that “Whoever by words, either spoken or written, or by visible representation or by any imputation, innuendo or insinuation, directly or indirectly, defiles the sacred name of the holy Prophet Muhammad (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine.” After the amendment of 1990 the punishment for blasphemy is “death and nothing else.” See further: Pakistan Penal Code XLV of 1860, October 6, 1860 available at the official website of Punjab Police Department www.punjabpolice.gov.pk.

²⁶⁰ *Islam: blasphemy and the law* [in:] Europe News service available at <http://europenews.dk/en/node/10667>, last accessed on June 19, 2008.

²⁶¹ Since the amendment of 1986.

²⁶² G. Conger, *Pakistan blasphemy law appeal* [in:] Religious Intelligence news service available at <http://www.religiousintelligence.co.uk/news/?NewsID=2096>, last accessed on June 19, 2008.

throughout the factory about him making blasphemous remarks. A mob of emotional workers then beat him to death.²⁶³

In Pakistan, with a population of 160 million, Hindus make up less than two percent of it.²⁶⁴ It is reported both by the media and the Human Rights Commission of Pakistan that violence and brutality against non-Muslims increased after the blasphemy law was imposed.²⁶⁵ The connection between law and social behavior is a well-established fact, proving that intolerant and violence-inducing laws produce malevolent behavior among the members of society.

In Pakistan Catholics are around 2.2 percent of the country's population.²⁶⁶ Pakistani Christian, Dr. Robin Sardar have been accused of blasphemy by a street vendor after they argued. The next day, after the vendor reported blasphemy against prophet Mohammed, a mob of Muslims arrived at Sardar's home, calling for his death.²⁶⁷ A mob of more than 200 Muslims, wielding guns, sticks and kerosene oil, attacked the doctor's home and medical offices. The men, wearing green turbans to represent their Islamic faith, broke into Sadar's home, shattered windows and ruined the family's furniture in their residence and clinic. The Islamic extremists were officially calling for the Christian doctor to be publicly executed. Also Muslim clerics have been sending messages out over the mosque amplifier, urging the community to slay Sardar's family.²⁶⁸

²⁶³ *Pak rights panel says dispute, not blasphemy reason behind Hindu killing* [in:] Thaindian News available at http://www.thaindian.com/newsportal/india-news/pak-rights-panel-says-dispute-not-blasphemy-reason-behind-hindu-killing_10038880.html, last accessed on June 19, 2008.

²⁶⁴ *Pakistani Hindu worker's murderers go unpunished* [in:] Thaindian News http://www.thaindian.com/newsportal/uncategorized/pakistani-hindu-workers-murderers-go-unpunished_10042716.html, last accessed on June 19, 2008.

²⁶⁵ *Blasphemy and persecution* [in:] <http://www.thenews.com.pk/print1.asp?id=108906>, last accessed on June 19, 2008.

²⁶⁶ *Killed for blasphemy, now his family is at risk* [in:] Asia News available at <http://www.asianews.it/index.php?l=en&art=12121&geo=2&size=A>, last accessed on June 19, 2008.

²⁶⁷ A. Morgan, *Islam: blasphemy and the law* [in:] Energy Publisher available at: <http://www.energypublisher.com/article.asp?id=15370>, last accessed on June 19, 2008.

²⁶⁸ *Doc accused of ripping Muhammad's beard faces death* [in:] World Net Daily available at: <http://worldnetdaily.com/index.php?fa=PAGE.view&pageId=65028>, last accessed on June 19, 2008.

Another Pakistani was sentenced to death for blasphemy on June 18, 2008, after he used derogatory language in reference to the prophet Mohammad. The convicted man, Mohammad Shafeeq, a Muslim in his early 20s, was arrested in 2006.²⁶⁹ The court also gave him a life sentence for desecrating the Quran, as he was accused of throwing pages of Quran in a dirty place.²⁷⁰

Pakistan blasphemy laws deliberately discriminate Ahmadis.²⁷¹ Under Pakistan blasphemy legislation, no Ahmadi can declare himself to be a Muslim. Anyone who does, or who tries to propagate his or her beliefs, can receive a three year jail term. Article 298C of the Pakistan Penal Code states: "Any person of the Qadiani group or the Lahori group, who directly or indirectly, poses himself as a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words, either spoken or written, or by visible representation or in any manner whatsoever outrages the religious feelings of Muslims, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine."²⁷²

There are a few reasons why minorities living in Pakistan are considered as "enemies within". In case of Hindus the problem appeared long before the partition of subcontinent in 1947, and is still influenced by the situation in Kashmir. As believers in another religion, Pakistani Hindus are usually pointed as "the others," what, in terms of domestic politics, leads to hate speech and false blasphemy accusations. In case of Pakistani Christians, their religion is a remaining of European domination in the continent, and for this reason the prejudice has been present in the state's tradition for ages. In the recent cases however, the blasphemy accusations appear to be rather personal, than political.

