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**CHARLIE HEBDO CARTOONS CASE IN EUROPE: DANGEROUS JOURNEYS AT
THE EDGES OF FREEDOM OF EXPRESSION**

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ABSTRACT

In 2005 the publication of a series of cartoons of the Prophet Muhammed by the Danish Newspaper Jyllands-Posten unleashes an impassioned debate concerning the propriety of exercising the freedom of expression in a fashion that seriously offends the religious sensibilities of others.¹ The publication of the cartoons continues in “copy-cat fashion”² in most of the countries of Europe. These series of publications of the cartoons causes protest by Muslim communities around the world and sometimes incidents. The last and most tragic is the one in Charlie Hebdo in 2015.

I strongly believe that every human being who enjoys proper mental health would condemn the execution of 12 innocent people during the shootings in Charlie Hebdo offices. So, beyond the incident, this paper analyzes the theoretical framework of freedom of expression in general, publications of the cartoons as a means of exercising freedom of expression in particular and the clash of freedom of expression with freedom of religion based on the European legal framework. European Court of Human Rights declares that religious sensibilities fall in the scope of Article 9 of ECHR and also are considered worth to be protected under Article 10(2) to protect the rights of others.

*And Jesus said unto them, Render unto Caesar the things that are Caesar's, and unto God the things that are God's.*³

Keywords: freedom of expression, freedom of religion, media, state's role, public interest, responsibility

¹ Evans, M., (2010), From Cartoons to Crucifixes: Current Controversies Concerning the Freedom of Religion and the Freedom of Expression before the European Court of Human Rights, *Journal of Law and Religion*, 26(1), 345-370, 345

² *Ibid.*, 346

³ Bible, Mark 12:17

LIST OF ABBREVIATIONS

ECHR European Convention on Human Rights

ECtHR European Court of Human Rights

ICCPR International Covenant on Civil and Political Rights

ICESCR International Covenant on Economic, Social and Cultural Rights

UDHR Universal Declaration of Human Rights

INTRODUCTION

Freedom of expression is a very important indicator of the level of democracy in the society. The publication of the cartoons of Prophet Muhammed by the satirical weekly newspaper “Charlie Hebdo” just before the terrorist attack in Paris, 7 January 2015 in the name of freedom of expression initiated a big discussion regarding the proper way of manifestation of freedom of expression. Many said that this event, namely the publication of cartoons, was the pure exercise of freedom of expression. Even a Paris Court was of the same opinion. European Convention on Human Rights (ECHR) in Article 10 gives a wide description of what freedom of expression entails and also that this freedom comes together with duties and responsibilities. For this reason, it may be subject to different formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security and to protect the right of others.⁴ When this guaranteed right in a democratic state, such as freedom of expression collides with other rights such as freedom of religion in this case, causing social tension necessitates a legal analysis of the rights involved, the way they are exercised and guarded by the proper instruments nationally and internationally. This research aims to introduce a new perspective for the topic taking into account notably the European Convention of Human Rights and the practice of European Court of Human Rights (ECtHR).

The hypothesis regarding the topic is: In a democratic society, freedom of expression should be restricted when it becomes a source of incitement to religious hatred and also when religious feelings of the believers which fall in the scope of Article 9 ECHR are hurt from the exceeding of the limits of freedom of expression and violating the rights of others (Article 10 (2)). Precedents of ECtHR in similar cases would be the best guide to address this research by not neglecting the major role that the states have in the orchestration of the situation by enabling balancing of rights.

⁴ Article 10(2) ECHR

Type of research that will be used in the thesis requires the usage of qualitative data. Elaboration of the problem will be done on conceptual levels as well as based on the ECtHR precedent regarding the topic. The research methodology followed will be fundamental and analytical. The sources chosen for the research are mostly previous academic research done in the same topic and also European Convention of Human Rights and cases from ECtHR.

The aim to be achieved with the research is a detailed analysis of the concept of freedom of expression in principle and *inter alia* in the context of the occurred events by identifying and examining the problems that arise when this right arrives at its limits.

This thesis is organized in three main chapters.

The first chapter presents a summary of the most important facts of the case including all the events, the object and the subjects of the initiated debate regarding the freedom of expression. In respect of the innocent victims, there is a description of the tragic events in Charlie Hebdo offices after the publishing of Prophet Muhammed Cartoons which marked the next terrorist attack that knows no faith no humanity. Returning to the main theme of the thesis, analyzing the exercise of freedom of expression, it was considered imperative to present the place Charlie Hebdo weekly satirical occupies in the French press by presenting its profile, the type of journalism it covers and its history as a newspaper with the struggles it has faced. Moreover, in this chapter it is given a timeline of publication of cartoons of Prophet Muhammed across Europe and especially in France together with different feedback from representatives of politics and leaders, religion communities and organizations. Lastly it is provided a description together with the messages disseminated in the name of freedom of expression.

The second chapter presents a brief history of freedom of expression by focusing on the most important international conventions that provide a protection over this right. A special focus is given the analysis of Article 10 of ECHR where the categories of expressions included are listed

and also positive and negative obligations that derived from this article are mentioned. In addition, in this chapter are treated the conditions of the state's obligation in addressing problems that arise as result of the conflict of the freedom of expression with other rights *inter alia* freedom of religion. An importance is given also to the special role of media and press that have in their essence the existence of freedom of expression.

The third chapter deals with a detailed analysis of the case in the light of principles of democracy by taking into consideration the criteria and limits of exercising freedom of expression, public interest and freedom of expression in relation to freedom of religion. It brings up several cases where freedom of expression is in conflict with freedom of religion and the way ECtHR balances the rights. Furthermore, it analyzed the decision of a Paris court in favor of editor in chief of Charlie Hebdo stating that there was no deliberate intention to offend Muslims even if the cartoon was shocking or hurtful to them. This chapter contains also an analysis of derivation of abuse of freedom of expression such as hate speech and balancing of freedoms referred to public interest and human dignity.

And the last part of my thesis provides conclusions and recommendations.

1. ROOTS OF A TRAGEDY

1.1. Charlie Hebdo Attack

About 11:30 a.m. Wednesday, according to the French newspaper *Le Monde*, gunmen dressed in black and wearing bulletproof vests forced their way into a building two doors down from Charlie Hebdo, asking where to find the magazine.⁵ They managed to find the right building, where they slaughtered the security officer there and forced a Charlie Hebdo sketch artist to enter the security codes and lead them to the offices of the newspaper.

The gunmen barged in during a lunchtime editorial meeting, separating men and women and calling out the names of employees they intended to kill, said Dr. Gerald Kierzek, a physician who treated wounded patients and spoke with survivors.⁶ As the aggressors were saying loudly, the reason behind the attack was the revenge for the Prophet Muhammed.

Top of their hit list was the magazine's production director, Stéphane Charbonnier, known as Charb, who had a price put on his head by al-Qaeda in 2013.⁷ Among the dead were cartoonists Jean Cabut, who was known by the pen-name Cabu and drew the Mohammed cartoon in 2006, Bernard "Tignous" Verlhac and Georges Wolinski.⁸ Others dead from the attack were Bernard Maris, 68, a former French central bank official and columnist, Michel Renaud, a guest of Mr Cabut who was visiting the editorial conference, cartoonist Philippe Honoré and subeditor Moustapha Ourad, Frédéric Boisseau, 42, a caretaker and father of two, and Elsa Cayat, a

⁵ Levs, J., Payne, E., Pearson, M.,(2015, January 10), A Timeline of Charlie Hebdo terror attack, *CNN Regions* <http://edition.cnn.com/2015/01/08/europe/charlie-hebdo-attack-timeline/>

⁶ *Ibid.*

⁷ Rayner, G., Samuel, H., Evans, M.,(2015, January 7), Charlie Hebdo attack: France's worst terrorist attack in a generation leaves 12 dead, *The Telegraph* <http://www.telegraph.co.uk/news/worldnews/europe/france/11331902/Charlie-Hebdo-attack-Frances-worst-terrorist-attack-in-a-generation-leaves-12-dead.html>

⁸ *Ibid.*

psychoanalyst and columnist.⁹ The French policeman Ahmed Merabet who was a Muslim believer also got killed during the attack trying to protect Charlie Hebdo staff. In total, 12 people lost their lives during the attack of Wednesday morning.

The terrorists managed to evade police despite apparently crashing their black Citroen C3 into a bollard, forcing them to abandon the car, before holding up an elderly motorist at gunpoint and stealing his grey Renault Clio.¹⁰ Heavily armed police fanned out across the country overnight searching for the two other suspects in the attack, who would be later identified as Cherif Kouachi 32 and Said Kouachi 34, brothers known to French and international intelligence.¹¹ Brothers Said and Cherif Kouachi, who carried out the attack in the name of Al-Qaeda's branch in Yemen, were themselves killed in a shootout with police after a siege northeast of Paris.¹²

That night, thousands of Parisians came out in the streets to honor the victims. Social media, and people around the world reacted with the hashtag "Je suis Charlie," that means "I am Charlie" as a means of solidarity with the victims and the satirical weekly. The solidarity manifested in response to the attacks on the offices of Charlie Hebdo (Je suis Charlie) is explainable as being in support of some fundamental normative principle of Western civilization which was under attack because the shootings in Paris were, supposedly, a response to the publication by Charlie Hebdo of various cartoons of the Prophet Muhammad.¹³ Another perception is that the phrase symbolized a desire to defend freedom of expression, although not necessarily an agreement with the ways in which Charlie Hebdo has expressed itself.¹⁴ At the same time, in the social media another reaction

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Levs, J., Payne, E., Pearson, M., (2015) *supra nota* 5

¹² Charlie Hebdo marks attack anniversary with black humour, (2017, January 3), *THE LOCAL FR*, Retrieved from <http://www.thelocal.fr/20170103/charlie-hebdo-marks-massacre-anniversary-with-black-humour>

¹³ Cox, N., (2015, October), Pourquoi Suis-Je Charlie? Blasphemy, Defamation of Religion, and the Nature of 'Offensive' Cartoons, *Oxford Journal of Law & Religion*, 4(3), 343-367, 25

¹⁴ Ervine, J., (2020, January 6), Five years on from the Charlie Hebdo attack, 'Je suis Charlie' rings hollow, *The Conversation*, Retrieved from <https://theconversation.com/five-years-on-from-the-charlie-hebdo-attack-je-suis-charlie-rings-hollow-129151>

initiated from Dyab Abou Jahjah¹⁵ who is an Arab political activist and writer based in Belgium was: “I am not Charlie, I am Ahmed the dead cop. Charlie ridiculed my faith and culture and I died defending his right to do so. (Je suis Ahmed)”

On Friday night Al Qaeda in the Arabian Peninsula declared to be responsible for organizing the attack on Charlie Hebdo. This is called terrorism, and terrorism does not have religion. Yes, “pen is mightier than the sword”¹⁶ but sometimes unfortunately ignorance can be mightier than them both.