²⁶⁹ *Pakistani Muslim sentenced to death for blasphemy* [in:] <http://www.reuters.com/article/worldNews/idUSISL7511320080618>, last accessed on June 19, 2008.

²⁷⁰ *Pakistani sentenced to death for blasphemy* [in:] Daily News and Analysis India web site <http://www.dnaindia.com/report.asp?newsid=1171982>, last accessed on June 19, 2008.

²⁷¹ Also called Ahmadiyya or Qadiani - Muslims, but regarded by many as heretics due to their belief that the man who founded their sect in 1889 - Mirza Ghulam Ahmad - was a prophet. For most Muslims (Shia and Sunni), Mohammed was the last prophet.

²⁷² A. Morgan, *Islam: blasphemy and the law* [in:] Energy Publisher available at: <http://www.energypublisher.com/article.asp?id=15370>, last accessed on June 19, 2008.

Therefore the societal question of minorities' coexistence gained a new dimension, turning the laws into tools of abuse and hate.

Conclusion

Despite the liberal voices opting for preservation of free speech, the fact is that even the most liberal democracies limit this freedom up to some point. It is not required by the autocratic authorities, but rather by the idea of peaceful co-existence within one society. Nevertheless, one cannot expect such a liberal and open-minded attitude from each and every member of this society. As people are different and unique, also their points of view, priorities and principles vary, what is typical in a multi-cultural surrounding especially. This may lead to an opinion that a social structure of this kind results with tolerant environment. Current international evens prove however something opposite.

Religion is one of the factors which cause the most tensions within one group. As not being correlated with any logic, based on undisputable principles, it gives to an individual two options only: to be accepted the way it is, or not be accepted at all. Any kinds of adjustments are unacceptable. For those reasons, public debates questioning religious values are unwelcome, no matter whether they take place in a secular or non-secular society. Obviously, the environment where the importance of religion is immense, is automatically less tolerant in terms of criticism of its beliefs.

The idea of secular society itself is not a threat to any religion, as equal rights are guaranteed for all the recognized cults. The question is however, whether this kind of liberal approach gives a right to offend them as well. Just like in case of preserving a good name of individual, the answer seems to be "no." On the other hand, there is no objective explanation in which point the constructive criticism turns to be an offence. As law does not prohibit general debate on religion, the limits of religious offence are upon personal perception.

The fact is that some groups of believers are more sensitive than the other. This rule applies especially in case of conservative Muslims, who every aspect of their lives base on Quran, being also a source of Sharia law. In most cases, however, there is a great disproportion between the so-called religious offence and

a reaction against it, often turning into atrocity. Such a reaction in a multi-cultural society may lead to prejudice and discrimination.

Current events, presented in the thesis, prove that the possibility of religious offence results with some kind of cultural terrorism. The message of the offence is not important anymore, as every type of it results with death threats recently. And on one hand, as the response does not remain within the limits of civilized behavior, the defended value – instead of getting the respect back – becomes a target for jokes and new offences instead. On the other, the threats may limit religious offences, but prejudice the society against the defending group.

In the last couple of years religious values have been used as political tools, and, what is more, abused in terms of grounds for their use. As mentioned before, due to the fact that religion is beyond any logic, remaining within private sphere of one's life, religious arguments given as an explanation of political actions, are beyond discussion. Therefore religion, as not requiring any further explanation, becomes the most effective political tool leading to results, which could never be accepted in a constructive dialogue. And as the dialogue is unacceptable as well, religion becomes a relevant mean in the process of limitation of free speech.

There is a noticeable difference in how religion is used as a political tool by secular and non-secular states. Muslims, who are the example of the present thesis, consider the West as the greatest threat to their religion. Therefore it is always the West, not Christianity that is pitted against Islam.²⁷³ Despite the offences of Islam, religion as sacrosanct value, is not a subject of any Islamic offense.