In this case we are dealing with an attack on the fundamental human right “the right to life”. As it is prescribed by ECHR “Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally.”¹⁷ The highest value for the state and society is human life, which is a core condition for the existence of all human rights, therefore the privation of the right to life directly causes privation of other rights too. For that reason, assassination as an action, can never be justified under no circumstances, no matter how much one can feel insulted. This attack was classified as a terrorist act. A general definition of terrorism is the use of unlawful violence most of the time toward civilians in order to pursue aims of hidden agendas. Unfortunately, terrorism is an existing reality of our times against which all the countries of the world have developed different means and have approved different rules countering and fighting it.

¹⁵ Dyab Abou Jahjah is an Arab political activist and writer who was active in Europe between 2001 and 2007. He is the founder and former leader of the Arab European League (AEL), a Pan-Arabist movement that supports the interests of Muslim immigrants in Europe.

¹⁶ Edward George Earle Lytton Bulwer-Lytton, English writer, politician, member of Parliament from 1831 to 1841 and a Conservative from 1851 to 1866

¹⁷ Article 2, ECHR

1.1. Genesis of the case

The table in the Appendix 1 presents a timeline of the publication of the Prophet Muhammed cartoons between September 2005, when these cartoons were firstly published, and January 2015, when the tragedy in Charlie Hebdo happened. All of the data in the table of Appendix 1 is taken from The Telegraph Newspaper¹⁸.

Jyllands-Posten, was the Danish newspaper to firstly published 12 cartoons under the caption “Muhammeds ansigt” – The face of Muhammed”, to satirize Prophet Mohammed in September 2005. Several newspapers in France, Germany, and many other countries of Europe republished the cartoons in order to protect freedom of press and freedom of speech. One question would be: was it threatened? Flemming Rose in his article in Washington Post says that the reason behind the publishing of the cartoons was a challenge to push back self-imposed limits on freedom of expression because he had noticed a kind of reluctance in dealing with the issues related to Islam. He considers it a topic that Europeans must confront, challenging moderate Muslims to speak out.¹⁹ His initiative was materialized shortly after a Danish standup comedian said in an interview with Jyllands-Posten that he had no problem urinating on the Bible in front of a camera, but he dared not do the same thing with the Kuran.²⁰ So, such a “great, vital” cause would induce the journalist Flemming Rose to portray as a symbol of violence and perversity neither more nor less, but one of mankind's greatest prophets, the spiritual meaning of more than 2 billion people, the Prophet Muhammad himself. Since when have journalistic causes gone to the level of a personal challenge to overcome an individual's fear of urinating on a sacred book in the name of freedom

¹⁸ Prophet Mohammed cartoons controversy: timeline, *The telegraph*, Retrieved from <http://www.telegraph.co.uk/news/worldnews/europe/france/11341599/Prophet-Muhammad-cartoons-controversy-timeline.html>

¹⁹ Rose, F., (2006, February 19), Why I Published Those Cartoons, *The Washington Post*, Retrieved from <https://www.washingtonpost.com/archive/opinions/2006/02/19/why-i-published-those-cartoons/f9a67368-4641-4fa7-b71f-843ea44814ef/>

²⁰ *Ibid.*

of expression? Since when such a concern has pretended to become a paradigm of freedom of expression?

The cartoons have resulted in boycotts, increasing hatred, and sometimes violent protests across the Islamic world, and eventually triggered the burning of Danish embassies and flags across the Middle East, Nigeria, Pakistan, Afghanistan in February.²¹

Meanwhile in the initiated public debate in Denmark, very offensive and aggressive attitudes were held toward Muslim minority. Prominent members of the parliament for the Danish People's Party, which as the third biggest political party provides the parliamentary basis for the present Liberal-Conservative government, had described Muslim immigrants as a plague for the Danish society.²²

Pia Kjærsgaard, who one of the founders and leaders of Danish People's Party, Danish Member of Parliament for more than 22 years made this statement:

“Nobody in 1900 would have been able to imagine “that by 2005 human beings at a lower level of civilization would populate big parts of Copenhagen and other major Danish cities with their foreign primitive, cruel habits – such as honor murders, arranged marriages, halal slaughtering and blood revenge. This is exactly what has happened. Ten thousand upon ten thousands of people have come to a country, which left the Middle Ages centuries ago, while their own apparent state of civilization, culturally and spiritually, is in 1005.”²³

As it is visible from the statement, in a full lack of understanding and moreover misunderstanding of the Muslim traditions, this is a very insulting statement that gains even more importance when it is stated from a person holding such an important position in the country.

²¹ Reynolds, P. (2006, February 09), Cartoons: Divisions and inconsistencies, *BBC News website World Affairs correspondent*, Retrieved from <http://news.bbc.co.uk/2/hi/asia-pacific/4708216.stm>

²² BONDE, B. N., (2007), How 12 Cartoons of the Prophet Mohammed were Brought to Trigger an International Conflict, *Nordicom Review* 28 (1), 33-48, 36

²³ *Ibid.*

More than 5000 people participated in a peaceful demonstration in front of the headquarters of “Jylland-Posten” in Copenhagen. Later, this was followed by a delegation consisting of representatives of Islamic organizations and institutions in Denmark, who traveled to Egypt, Syria, Turkey and Lebanon in order to sensitize the leaders of these countries about the publication of these cartoons.²⁴ The closing communiqué took note of the issue when it expressed:

"concern at rising hatred against Islam and Muslims and condemned the recent incident of desecration of the image of the Holy Prophet Muhammad in the media of certain countries" as well as over "using the freedom of expression as a pretext to defame religions."²⁵

Mr. Ahmed Akkari, 28, a Lebanese-born Dane, gathered 27 Danish Muslim organizations and tried for more than two months to communicate with the Danish government in order to take action regarding the cartoons.

"We collected 17,000 signatures and delivered them to the office of the prime minister, we saw the minister of culture, we talked to the editor of the Jyllands-Posten, we took many steps within Denmark, but could get no action," Mr. Akkari said, referring to the newspaper that published the cartoons. He added that the prime minister's office had not even responded to the petition.²⁶

Only on 30th of January 2006 the editor-in-chief of Jyllands-Posten admitted that the 12 cartoons, one of which depicted Muhammad wearing a bomb-shaped turban, had caused "serious misunderstandings".²⁷ Carsten Juste said: "The 12 cartoons ... were not intended to be offensive, nor were they at variance with Danish law, but they have indisputably offended many Muslims, for which we apologize."²⁸ After that, Mr Rasmussen, the Danish Prime Minister also said: "I

²⁴ Fatah, H.M., (2006, February 9), At Mecca Meeting, Cartoon Outrage Crystallized, *The New York Times*, Retrieved from <https://www.nytimes.com/2006/02/09/world/at-mecca-meeting-cartoon-outrage-crystalized.html>

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ Watt, N., (2006, January 31), Danish paper sorry for Muhammad cartoons, *The Guardian*, Retrieved from <https://www.theguardian.com/media/2006/jan/31/religion.saudi Arabia>

²⁸ *Ibid.*

personally have such a respect for people's religious belief that I personally never would have depicted Muhammad, Jesus or any other religious character in a way that could offend other people."²⁹ Foreign Secretary Jack Straw has praised UK media for not publishing the cartoons and he said the decision by some European newspapers to print the cartoons was "disrespectful" and he added that freedom of speech did not mean an "open season" on religious taboos.³⁰

Jyllands-Posten, the same Danish newspaper that first published the cartoons of the prophet Muhammad that have caused a storm of protest throughout the Islamic world, refused to run drawings lampooning Jesus Christ wrote "The guardian".³¹ The Danish daily turned down cartoons of Christ three years ago, on the grounds that they could be offensive to readers and were not funny.³² In this case the application of double standards is very clear.

Amnesty international declared on its report that:

"However, the right to freedom of expression is not absolute -- neither for the creators of material nor their critics. It carries responsibilities and it may, therefore, be subject to restrictions in the name of safeguarding the rights of others. In particular, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence cannot be considered legitimate exercise of freedom of expression. Under international standards, such "hate speech" should be prohibited by law."³³

Several religious communities also reacted over the cartoons. The Conference of European Rabbis held in Brussel on 5 February 2006 expressed its concern at recent publications by European press

²⁹ *Ibid.*

³⁰ Muslim leader condemns protesters, (2006, February 4), Retrieved from http://news.bbc.co.uk/2/hi/uk_news/4676524.stm

³¹ Fouché, G., (2006, February 6), Danish paper rejected Jesus cartoons, *The Guardian*, Retrieved from <https://www.theguardian.com/media/2006/feb/06/pressandpublishing.politics>

³² *Ibid.*

³³ Amnesty International, (2006, February 7), "Freedom of speech carries responsibilities for all", Retrieved from <https://www.amnesty.org/en/documents/POL30/007/2006/en/>

organs which humiliate and disparage the feelings of Muslims.³⁴ Rabbi Sitruk said “The publication of cartoons depicting the Muslim Prophet Mohammed by the Danish daily, Jyllands-Posten, and their subsequent publication by other European press organs, showed "a lack of intellectual honesty and a deep lack of respect for the feelings of others. We gain nothing by disparaging religions, by humiliating people and by making caricatures of religious symbols"³⁵

About 1,000 people protested in Paris against the publication of cartoons in European newspapers depicting the prophet Mohammed, saying the drawings were an attack on Islam.³⁶ French Prime Minister Dominique de Villepin intervened in the international uproar over irreverent cartoons of the prophet Mohammed with a call for respect for the sensitivities of other faiths: "We must pay attention to what hurts, what can shock, there isn't the same idea, everywhere in the world, of what is holy and you have to take that into account," - he said on French television.³⁷

Charlie Hebdo was one of the newspapers reprinting the cartoons in 2006, adding a cartoon of Prophet Muhammed saying “It’s hard to be loved by idiots”. In 2011, Charlie Hebdo published a special edition called “Charlie Hebdo” featuring the Prophet Muhammad as a “guest editor” where the cover depicted the prophet threatening readers with “100 lashes if you don’t die of laughter”.³⁸ After that, Charlie Hebdo’s Paris headquarters were attacked during the night without any injuries. Another cartoon of Prophet Muhammad was the one greeting suicide bombers with the words "stop, we have run out of virgins".³⁹

³⁴ The right to satirise is not the right to injure or humiliate, Brussels, (2006, February 5), Retrieved from <https://www.islamicboard.com/archive/index.php/t-15128.html>

³⁵ *Ibid.*

³⁶ AFP, (2006, February 2006), Protests in France against controversial cartoons, *NEWS* <https://mobile.abc.net.au/news/2006-02-06/protests-in-france-against-controversial-cartoons/792540?pfm=sm>

³⁷ *Ibid.*

³⁸ Campbell M., Mawad, M.,(2015, January 8), Charlie Hebdo | A history of pushing boundaries, *LiveMint* Retrieved from <https://www.livemint.com/Politics/vMRVMRPkXhnsVFZr6u1nfK/Charlie-Hebdo--A-history-of-pushing-boundaries.html>

³⁹ Fouché, G., (2007, February 7), Cartoon court case begins, *The Guardian*, Retrieved from <https://www.theguardian.com/media/2006/feb/06/pressandpublishing.politics>

In 2012, former prime minister Jean-Marc Ayrault called for restraint when Charlie Hebdo published more cartoons representing the Prophet Mohammad.⁴⁰ Charlie Hebdo's reprint of the cartoons in 2015, counting the added effort to increase the dosage of the message given by the cartoons, received as much criticism as the Danish newspaper. France's then President Jacques Chirac released a statement at the time saying, "Anything that can hurt the convictions of someone else, in particular religious convictions, should be avoided. Freedom of expression should be exercised in a spirit of responsibility."⁴¹

The White House also criticized the decision to publish the cartoons. "We don't question the right of something like this to be published, we just question the judgment behind the decision to publish it," Jay Carney⁴² told reporters at the time.⁴³

From the table in the Appendix 1 it is evident how the case in total has an extension of nearly ten years and also noticeable how the reaction of Charlie Hebdo becomes more intense in the end of 2011 and in the ongoing years.

⁴⁰ Campbell M., Mawad, M.,(2015), *supra nota* 38

⁴¹ Gibson, M.,(2015, January 7), The Provocative History of French Weekly Newspaper Charlie Hebdo, *TIME World*, Retrieved from <http://time.com/3657256/charlie-hebdo-paris-attack/>

⁴² James "Jay" Carney is the former White House press secretary to President Barack Obama. He served as press secretary from January 2011 through June 2014.

⁴³ Phillip A., Ohlheiser, A., (January 7, 2015), What is Charlie Hebdo, the provocative satirical newspaper attacked by gunmen in Paris? *The Washington Post*, Retrieved from https://www.washingtonpost.com/news/world/wp/2015/01/07/what-is-charlie-hebdo-the-provocative-satirical-magazine-attacked-by-gunmen-in-paris/?utm_term=.70266eed164

1.2. Charlie Hebdo and its place in French Journalism

Media is one of the most important channels of exercising freedom of expression. In this context, it would be useful to analyze which part of the French media does Charlie Hebdo represent as such, based also in the newspaper's history.

Charlie Hebdo weekly newspaper was firstly published with the name Hara-Kiri in the 1960s. At that time, as Gibson says two dramatic events occurred, such as a horrific fire at a disco where more than 100 people lost their life; the death of former President Gen Charles de Gaulle. Hara-Kiri led its edition with a headline mocking the general's death: "Bal tragique a Colombey - un mort", meaning "Tragic dance at Colombey [de Gaulle's home] - one dead."⁴⁴ Charlie Hebdo was introduced in 1970, because after this publication, Hara-Kiri, was banned for mocking the death of former French President Charles de Gaulle.⁴⁵ Its journalists decided to launch a new weekly - Charlie Hebdo. The Charlie was not an irreverent reference to Charles de Gaulle, but to the fact that originally it also re-printed the Charlie Brown cartoon from the United States (US).⁴⁶ Hebdo is short for "hebdomadaire" which means weekly in French.⁴⁷ Targets of its cartoon covers have included the singer Michael Jackson, who was sketched as a skeleton after he was found dead because of a drug overdose.

From the cartoons mentioned and the titles used we see how the satirical weekly gives itself the right to mock the dead. Based on the universal principles of ethics despite the legal systems of different countries, the dead are accorded dignity and respect. Mocking the dead besides being an act of vandalism, it is also not fair because it means mocking a person who literally cannot defend himself, so the mocker and the mocked is not in the same condition. Automatically this is

⁴⁴ Charlie Hebdo and its place in French journalism, (2015, January 8), BBC NEWS, Retrieved from <http://www.bbc.com/news/world-europe-15551998>

⁴⁵ Gibson

⁴⁶ Charlie Hebdo and its place in French journalism

⁴⁷ Gibson, *supra nota* 41

considered a violation and offense of its image, a violation of the feelings and memories of his relatives and his followers and admirers when he is a public person. Even in the war, under the humanitarian law it is accorded a treatment with dignity and respect to the dead.

“The BBC's Hugh Schofield in Paris says Charlie Hebdo is part of a venerable tradition in French journalism going back to the scandal sheets that denounced Marie-Antoinette in the run-up to the French Revolution.⁴⁸ The tradition combines left-wing radicalism with a provocative scurrility that often borders on the obscene, he says.”⁴⁹ According to BBC news, meanwhile in the 18th Century, the target of satire was the royal family, nowadays focus is directed to politicians, bankers, the police and religion. Satire is the weapon of Charlie Hebdo.

The weekly satirical stopped the publication for 10 years from 1981 for lack of funds. But with the second launch first-page cartoons and provocative headlines, brought it back to the public attention.⁵⁰ For the sake of the truth, though the publication has never found wide circulation, it quickly made a name for itself thanks to its incendiary cartoons, which took shots at high-profile figures, including the far right, politicians and celebrities, and religions of all kinds.⁵¹ From another point of view this behavior of the satirical weekly can be considered a means to attract the attention of the audience.

Charlie Hebdo weekly newspaper's greatest rival and opponent is Le Canard Enchaîné. Both are animated by the same urge to challenge the powers-that-be, but if Le Canard is all about scoops and unreported secrets, Charlie is both cruder and crueller - deploying a mix of cartoons and an often vicious polemical wit.⁵²

⁴⁸ Charlie Hebdo and its place in French journalism, *supra nota* 44

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ Gibson, *supra nota* 41

⁵² Charlie Hebdo and its place in French journalism, *supra nota* 44

True to its position on the far left of French politics, Charlie Hebdo's past is full of splits and ideological betrayals.⁵³ The founders and the writers of the weekly newspaper have remained unbowed claiming that they have satirized all the major religions already. One of the most important editors was fired after a row about anti-Semitism. And before the tragedy the team was made of Charbonnier who was the head and the cartoonist Riss. Just to understand even more the profile of the humor of the weekly satirical some other cartoons to be mention are in 2010, a cover showed Pope Benedict giving holy communion with a condom, and in 2012 story on gay marriage depicted a ménage-a-trois featuring the Holy Spirit, Jesus, and God.⁵⁴ Before Christmas in 2014, the cover depicted Charlie's take on a traditional nativity scene—a spread-eagled Mary giving birth to the baby Jesus.⁵⁵ Charlie Hebdo knows no bounds!

Charlie Hebdo has traditionally taken pride in describing itself as a “journal irresponsable” (irresponsible newspaper) and it has been happy to describe its humour as “bête et méchant” (stupid and nasty).⁵⁶ But is this declaration enough to legitimize any action that comes after? There is no place in any law for the expression "after self-declaration of irresponsibility, one can be considered automatically irresponsible". Moreover, such declaration is a proof of one being aware and consequently responsible.

Having known the history of Charlie Hebdo weekly satirical as one of the subjects of the case helps to have a clearer and a wider vision on its profile as media and also as the particular media which brought in the attention of the public debate like never before the discussion of freedom of expression versus freedom of religion.