Attacking the idea of blasphemy laws, and limitation of free speech as their result, one of British feminist activists wrote: "We cannot afford anymore to pretend that it is God whom we wish to protect. A God who needs this sort of protection [e.g. through blasphemy laws] is not worth believing in."

²⁷³ Said E.W., *Covering Islam: How the Media and the Experts determine How We See the Rest of the World*, Routledge&Kegan 1981, p. 10.

Bibliography

Literature:

- Ahsan M.M., Kidwai A.R., *Sacrilege Versus Civility. Muslim Perspectives on The Satanic Verses Affair*, The Islamic Foundation 1991,
- Asad T., *Formations of the Secular. Christianity, Islam, Modernity*, Stanford University Press 2003,
- Barr J., *Fundamentalism*, SCM Press Ltd. 1977,
- Blackstone W., *Commentaries on the Laws of England, 1765-1769*, vol. 4, University of Chicago Press 1979,
- Bollinger L., *The Tolerant Society*, Oxford Clarendon Press 1986,
- Carmilly-Weinberger M., *Fear of Art. Censorship and Freedom of Expression in Art*, R.R.Bowker 1986,
- Carter J., *Are You Being Kept in the Dark: The Satanic Verses – Rushdie’s Dilemma*, Jamaica NY, Islamic Circle of North America 1989,
- Choueiri Y.M., *Islamic Fundamentalism*, Pinter Publishers 1990,
- Clor H.M., *Obscenity and Morality. Censorship in a Liberal Society*, The University of Chicago Press 1969,
- Cobb M.L., *Racial Blasphemies. Religious Irreverence and Race in American Literature*, Routledge 2005,
- Cohen A., Susser B., *Israel and the Politics of Jewish Identity. The Secular-Religious Impasse*, The John Hopkins University Press 2000,
- Cohn-Sherbok D. (ed.), *The Salman Rushdie Controversy in Interreligious Perspective*, The Edwin Meller Press 1990,
- Cox N., *Blasphemy and the Law in Ireland*, The Edwin Meller Press 2000,
- Dhavan R., Davies C. (ed.), *Censorship and Obscenity*, Martin Robertson 1978,
- Disney J., *A View of the Ancient Laws Against Immortality and Profaneness*, Cambridge 1729,
- Durkheim E., *The Elementary Forms of the Religious Life*, Free Press 1947,
- Falk G., *Man’s Ascent to Reason – The Secularization of Western Culture*, The Edwin Mellen Press 2002,

- Feinberg J., *The Moral Limits of the Criminal Law. Offence to Others*, Oxford University Press 1985,
- Hartley J., *Understanding News*, London 1982,
- Heins M., *Sex, Sin and Blasphemy. A Guide to America's Censorship Wars*, New York 1993,
- Hirschman A.O., *The Rhetoric of Reaction*, Belknap Press 1991,
- Huntington S., *The Clash of Civilizations and the Remaking of the Modern World*, New York: Simon & Schuster 1996,
- Judt T., *Postwar. A History of Europe Since 1945*, Penguin Books, New York 2005,
- Kepel G., *Allah in the West. Islamic Movements in America and Europe*, Stanford University Press 1997,
- Khan M.A., *Human Rights in the Muslim World. Fundamentalism, Constitutionalism and International Politics*, Carolina Academic Press 2003,
- Kosmin B.A., Keysar A. (ed.), *Secularism & Secularity: Contemporary International Perspectives*, Hartford, CT: Institute for the Study of Secularism in Society and Culture (ISSSC), 2007,
- Kuortti J., *Place of the Sacred. The Rhetoric of The Satanic Verses Affair*, Peter Lang 1997,
- La'Porte V., *An Attempt to Understand the Muslim Reaction to The Satanic Verses*, The Edwin Mellen Press 1999,
- Lee S., *A World Abandoned by God. Narrative and Secularism*, Lewisburg Bucknell University Press 2006,
- Lenkova M. (ed.), *'Hate Speech' in the Balkans*, The International Helsinki Federation for Human Rights 1998,
- Levy L.W., *Blasphemy: Verbal Offence Against the Sacred from Moses to Salman Rushdie*, New York: Knopf 1993,
- Maher G. (ed.), *Freedom of Speech: Basis and Limits*, Association for Legal and Social Philosophy, 12th Annual Conference, University of Glasgow 29-31 March 1985, Stuttgart 1986,
- McGoldrick D., *Human Rights and Religion – the Islamic Headscarf Debate in Europe*, Hart Publishing 2006,
- Meiklejohn A., *Free Speech and Its Relation to Self-Government*, Harper New York 1948