⁵³ *Ibid.*

⁵⁴ Campbell M., Mawad, M., *supra nota* 38

⁵⁵ *Ibid.*

⁵⁶ Ervine, J., *supra nota* 14

1.3. The nature of the published cartoons of Prophet Muhammed

The Cartoon Crisis produced one of the most inclusive global security issues of the last decade. The questions emerging after the crisis are mainly, the possibility of “clash of civilizations”⁵⁷ Huntington’s theory, the limits of freedom of speech and the role of media among all these.⁵⁸

By describing and analyzing the nature of the published cartoons by the satirical weekly it can be distinguished whether Charlie Hebdo’s conduct, as media which is considered to be fourth power, is in support of the principles of freedom of expression or if it jeopardizes the rights of others, and sets a bad precedent in terms of tolerating hatred in the name of free speech.

The twelve cartoons pictured Prophet Muhammad in a variety of ways.⁵⁹ These cartoons were protested against, however, not only because of their depiction of the Prophet Muhammad but the manner in which he was depicted.⁶⁰ The most controversial image shows the Prophet Muhammad carrying a lit bomb in the shape of a turban on his head decorated with the Islamic creed.⁶¹ Kurt Westergaard, the author of this cartoon says that is "the metonym for the whole controversy."⁶² According to Ziauddin Sardar “the Prophet is represented as a terrorist with the clear implication that he preaches a violent creed and that all his followers are intrinsically violent. This is painting Islam and every Muslim in the conclusive colors of absolute darkness.”⁶³

⁵⁷ Huntington, S. (1993). The Clash of Civilizations? *Foreign Affairs*, Council on Foreign Relations, 72(3), 22-49,32

⁵⁸ Yüksel, Y., Akbulut, A., (2015), Representation of the cartoon controversy on the U.S. newspapers, *International Journal of Human Sciences*, 12(1), 487-510, 488

⁵⁹ Saloom, R., (2006), You dropped a bomb on me, Denmark - a legal examination of the cartoon controversy and response as it relates to the Prophet Muhammad and Islamic law, *Rutgers Journal of Law and Religion* 8, 3rd Article, 2

⁶⁰ *Ibid.*

⁶¹ Asser, M., (2010, January 2), What the Muhammad cartoons portray, *BBC NEWS*, Retrieved from http://news.bbc.co.uk/2/hi/middle_east/4693292.stm

⁶² Keane, D., (2008), Cartoon Violence and Freedom of Expression, *Human Rights Quarterly*, 30(4), 845-875, 860, Retrieved from www.jstor.org/stable/20486714

⁶³ Sardar, Z., (2006, February 5), A 'freedom' whose home is the jungle, *Independent*, Retrieved from <http://www.independent.co.uk/voices/commentators/ziauddin-sardar-a-freedom-whose-home-is-the-jungle-343245.html>

Some other cartoons represent the Prophet Muhammad with a large sword in his hand, seemingly prepared for battle, with a happy expression in his face and associated by one woman on each side dressed in a niqab where only visible part are their wide eyes, meanwhile the Prophet Muhammad's eyes are covered. According to Rachel Saloom this cartoon plays upon two stereotypes, one is that Muslims are violent and eager to fight and the second stereotype regards Muslim women and their portrayal, here emphasizing their wide eyes as their only defining characteristic.⁶⁴

Another cartoon featured as a cover page published by Charlie Hebdo in 2006 was showing Muhammad with his hands in his head, crying and saying: "It's hard to be loved by idiots" conveying a very offensive message toward the Muslim community.

There are also other cartoons varying in their depictions but all of them focusing on different forms of violence such the cover depicting the prophet threatening readers with "100 lashes if you don't die of laughter" and perversity like in the cartoon of Prophet Muhammad calling the suicide bombers with the words "stop, we have run out of virgins" with violent elements such as swords, bombs, exaggerated traits of a racial group etc.

All these cartoons loaded with high notes of violence undermine the image of the good Muslim believer who has nothing to do with the messages conveyed. Moreover, they are the impetus for inciting hatred against a racial or religious group and for inciting Islamophobia.

Another element to be taken into account is the analysis of the form of expression of the messages. In our case the satirical message is given through the genre of drawing in the form of cartoons, which highlights and emphasizes even more the message. Cartoons as a means of satire hold a very powerful language. Cartoons as an artistic genre and its symbolism through visual rhetoric,

⁶⁴ Saloom, R., *supra nota* 59, 4

are a powerful tool which when misused can feed the conflict in irreparable proportions.⁶⁵ In a writing published in Independent the writer Ziauddin Sardar states that:

“A cartoon is a satiric device. Satire holds a mirror to the powerful, speaking truth to power. But European Muslims can hardly be described as powerful. The Muslims of Denmark, France, Germany and Holland are among the most marginalized, unrepresented and voiceless of communities. They have no comeback. When the powerless are ridiculed in this manner, "freedom of expression" becomes an instrument of oppression.”⁶⁶

A survey conducted by Le Journal du Dimanche, which is a French weekly newspaper, in the wake of the Charlie Hebdo tragedy shows that 42% of French believe that Charlie Hebdo should have not published the cartoons, given that many Muslims find the images offensive.⁶⁷ Others even go further by accusing the newspaper of spreading Islamophobia.⁶⁸

. . . “It was an exercise to demonstrate power, and to illustrate that European liberal secularists have a superior right to define and determine how Islam should be seen and how Muslims observe their faith . . . It is time for the mindless to realize that the kind of absolute freedom they seek belongs only in the jungle. In a civilized society, freedom always comes with responsibility.”⁶⁹

Having talked about the facts of the case in detail and the way the media exercised the right to free expression in the next chapter will be a detailed explanation of what freedom of expression entails and the forms on how it is exercised according to the law.

⁶⁵ Shehu, R.,Gjana, F., SPRING 2014, Social Conflict as a Consequence of Freedoms Imbalance, *Bedër Journal of Humanities*, 1(3), (145-165), 146

⁶⁶ Sardar, Z., *supra nota* 63

⁶⁷ Linshi, J. (2015, January 18). 42% of French Opposed to Charlie Hebdo's Cartoons of the Prophet Muhammad, Poll Finds. Retrieved from www.time.com

⁶⁸ Gaffey, C. (2015, September 3). Charlie Hebdo Given Islamophobia Award by Muslim Group. Retrieved from www.europe.newsweek.com

⁶⁹ Sardar, Z., *supra nota* 63

2. FREEDOM OF EXPRESSION

Every physical appearance or action that derives from a human being, that is materialized verbally, or physically in any other form is a matter of expression. There has always been a need for assuring freedom of expression as a personal good in itself deriving from the social nature of the human being, the need to express oneself, to have an attitude or take a stance, the need of positioning of oneself in relation to “the rest”.

Besides being a personal good in itself, freedom of expression serves as a useful instrumental tool in public debate, in order to achieve other social objectives, such as cultivation of the knowledge that comes as result of discussion and the clash of opinions and ideas. This process is considered as the shortest, easiest and the best way of discovering the truth. Furthermore, technically, freedom of expression plays an important role in realization or enjoyment of other rights and freedoms. For instance, right to privacy and freedom of assembly requires “a great deal” in the quantity of usage of the freedom of expression, as for the first one, freedom of expression is not supposed to go beyond the boundaries of privacy and violate right to privacy, and for the second, one wouldn’t be able to enjoy freedom of assembly in the absence of it.

2.1. Short history

Awareness and the undertaking of the first steps for granting protection for freedom of expression would begin with Ancient Athens and with Romans afterwards. “Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties”⁷⁰ would say John Milton to the Parliament of England in 1644, to mark the great importance of freedom of expression by establishing it and the autonomy of the Parliament in “England’s bill of rights”.⁷¹ With the French

⁷⁰ Milton, J. S., *Areopagitica*, with a Commentary by Sir Richard C. Jebb and with Supplementary Material, (1918), Cambridge at the University Press, 57

⁷¹ England’s Bill of Rights (1689)

Revolution, freedom of expression was going to be affirmed as an “inalienable right” in the Declaration of the Man and of the Citizen 1789.⁷² Meanwhile, in the other continent, the US drafted the “Bill of Rights” in order to complete the Constitution with amendments regarding the rights and freedoms of the citizens. Its First Amendment guarantees a wide scope of protection for the freedom of expression.⁷³

Subsequently, with the establishment of the peace in the world several international instruments were created in order to maintain peaceful relations between states and promote the rule of law and cooperation in economic and social matters, including the guarantee of human rights and freedoms in international level. As Milton says in a much quoted passage in “Areopagitica”, itself a banned work: The democratic political process and the development of every human being are options for which the protection of freedom of expression is essential.⁷⁴ Therefore, freedom of expression as the cornerstone of democracy, is protected by a lot of international instruments.

2.2. Instruments regulating freedom of expression

The main international instruments that regulate freedom of expression are the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and the European Convention for the Protection of Human Rights and Fundamental Freedoms.⁷⁵

⁷² Déclaration de l’Homme et du Citoyen, (1789) “The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law”

⁷³ Zoller, E., (2009), Symposium: An Ocean Apart? Freedom of Expression in Europe and the United States – Foreword: Freedom of Expression: “Precious Right” in Europe, “Sacred Right” in the United States?, *Indiana Law Journal*, 84(3), 802-808, 803

⁷⁴ Macovei, M., (2004, January), *Freedom of expression - Human rights handbooks, A guide to the implementation of Article 10 of the European Convention on Human Rights*, (2nd ed.), Germany: Council of Europe, Directorate General of Human Rights, 7

⁷⁵ Tsybulenko, E.; Platonova, A. (2019). Violations of Freedom of Expression and Freedom of Religion by the Russian Federation as the Occupying Power in Crimea, *Baltic Journal of European Studies*, 9 (3 (28)), 134–147, 140, Full text: <https://content.sciendo.com/view/journals/bjes/9/3/article-p134.xml>

Universal Declaration of Human Rights (UDHR), as it is stated in its preamble, represents different legal and cultural backgrounds from all regions of the world as a common standard of achievements for all peoples and all nations. In Article 19 UDHR establishes global standards for free expression:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”⁷⁶

As it is stated in The Preamble of the UDHR, all the human rights must be set in the context of ‘the inherent dignity’ together with ‘the equal and inalienable rights of all members of the human family’. This concept of the human dignity applying equally to all is thus intended to pervade the whole of the Universal Declaration.⁷⁷

Meanwhile UDHR defines freedom of expression in very broad terms, International Covenant on Civil and Political Rights (ICCPR) in Article 19 states that:

- “1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (order public), or of public health or morals.”

⁷⁶ Article 19 of UDHR

⁷⁷ Sturges, P., (2006)., Limits to Freedom of Expression? considerations arising from the Danish cartoons affair, *IFLA Journal*, 32(3), 181-188, 183

Among the other articles of ICCPR that contain guarantees for freedom of opinion and/or expression, are articles 17, 18, 25 and 27 since freedoms of opinion and expression form a basis for the full enjoyment of a wide range of other human rights.⁷⁸ For instance, freedom of expression is integral to the enjoyment of the right to privacy, freedom of thought, conscience and religion, rights to freedom of assembly and association, and the exercise of the right to vote respectively with the numbers of the articles above.

Another important instrument guaranteeing freedom of expression is European Convention on Human Rights in Article 10:

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

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

⁷⁸ Article 19, Defending freedom of expression and information Retrieved from <https://www.article19.org/resources.php/resource/2420/en/general-comment-no.34:-article-19:-freedoms-of-opinion-and-expression>

Freedom of expression is a “qualified right”⁷⁹ just like Articles 8⁸⁰, 9⁸¹ and 11⁸² of the ECHR. As a general principle the ECtHR has emphasized the crucial role of freedom of expression in several cases by stating that: “Freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for each individual’s self-fulfillment.”⁸³

2.3. Article 10 of European Convention on Human Rights

The first paragraph of Article 10 defines the freedoms which are protected, it allows individuals to disclose, communicate and compare their thoughts, opinions and ideas and have access to information, and, on the other hand, freedom of expression affects the democratic quality of the overall political, cultural or economic system.⁸⁴ That’s why at the same time it also is associated with duties and responsibilities in order to prevent the violation of rights of others and maintain social justice.

Freedom of expression is exercised in a very wide range of manners. Expression includes words both spoken and written, the display or dissemination of pictures and images, and peaceful marches or demonstrations, the purpose of which is to communicate a political message.⁸⁵ The protection of Article 10(1) also applies to expression regardless of the medium by which it is conveyed, whether by newspapers, cinema, television, radio or the internet.⁸⁶ It also extends to the

⁷⁹ Government interference with these rights is allowed in special circumstances, and only when necessary in a democratic society, Retrieved from <http://www.constitution.gov.ky/www.cnstitution.gov.ky/portal/pageb59e.html>

⁸⁰ Article 8 of ECHR “Right to respect for private and family life”

⁸¹ Article 9 of ECHR “Freedom of thought, conscience and religion”

⁸² Article 11 of ECHR “Freedom of assembly and association”

⁸³ *Handyside v the United Kingdom*, no. 5493/72, ECtHR1976; *Lingens v. Austria*, no. 9815/82, ECtHR 1986

⁸⁴ Avigo, K., Rull, A., *Intermediary Liability for User-Generated Content in Europe*, Master Thesis, Tallinn University of Technology, Tallinn, Estonia

⁸⁵ *Steel and others v United Kingdom*, no.24838/94, ECtHR 1998

⁸⁶ Sharland A., (2009, March), *Focus on Article 10 of the ECHR*, *Judicial Review*, 14(1), 59-72, 60

distribution of leaflets, the display of banners and the exhibition of paintings.⁸⁷ In order to decide the extent to which a particular form of expression should be protected, the ECtHR examines the type of expression (political, commercial, artistic, etc.), the means by which the expression is disseminated (personal, written media, television, etc.), and its audience (adults, children, the entire public, a particular group).⁸⁸ Even the “truth” of expression has a different significance according to these criteria.⁸⁹ Given the fact that the main role of the media is to inform the public, the criterion of the objective truth is very important at the time when the media is exercising its own constitutional right of freedom of expression.

2.3.1. More about the categories of expression

ECtHR has given an important place to distinctions between the categories of the expression by giving as result different restrictions according to the issue. Three main categories consist of political, artistic and commercial, where political expression is guaranteed by receiving more protection. But it may occur that the same expression may be subject to more than one category, therefore the classifications in categories must not be too rigidly.

One such example of expression that fell into more than one category was *Hertel v Switzerland*, which concerned newspaper articles detailing the alleged dangers of microwave ovens.⁹⁰ The type of expression in this case was noticed to be in the category of commercial expression and also related to matters of general public concerns. As ECtHR has considered the political expression as a matter of public concern, it has guaranteed the highest protection within other categories of speech. The ECtHR has viewed expressions concerning litigation, alleged police malpractice, the alleged cruelty to seals inflicted by hunters, the practice of cosmetic surgeons, and even comments

⁸⁷ *Ibid.*

⁸⁸ Macovei, 7

⁸⁹ *Ibid.*

⁹⁰ Sharland, 63

on the quality of local veterinary services to be expression on matters of public concern worthy of strong protection.⁹¹

The applicant in the case *Lingens v Austria* had claimed that the Chancellor of Austria had attended and helped former Nazis. Mr Lingens, who was a journalist, was declared guilty and also fined for defamation. ECtHR emphasized the importance of freedom of expression for the sake of the political debate in determining the democracy of the society:

“It is incumbent on the press to impart information and ideas on political issues just as those in other areas of public interest. Not only does the press have the task of imparting such ideas: the public also has a right to receive them . . . The limits of acceptable criticism are . . . wider as regards a politician as such than as regards a private individual: unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and must consequently display a greater degree of tolerance.”⁹²

The Court clarifies that the boundaries of permitted criticism depend, to certain extents, on the personality of the individual that as object of criticisms. So, limitations on the criticism made publicly may have a different extension if the subject of criticism are politicians.

The ECtHR has justified different restrictions on Article 10(1) where commercial expression is included to protect the consumers from misleading advertising. Nevertheless, in *Krone Verlag GmbH & Co. KG v Austria*, like never before, decided that a limitation on commercial speech is a violation of Article 10 ECHR. The Austrian courts prohibited the applicant from placing advertisements contrasting the cost of his newspaper with that of a local rival, unless the advertisement explained the differences in reporting styles of coverage of political and economic

⁹¹ *Ibid.*

⁹² *Lingens v. Austria*, no. 9815/82, ECtHR 1986, § 41–42; *Sharland*, *supra nota* 86, 63

matters between the newspapers in question.⁹³ This limitation on the applicant's right to advertise was considered to be expansive, very hard to comply with and damaging the very basics of comparative advertising. As such it was disproportionate to the legitimate aim of protecting the rights of others and not "necessary in a democratic society".⁹⁴

Although ECtHR has held that artistic expression is also guaranteed by Article 10 it has historically been less protected by the ECtHR compared to political or commercial expression. In the Charlie Hebdo cartoons case, the exercise of freedom of expression is realized through the artistic expression. Unfortunately, this case was never subject to judgment from ECtHR. After the early publishing of the Prophet Muhammed cartoons from the Danish Newspaper a complaint was filed in ECtHR from a Moroccan national living in Morocco against Denmark. The case was considered inadmissible from the ECtHR because it was not found any jurisdictional link between Denmark and Moroccan nationals complaining about the publication in a Danish newspaper of caricatures of the prophet Muhammad.⁹⁵ The analysis of the case in the French courts and based on the similar cases of ECtHR will be covered in the next chapter.

2.3.2. States obligation

The contracting states have the obligation to facilitate the exercise of freedom of expression as much as to keep the balance between the freedom of expression and other rights based on Article 10(2). The extent of a state's positive obligations under Article 10 is hard to discern, not least, because the European Court has refused to articulate any general theory as to their scope.⁹⁶ In determining whether or not a positive obligation exists, regard must be had to the fair balance that has to be struck between the general interest of the community and the interests of the individual.⁹⁷

⁹³ Sharland, *supra nota* 86, 65

⁹⁴ *Ibid.*

⁹⁵ Ben El Mahi v. Denmark, no 5853/06, ECtHR 2006

⁹⁶ Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2) [GC] - 32772/02, ECtHR 2009, § 46; Sharland, *supra nota* 86, 62

⁹⁷ Sharland, *supra nota* 86, 62

The first paragraph of Article 10 does not necessarily prohibit States from enforcing limits on freedom of expression; it places upon the State a substantive duty to promote the exercising of that right. As it is stated, Article 10 guarantees the right to receive and to impart information. An example of the ECtHR recognizing the right of individuals to receive information contrary to the Irish Courts would be *Open Door Counselling and Dublin Well Woman v Ireland*, where the Court ruled that an injunction, imposed by Irish courts, which effectively restrained staff at the applicants' clinics from imparting information to pregnant women concerning abortion facilities outside Ireland, by way of non-directive counselling, was contrary to Article 10.⁹⁸ The ECtHR allowed the applicants to take a stance against the directive to incorporate two ladies of childbearing age as they are classified from the group which may be unfavorably influenced by the directive since it didn't allow them to be informed about the abortion opportunities in the United Kingdom. ECtHR has emphasized the significance of the right to receive information as of a great importance in democracy.

According to the practice of ECtHR any interference done by states must fulfill three conditions. The first one is to be prescribed by law which means that the intervention should be based on the national law. The other condition is that the restriction should have a legitimate aim in accordance with the second paragraph of Article 10 of ECHR. And the final condition is related to the necessity of the restriction in the democratic society.