- Mews S., *Religion in Politics: a World Guide*, Longman 1989,
- Mill J.S., *On Liberty and Other Essays*, Penguin 1985,
- Mozaffari M., *Fatwa. Violence and Discourtesy*, Aarhus University Press 1998,
- Nash D., *Blasphemy in Modern Britain – 1789 to the Present*, Ashgate 1999,
- Nash D., *Secularism, Art and Freedom*, Leicester University Press 1992,
- Paden W.E., *Interpreting the Sacred: Ways of Viewing Religion*, Beacon Press 1992,
- Pipes D., *The Rushdie Affair. The Novel, the Ayatollah and the West*, Transaction Publishers 2006,
- Rabasa A.M., Benard C., Chalk P., Fair C.C., Karasik T., Lal R., Lesser I., Thaler D., *The Muslim World After 9/11*, RAND 2004,
- Robertson G., Nicol A., *Media law*, Viking Penguin 1993,
- Ruthven M., *A Satanic Verses Affair. Salman Rushdie and the Rage of Islam*, Chatto and Windus 1990,
- Said E.W., *Covering Islam: How the Media and the Experts determine How We See the Rest of the World*, Routledge&Kegan 1981,
- Salwa I., *Rethinking Islamist Politics. Culture, the State and Islamism*, London 2003,
- Sandeen E.R., *The Roots of Fundamentalism*, Chicago University Press 1970,
- Sardar Z., Davies M., *Distorted Imagination: Lessons From the Rushdie*, Grey Seal Books 1990,
- Simpson R., *Blasphemy and the Law in a Plural Society*, Bromcote Grove Books 1993,
- Stein G. (ed.), *The Encyclopedia of Unbelief*, Prometheus Books 1985,
- Swatos W.H. (ed.), *Religious Politics in Global and Comparative Perspective*, New York: Greenwood Press 1989,
- Swatos W.H. (ed.), *Religious Sociology*, Greenwood Press 1987,
- Ter Haar G., Busutti J.J. (ed.), *The Freedom To Do God's Will. Religious Fundamentalism and Social Change*, Routledge 2003,
- Timofeeva Y., *Censorship in Cyberspace. New Regulatory Strategies in the Digital Age on the Example of Freedom of Expression*, Nomos, Baden-Baden 2006,
- Treverton G.F., Gregg H.S., Gibran D., Yost C.W., *Exploring Religious Conflict*, RAND 2005,

- Watt W.M., *Islamic Fundamentalism and Modernity*, Routledge 1988,
- Weatherby W.J., *Salman Rushdie: Sentenced to Death*, Carol and Graf 1990,
- Webster R., *A Brief History of Blasphemy. Liberalism, Censorship and The Satanic Verses*, The Orwell Press 1990,
- Ziolkowski T., *Modes of Faith. Secular Surrogates for Lost Religious Belief*, The University of Chicago Press 2007,

Articles and press releases:

- Ashford N., *Freedom of the Press Also Means Responsibility* [in:] The Independent February 18, 1989,
- Burgess A., *Islam's Gangster Tactics* [in:] The Independent, February 16, 1989,
- Chafee Z., Book review, 62 Harvard Law Review, 899-900, (1949),
- Chryssides G., *Discernment: Focus on the Salman Rushdie Affair* [in:] London 4/2, 1990,
- Edge P.W., *The Construction of Sacred Places in English Law* [in:] the Journal of Environmental Law vol. 14 no. 2,
- Fish M.S., *Islam and Authoritarianism* [in:] *World Politics*, 55 (October 2002),
- *Habermas speaks on co-existence of religious and secular mentalities* [in:] Turkish Daily News, June 10, 2008,
- *International Institute for the Study of Islam in the Modern World (ISIM) Review*, 15/2005,
- Kenny C.S., *The Evolution of the Law of Blasphemy*, 1923 Cambridge Law Journal, 127,
- Merkel W., *Religion, Islam, and Democracy*, ECPR Joint sessions, Granada, Spain, April 14-19, 2005, workshop 11: Post Cold War Democratization in the Muslim World: Domestic, Regional and Global Trends,
- *Muslims in the EU. Cities Report – the Netherlands. Preliminary research report and literature survey 2007*, Open Society Institute – EU Monitoring and Advocacy Program,
- Shahabuddin S., *You Did This with Satanic Forethought, Mr Rushdie* [in:] The Times of India, October 13, 1988,
- Soage A.B., *The Danish Caricatures Seen from the Arab World* [in:] *Totalitarian Movements and Political Religions*, 7:3/2006,