The ECtHR has permitted states a wide "margin of appreciation" in this field, particularly in relation to expression which has the potential to offend religious or moral sensibilities.⁹⁹ In the case *Otto-Preminger-Institut v Austria* the film shown only to the members of a film club was considered offensive by Austrian authorities toward the religious feelings of the Catholic Community. The applicants opposed the decision of the confiscation of this film by filing a

⁹⁸ *Ibid.*, 61

⁹⁹ *Handyside v United Kingdom* quoted above *supra nota* 84 : *Sharland*, *supra nota* 86, 65

complaint in ECtHR. The court confirmed the state's measure although the members of the film club were informed about the content.

Every interference made by states, in any kind of expression needs to be well justified. These exceptions must be “construed strictly, and the need for any restrictions must be established convincingly”.¹⁰⁰ In other words, the public authorities have only the possibility and not the obligation to order and/or enforce a restrictive or punitive measure to the exercise of the right to freedom of expression.¹⁰¹

2.3.3. Special role of media and press

The freedom of expression guaranteed by Article 10 includes centrally freedom of the press.¹⁰² The media receives particularly strong protection under Article 10 because it has a duty to impart, in a manner consistent with its obligations and responsibilities, information and ideas on all matters of public interest.¹⁰³ That's why the media and mass media is considered to be “the fourth power” regarding the importance that they have in the mission of informing the public and as a result in a way shaping the public views about reality. They serve as a relating canal or tool between the public and the information. So, the ECtHR has recognized that the press and other media have a special place in a democratic society as “purveyor of information and public watchdog”, and thus restrictions directed against such organizations tend to be scrutinized very closely.¹⁰⁴

Therefore in *Bergens Tidende v Norway* emphasized:

¹⁰⁰ *Zana v Turkey*, no. 69/1996/688/880, ECtHR 1997, § 51

¹⁰¹ *Macovei*, *supra nota* 75, 21

¹⁰² *Observer and Guardian v United Kingdom*, no 13585/88, ECtHR 1991; *Sharland*, *supra nota* 86, 61

¹⁰³ *Jersild v Denmark*, no. 15890/89, ECtHR 1994, § 31; *Sharland*, *supra nota* 86, 61

¹⁰⁴ *Sharland*, *supra nota* 86, 61

“Where . . . measures taken by the national authorities are capable of discouraging the press from disseminating information on matters of legitimate public concern, careful scrutiny of the proportionality of the measures on the part of the Court is called for.”¹⁰⁵

The House of Lords, in *McCartan Turkington Breen v Times Newspapers Ltd* [2001] 2 AC 277 has similarly recognized the importance of the media in a modern democracy.¹⁰⁶ Lord Bingham stated (pp. 290G–291A):¹⁰⁷

“In a modern, developed society it is only a small minority of citizens who can participate directly in the discussions and decisions which shape the public life of that society. The majority can participate only indirectly, by exercising their rights as citizens to vote, express their opinions, make representations to the authorities, form pressure groups and so on. But the majority cannot participate in the public life of their society in these ways if they are not alerted to and informed about matters which call or may call for consideration and action. It is very largely through the media, including of course the press, that they will be so alerted and informed. The proper functioning of modern participatory democracy requires that the media be free, active, professional and inquiring. For this reason, the courts, here and elsewhere, have recognized the cardinal importance of press freedom.”

Journalist are allowed to provoke and exaggerate until a certain extent.¹⁰⁸ Anyway, ECtHR makes an evaluation for every case according to the circumstances.¹⁰⁹ According to Article 10 ECHR the source of information also enjoys protection.¹¹⁰ Article 10 requires deference to the media as to the methods of objective and balanced reporting;¹¹¹

¹⁰⁵ *Bergens Tidende v Norway*, no. 26132/95, ECtHR 2001, § 52

¹⁰⁶ *Sharland*, *supra nota* 86, 61

¹⁰⁷ *R v Shayler*, Lord Bingham commented on the potent and honorable “role of the press in exposing abuses and miscarriages of justice”; *Sharland*, *supra nota* 86, 61

¹⁰⁸ *Prager and Oberschlick v Austria*, no. 15974/90, ECtHR 1995, § 38

¹⁰⁹ *Stoll v Switzerland*, no. 69698/01, ECtHR 2008

¹¹⁰ *Goodwin v United Kingdom*, no. 28957/95, ECtHR 1996, § 123

¹¹¹ *Sharland*, *supra nota* 86

In the case of *Jersild v. Denmark*, a journalist was found guilty after doing an interview with some racist young people who made offensive and insulting remarks towards minorities. The aim of the state to protect the minorities from racial discrimination by declaring guilty the young people connected to this action was found legitimate from ECtHR. But at the same time ECtHR considered the penalties toward the media not legitimate and necessary in a democratic society based on the second paragraph of Article 10 ECHR for the protection of the rights of others. ECtHR declared that it is not in the competence of the courts:

“to substitute their own views for those of the press as to what technique of reporting should be adopted by journalists. In this context the Court recalls that Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed.”¹¹²

This case is a clear example how ECtHR reminds that based on Article 10 the press is free to decide on the substances of the ideas that it wants to convey as much as in the form.

2.3.4. Second paragraph of Article 10

Freedom comes together with responsibility. Every society places some limits on the exercise of speech because it always takes place within a context of competing values.¹¹³ These competing values bring up competing interests. As we discuss the other side of the coin, namely limitations made on freedom of expression in the name of balance, the notion of “Mill’s harm principle” is appropriate to be mentioned. Mill recognized that there is a difference between ‘thought and conscience and freedom of expression insofar as the latter passes from the wholly individual realm of personal experience to the social realm, where others may be affected.’¹¹⁴

As it is discussed in the paper by Michael Lacewing Mill’s harm principle says that:

¹¹² *Jersild v Denmark*, no. 15890/89, ECtHR 1994

¹¹³ Van Mill, D., "Freedom of Speech", *The Stanford Encyclopedia of Philosophy (Winter 2016 Edition)*, Edward N. Zalta (ed.), Retrieved from <https://plato.stanford.edu/archives/win2016/entries/freedom-speech/>

¹¹⁴ Mill’s ‘harm principle’, *Routledge Taylor and Francis Group*, <http://documents.routledge-interactive.s3.amazonaws.com/9781138793934/A2/Mill/MillHarm.pdf>

“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. His own good, either physical or moral, is not a sufficient warrant.”¹¹⁵

In other words, we can find this principle translated as articles in the most important legal documents that guarantee human rights. As UDHR in Art 19 defines a more general definition of freedom of expression, the other two convention CCPR Article 19 and ECHR Article 10 in their first paragraphs of the articles embody the forms of exercising freedom of expression meanwhile in the last paragraphs are faced duties and responsibilities that derive considering the rights of others and the public order or interest. By referring to “duties and responsibilities” Article 10(2) gives the public authorities the opportunity to interfere by restricting freedom of expression in some cases.

As a matter of principle, the protection given by Article 10 extends to any expression notwithstanding its content, disseminated by any individual, group or type of media.¹¹⁶ But as Archibald Cox says: “freedom of expression, despite its primacy, can never be absolute”¹¹⁷. So, in order to form an equilibrium, in the second paragraph of Article 10 of ECHR are defined the exceptions on freedom of expression, which are necessary to promote democracy and to create the right balance between the competing interests.¹¹⁸

¹¹⁵ *Ibid.*

¹¹⁶ Macovei, *supra nota* 74, 7

¹¹⁷ Cox, A., (1981, January) Freedom of Expression, *Harvard University Press, s.l.*

¹¹⁸ Cobani, E., (2002), *Te drejtat dhe Lirite Themelore te Njeriut*, 60

3. ANALYSING OF THE CASE IN THE LIGHT OF THE PRINCIPLES OF DEMOCRACY

Staying apart from, and condemning any terrorist act, in this chapter will be analyzed Charlie Hebdo Cartoons Case based on the court decisions of ECtHR on similar cases and also a legal logic interpretation. This case eventually caused a lot of debates regarding the collision that happened between two guaranteed rights in democratic states which are technically inseparable from each other.

Article 9(1) of the ECHR “Freedom of thought, conscience and religion” states that:

“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.”

In its first paragraph Article 9 guarantees freedom of thought, conscience and religion and beside this the freedom to manifest this belief or religion.

While Article 10(1) “Freedom of expression” of ECHR states that:

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

In both of the rights in the second paragraphs are described restrictions under certain circumstances where in Article 9 (2) it is written:

“Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public

safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

And in Article 10 (2) in a wider description it is written:

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

So, in prescribed circumstances, both the freedom to manifest one’s religion and freedom of expression can be restricted when this is prescribed by law and necessary in a democratic society for one or more of the aims described in the second paragraph of both these articles.¹¹⁹ Both of the rights are balanced and in line with each other. Freedom of religion can never be treated as the opposite of freedom of speech, because freedom of speech is an integral part of freedom of religion and vice versa.¹²⁰ Hence, the dilemma of freedom of speech or freedom of religion arises only from a secular point of view which is strengthened by the mechanisms of secular criticism as a guardian of this system.¹²¹ So, the mechanical separation of freedom of expression from faith and its absolutization, leads to dogmatism of that freedom and any dogmatism has premises to become a dictate.¹²²

¹¹⁹ Howard, E., (2017, June), Freedom of Speech versus Freedom of Religion? The Case of Dutch Politician Geert Wilders, *Human Rights Law Review*, 17(2), 313–337, 320, Retrieved from <https://doi.org/10.1093/hrlr/ngx002>

¹²⁰ Shehu, R., Gjana, F., 146

¹²¹ *Ibid.*, 91

¹²² *Ibid.*, 2

3.1. Freedom of expression versus freedom of religion?! - The practice of European Court of Human Rights

In the context of effective political democracy and respect for human rights mentioned in the Preamble to the Convention, freedom of expression is not only important in its own right, but also it plays a central part in the protection of other rights under the Convention.¹²³ Freedom of expression is an integral part of freedom of religion too. From the other side, freedom of religion represents a very important aspect of the human being. The inevitable question in this case is: Are these rights contrary to each other, or does one of them prevail over the other?

The interpretation of the ECHR's text is dynamic and evolutive, making the Convention a living instrument which must be interpreted in the light of the present day conditions.¹²⁴ Sometimes, freedom of expression can conflict with other rights protected by the Convention, such as the right to a fair trial, to respect for private life, to freedom of conscience and religion.¹²⁵ When such conflict occurs, the Court strikes a balance in order to establish the pre-eminence of one right over the other. The ECHR also gives a margin of appreciation to the states according to the case and the way it affects the society. As it is also stated previously "Margin of appreciation" refers to the power of a Contracting State in assessing the factual circumstances, and in applying the provisions envisaged in international human rights instruments.¹²⁶ Margin of appreciation is based on the notion that each society is entitled to certain latitude in balancing individual rights and national interests, as well as in resolving conflicts that emerge as a result of diverse moral convictions.¹²⁷

¹²³ Macovei, *supra nota* 74, 6

¹²⁴ *Ibid.* 5-6

¹²⁵ *Ibid.* 6

¹²⁶ Bakircioglu, O., (2007), The Application of the Margin of Appreciation Doctrine in Freedom of Expression and Public Morality Cases, *GERMAN LAW JOURNAL*, 8(7), 711-733, 711

¹²⁷ Benvenisti, E., (1999), Margin of Appreciation, Consensus, and Universal Standards, *New York University Journal of International Law and Politics*, 31, 843 - 854, 843

ECtHR also states that the margin of appreciation left to the states is subject to European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court because it is the court's task is to determine whether the measures taken at national level were justified in principle and proportionate.¹²⁸

ECtHR tries to promote tolerance and respect. But how can be decided what does the respect entails? A subjective determination of what is or is not respectful would merely result in a restatement of the claims of the parties who, by definition, are in dispute over the very issue.¹²⁹ So, their consideration over a certain issue is to be taken into account. Such an approach would produce a resolution only by reverting to a hierarchical understanding of the rights at issue: should the Court prioritize respect for my right to say what I think or your right not to be offended by what I say?¹³⁰ Indeed, this should be a difficult question for the courts to answer when the balance between rights is broken.

Handyside v. United Kingdom is one of the cases underlying the scope of freedom of expression under Article 10 of ECHR where ECtHR stated that:

“ freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for the development of everyone.”¹³¹

It is visible that ECtHR has highlighted the importance of freedom of expression in very clear terms. Similarly, it has also emphasized the importance of freedom of thought, conscience and religion in the case *Kokkinakis v. Greece* where it stated that:

. . . freedom of thought, conscience and religion is one of the foundations of a “democratic society” within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The

¹²⁸ *Kokkinakis v. Greece*, no. 14307/88, ECtHR 1993, § 47

¹²⁹ Evans, 348

¹³⁰ *Ibid.*

¹³¹ *Handyside v the United Kingdom*, no. 5493/72, ECtHR 1976, § 49

pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.¹³²

As ECtHR has declared both of these rights are foundations of a democratic society, very important for the progression of people and essential for pluralism.

The following paragraphs will present how ECtHR has emphasized certain aspects of the rights in the judged cases.

In the case *E.S v. Austria* the applicant said that her right to free expression under Article 10 of ECHR had been violated from the national court's decision. The national court found her guilty of publicly disparaging an object of veneration of a domestic church or religious society – namely Muhammad, the Prophet of Islam – in a manner capable of arousing justified indignation.¹³³ Ms. E.S. pretending to be an expert of Islamic matters held some seminars called “Basic Information on Islam”, where she talked about Prophet Muhammad marriage with Aisha labeling the Prophet a pedophile.

The court considered that the applicant's statements were not statements of fact, but derogatory value judgments which exceeded the permissible limits. It held that the applicant had not intended to approach the topic in an objective manner, but had directly aimed to degrade Muhammad.¹³⁴ The court concluded that the interference with the applicant's freedom of expression in the form of a criminal conviction had been justified as it had been based in law and had been necessary in a democratic society, namely in order to protect religious peace in Austria.¹³⁵ Preventing disorder by safeguarding religious peace, as well as protecting religious feelings, corresponds to protecting the rights of others within the meaning of Article 10 (2) of the Convention.¹³⁶ Religious tolerance and sensibility of the believers seem to have been upheld in this case. The ECtHR declared the

¹³² *Kokkinakis v. Greece*, no. 14307/88, ECtHR 1993, § 31

¹³³ *E.S. v. AUSTRIA*, no. 38450/12, ECtHR 2018, § 12

¹³⁴ *Ibid*, § 15

¹³⁵ *Ibid*, § 15

¹³⁶ *Ibid*, § 41

application admissible and held that there had been no violation of Article 10 of the ECHR by upholding the domestic court decision.

In another case, *Otto-Preminger-Institut v. Austria*, a previously mentioned case, a film containing trivial imagery of Christianity was shown only to the members of a film club. Anyway, this was considered offensive toward the religious feelings of the Catholic Community by the Austrian authorities. The applicants opposed the decision of the confiscation of this film by filing a complaint in ECtHR. The court held that the seizure of the film was in accordance with the legitimate aim within the meaning of Article 10 of ECHR and the national court had acted within its margin of appreciation under the social need in order to maintain religious peace. It noted that generally “the manner in which religious beliefs and doctrines are opposed or denied is a matter which may engage the responsibility of the State, notably its responsibility to ensure the peaceful enjoyment of the right guaranteed under Article 9 to the holders of those beliefs and doctrines.”¹³⁷ In the case *Otto-Preminger-Institut v. Austria* ECtHR states that the exercise of the rights and freedoms enshrined in Article 10(1) undertakes duties and responsibilities, *inter alia* in the context of religious opinions and beliefs - may legitimately be included an obligation to avoid as far as possible expressions that are gratuitously offensive to others and thus an infringement of their rights, and which therefore do not contribute to any form of public debate capable of furthering progress in human affairs.¹³⁸ Again, the court emphasized that the right to respect for one's religious feelings goes under the protection of the rights of others in Article 10 (2).

In consequence, it ought not to come as too much of a surprise that the Court has been willing to endorse what some consider to be a surprisingly interventionist approach with forms of expression that may be offensive to religious believers.¹³⁹ In the mentioned rulings involving freedom of religion or belief were directly linked to freedom of speech. Through these decisions the Court

¹³⁷ *Otto-Preminger-Institut v. Austria*, no. 13470/87, ECtHR 1994, §47

¹³⁸ *Ibid.* §49

¹³⁹ Evans, *supra nota* 1, 345

highlighted the need to respect the sensibilities of the believers with the legitimate aim in Article 10 (2) to prevent the disorder, maintain the social peace and protect the rights of others. Within the Article 10 jurisprudence, forms of expression that are critical of religion have been treated more favorably where journalistic or scholarly, as opposed to creative or artistic, in nature.¹⁴⁰

In all cases, ECtHR has held its decisions based on the principle that every freedom comes with responsibilities. Not left alone the principle that one's freedom ends where another's freedom begins. So, on the other side the ECtHR has also made it clear that the freedom of religion or belief cannot be used by individuals or groups to, in effect, "gag" others from expressing views which run counter to their own or which they find offensive.¹⁴¹

In *Kokkinakis v Greece*, the European Court of Human Rights explained that Article 9(2) 'recognizes that in democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected'.¹⁴²

In the same manner, ECtHR in the *Otto Preminger-Institut* case stated that: "Those who choose to exercise their freedom of religion . . . cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious belief and even the propagation by others of doctrines hostile to their faith."¹⁴³ With these statements the ECtHR makes it clear that no right is absolute as such. Those who invoked their freedom of religion could not expect to be exempt from criticism, and even had to accept the negation of their beliefs¹⁴⁴, and even the propagation by others of doctrines hostile to their faith.¹⁴⁵

¹⁴⁰ Kuhn, P., Y., (2019, February), Reforming the Approach to Racial and Religious Hate Speech Under Article 10 of the European Convention on Human Rights, *Human Rights Law Review*, 19(1), 119–147, 120

¹⁴¹ *Ibid.*

¹⁴² *Supra nota* 132, Merits and Just Satisfaction, § 33

¹⁴³ *Otto-Preminger-Institut*, *supra nota* 137, § 47

¹⁴⁴ *E.S. v. AUSTRIA*, *supra nota* 133, §15

¹⁴⁵ *Otto-Preminger-Institut*, § 47

However, the manner in which religious views are attacked could engage the State's responsibility in order to guarantee the peaceful exercise of the rights under Article 9.¹⁴⁶ As the second paragraph of Article 10 recognizes, the exercise of the freedom of expression carries with it duties and responsibilities. Amongst them, in the context of religious beliefs, is the general requirement to ensure the peaceful enjoyment of the rights guaranteed under Article 9 to the holders of such beliefs including a duty to avoid as far as possible an expression that is, in regard to objects of veneration, gratuitously offensive to others and profane.¹⁴⁷ Where such expressions go beyond the limits of a critical denial of other people's religious beliefs and are likely to incite religious intolerance, for example in the event of an improper or even abusive attack on an object of religious veneration, a State may legitimately consider them to be incompatible with respect for the freedom of thought, conscience and religion and take proportionate restrictive measures.¹⁴⁸ In addition, expressions that seek to spread, incite or justify hatred based on intolerance, including religious intolerance, do not enjoy the protection afforded by Article 10 of the Convention.¹⁴⁹ Presenting objects of religious worship in a provocative way capable of hurting the feelings of the followers of that religion could be conceived as a malicious violation of the spirit of tolerance, which was one of the bases of a democratic society.¹⁵⁰