- Tremblay P.K., *Conceptualizing Turkey right: Post-Islamism vs. neo-secularism* [in:] Turkish Daily News, May 26,2008,
- Vaz K., *Lecturing is the Ultimate Cheek* [in:] The Independent, July 29,1989,
- Whyte A., *The Flying Face of Tradition* [in:] The Guardian, July 25, 1989,

Legal acts:

- *Cairo Declaration on Human Rights in Islam* adopted during the Nineteenth Islamic Conference of Foreign Ministers (Session of Peace, Interdependence and Development), Cairo, Egypt, 31 July - 5 August 1990,
- *Convention for the Protection of Human Rights and Fundamental Freedoms*, 3.09.1953, CETS 005,
- *International Covenant on Civil and Political Rights*, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976,
- *Pakistan penal code*, XLV of 1860, October 6, 1860,

Cases:

- Cohen v. California, 403 U.S. 15, 25 (1971),
- Gündüz v. Turkey, Application no. 35071/97, judgment of December 4, 2003
- Ukrainian Media Group v. Ukraine, application no. 72713/01, judgment of March 29, 2005,
- Otto Preminger Institute v. Austria, (1995) 19 EHRR 35,
- R. v. Hetherington (1841) 4 St. Tr. (n.s.) 563,
- Taylor's case (1676), 1 Vent 293, 3 Keble 607 (1676),
- Whitehouse -v- Lemon; Whitehouse -v- Gay News Ltd On Appeal From Regina -v- Lemon, [1979] 2 WLR 281,
- Wilson, National Union of Journalists and Others v. the United Kingdom, applications nos. 30668/96, 30671/96 and 30678/96, judgment of July 2, 2002,
- Wingrove v. UK, (1997) 24 EHRR 1,

Internet sources:

- <http://www.tbmm.gov.tr> - the official web site of the Grand National Assembly of Turkey,
- <https://www.cia.gov/library/publications/the-world-factbook> - CIA World Factbook, online version,
- www.arabnews.com - the Middle East's English daily,
- www.bbc.co.uk - BBC news service,
- www.boston.com - The Boston Globe official web site,
- www.caslon.com.au - official web site of the Caslon Analytics,
- www.chinaview.cn - the China View news service,
- www.cphpost.dk - the Copenhagen Post official web site,
- www.dutchnews.nl - the Dutch News online,
- www.dw-world.de - Die Deutsche Welle online,
- www.foxnews.com - Fox News television official web site,
- www.freedomhouse.org - official web site of the Freedom House organization,
- www.guardian.co.uk - official web site of the Guardian daily,
- www.gulfnews.com - the official web site of the Gulf News daily,
- www.haretz.com - Israel daily,
- www.ifex.org - International Freedom of Expression Exchange platform,
- www.irna.com - Islamic Republic News Agency,
- www.justice.gov.uk - official web site of the British Ministry of Justice,
- www.news-service.stanford.edu - news service of Stanford University,
- www.oicun.org - Organization of the Islamic Conference official web site,
- www.opinionjournal.com - The Wall Street Journal editorials available online,
- www.pemra.gov.pk - official web site of the Pakistan Electronic Media Regulatory Authority,
- www.presstv.ir - Iranian international news service in English,
- www.punjabpolice.gov.pk - official web site of the Punjab police department,

- www.radionetherlands.nl - the official web site of Radio Netherlands Worldwide,
- www.rsf.org - official web site of Reporters Without Borders Organization,
- www.slate.com - Slate daily,
- www.tehrantimes.com - Iranian international daily web site,
- www.telegraph.co.uk - official web site of The Daily Telegraph,
- www.thaindian.com - Thaindian News service,
- www.thenews.com.pk - Pakistani international news service,
- www.todayszaman.com - official web site of the Today's Zaman daily,
- www.tvn24.pl - Polish news service TVN24,
- www.un.org - official web site of the United Nations organization,
- www.upi.com - the United Press International web site,
- www.washingtonpost.com - official web site of the Washington Post daily,
- www.yementimes.com - official web site of the Yemen Times