While there is no necessary "conflict" between these two fundamental freedoms, there is obviously a tension that needs to be resolved on the facts of each case, informed by the common underlying values that derive from the Convention system more generally.¹⁵¹ Though it is certainly possible to critique its various decisions in a more or a less positive fashion, the basic approach outlined by the Court has considerable merit: rather than seek to "prioritize" either the freedom of religion or

¹⁴⁶ *Ibid.* §143

¹⁴⁷ E.S. v. AUSTRIA, *supra nota* 133, § 43

¹⁴⁸ Otto-Preminger-Institut, *supra nota* 137, § 47, E.S. v. AUSTRIA § 43

¹⁴⁹ Otto-Preminger-Institut, *supra nota* 137

¹⁵⁰ *Ibid.*

¹⁵¹ Evans, *supra nota* 1, 345

belief or the freedom of expression at the expense of the other, it draws on the idea of reciprocal “respect” and “tolerance.”¹⁵²

Anticipating the potential conflicts that might arise due to the abuse of rights, the Convention has taken measures to respond to such a situation. A case where it is promoted prohibition of abuse of rights is *Kühnen v. The Federal Republic of Germany*. In this case, the applicant, a German journalist as part of an organization, was attempting to reinstitute the National Socialist Party which was prohibited in Germany. He prepared and disseminated in this context various publications against the basic order of democracy, freedom and the notion of the understanding among peoples. The applicant pretended to have exercised his right of free speech. In the Article 17 of ECHR “Prohibition of abuse of rights” it is stated that:

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

Essentially, this article aims to avoid the use of the ECHR’s provisions to undermine its core values. The Commission relied on Article 17 of the Convention and held that freedom of expression may not be used in order to lead to the destruction of the rights and freedoms granted by the Convention.¹⁵³ Such decisions apply the theory of the paradox of tolerance: an absolute tolerance may lead to the tolerance of the ideas promoting intolerance, and the latter could then destroy the tolerance.¹⁵⁴

The key points emerging from the Court’s approach to the intersection of the freedom of religion and the freedom of expression are that both rights are of value and should be enjoyed to the fullest

¹⁵² *Ibid.*

¹⁵³ *Kühnen v. The Federal Republic of Germany*, no. 12194/86, 1988

¹⁵⁴ *Macovei, supra nota 74*

extent possible without negatively impacting on the enjoyment of the rights of others.¹⁵⁵ Based on their margin of appreciation states are allowed to interfere in order to protect the rights of others whenever the social need is present in a democratic society.

3.2. Analyzation of the cartoons case

In 2006 Charlie Hebdo republished the cartoons that were already published by Jyllands-Posten adding its own cartoon of Prophet Muhammed saying: “It's hard to be loved by idiots”. Two French Muslim organizations, the Great Mosque of Paris and the Union of Islamic Organizations of France, sued Charlie Hebdo for "public insults against a group of people because they belong to a religion".¹⁵⁶

The Guardian wrote that the head of the Great Mosque of Paris and the mosque’s lawyer said that “this was not a trial against the freedom of expression or secularism, they were worried that these caricatures incited racism”. The Charlie Hebdo editor-in-chief, Philippe Val, responded in an interview with the news weekly *Le Nouvel Observateur*: "One should not confuse criticism of an ideology with racism."¹⁵⁷ The offense that Mr. Val considers to be criticism has some limits of acceptability according to ECtHR. The manner in which religious beliefs and doctrines are opposed or denied is a matter which may engage the responsibility of the State, notably its responsibility to ensure the peaceful enjoyment of the right guaranteed under Article 9 ECHR to the holders of those beliefs and doctrines because in extreme cases the effect of particular methods of opposing or denying religious beliefs can be such as to inhibit those who hold such beliefs from exercising their freedom to hold and express them.¹⁵⁸

¹⁵⁵ Evans, *supra nota* 1, 352

¹⁵⁶ Fouché, (2007, February 7), *supra nota* 39

¹⁵⁷ *Ibid.*

¹⁵⁸ Otto-Preminger-Institut, *supra nota* 137, § 47

In such cases restriction of freedom of expression is within the margins of measures that the states take to ensure the enjoyment of freedom of religion or belief by others. Indeed, the nature of the expression at issue might remove it from the scope of the protection offered by the freedom of expression altogether; just as there are forms of belief or manifestation that do not “qualify” for protection under Article 9, so are there forms of expression that fall outside of the protections offered by Article 10.¹⁵⁹ The speech that contains hatred, discrimination, incite violence, promote intolerance, including religious intolerance fall in this scope.

“We will explain that we are not opposed to believers, as long as their beliefs stay private. Religion should not influence collective affairs.” – said Mr. Val. The guardian wrote that he considered the trial "medieval trial" because the religions must be subject to "critique and to democratic debate." The declarations of Mr. Val are in contradiction with each other since from one side he says that they were not opposed to believers as far as they keep their beliefs private and from the other side he says that the religions must be subject to critique and to democratic debate by bringing it to public attention and debate. Moreover, the declarations of Mr. Val are in open contradiction to the right of freedom of religion not just as such in itself, but also as one of the forms of freedom of expression. Mr. Val added that “one is a citizen of French Republic before being a Muslim”. This other declaration is found to be imposing on the right of a free person to self-determination, to choose how he or she wants to feel as far as not breaking the law, one might decide to feel as a citizen of the world and still not break the laws. It is possible to notice light nuances of fear speech in Mr. Val declarations, who tries to impose priorities, to give messages such as being a French citizen is more important than being a believer, so being a French citizen should come first, as these two features cannot be found in one person at the same time, presenting religious believe as something less good for those who have it, and if you prioritize your believe according to Mr. Val you become a citizen with less worth.

¹⁵⁹ Evans, *supra nota* 1, 350

The ruling of the court was done based on cartoon presenting Prophet Muhammad wearing a turban with a bomb in it. The Court said: "the drawing, taken on its own, could be interpreted as shocking for followers of this religion (Islam), however it had to be seen in the wider context of the magazine examining the issue of religious fundamentalism. Therefore, even if the cartoon "is shocking or hurtful to Muslims, there was no deliberate intention to offend them."¹⁶⁰ So, the editor of the satirical weekly even though insulted a whole community was found right in his freedom to do so. The Paris court ruled that Philippe Val, editor-in-chief of the magazine Charlie Hebdo, was innocent of the charge of making "public insults against a group of people because they belong to a religion".¹⁶¹ The court's decision was widely expected, since the prosecutor, who did not initiate the legal action, had asked the court last month to find the defendant not guilty, arguing that this was a case of freedom of expression and that the cartoons did not attack Muslims, but fundamentalists.¹⁶² "I am pleased, not only for Charlie Hebdo, but for all of us. It's good news for those who believe in freedom of expression and for Muslims who are secular and republican," he told reporters after the verdict.¹⁶³ The prosecutor of the case obviously has ignored his role on the trial and moreover has prejudiced the case by not even trying to understand, recognize and very far from representing the damage caused to the claimant parties as his duty requires to. So, the court has failed to judge the case based on the principle of impartiality without any prejudice on the matter. It is obvious that the state did not considered the intervention necessary in the democratic society to guarantee the safe enjoyment of religion rights to the Muslim minority.

Based on Article 14 "Prohibition of discrimination" of ECHR:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political

¹⁶⁰ Fouché, G., (2007, March 22), Editor cleared in French cartoons case, *The Guardian*, <https://www.theguardian.com/media/2007/mar/22/pressandpublishing.race>

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

or other opinion, national or social origin, association with a national minority, property, birth or other status.”

The national court has failed to take into account the harm done to a minority of France based on their religion and their status of minority. Moreover, the effects of the expression of Charlie Hebdo should pass through the filters of the second paragraph of Article 10 of ECHR. Freedoms of expression should be exercised under duties and responsibilities as are prescribed by law and are necessary in a democratic society, among other reasons, also for the protection of the reputation or rights of others. So, the type of expression used from Charlie Hebdo violates the reputation and rights of others, namely the rights and reputation of French Muslim Community.

Regarding the “believing in the freedom of expression” it seems that the court has raised “freedom of expression” in levels of absolutization and the worship of it. If unlimited absolutization will be accorded to freedom of expression, without determining human limits, there’s the risk to convert freedom of expression from one of the pillars of democracy, to a building of dictate, to a "freedom of expression" dictatorship.¹⁶⁴ Even a freedom of expression dictatorship is still a dictatorship.

The Union of Islamic Organization of France appealed the court's decision. A year later, the Paris Court of Appeals cleared Charlie Hebdo magazine's publisher Philippe Val of any wrongdoing and considered that the caricatures of prophet Mohammed printed in the magazine in 2006 were not an insult to Muslims.¹⁶⁵ It is difficult to see on what basis a Court can determine that a person or a community does not consider an expression to be offensive if he or she says that for her or him, it is. In any case, this will need to be measured objectively by the court. But firstly, the court has the obligation to take into account the claims of the parties regarding the caused harm. Based on the rulings of ECtHR, It is however for the Court to determine “objectively” that the offense was caused “gratuitously,” that is, in a fashion that does not contribute to any form of public debate

¹⁶⁴ Shehu, R.,Gjana, F., *supra nota* 65

¹⁶⁵ France 24, (2008, March 12), French court clears magazine in cartoons case, <https://www.france24.com/en/20080312-french-court-clears-magazine-cartoons-case-cartoons-trial>

capable of further progress in human affairs.”¹⁶⁶ If it is, then it will be considered to be a “violation of the spirit of tolerance,” which may legitimately be subject to restraint by the State, bearing in mind the margin of appreciation a State enjoys in determining whether or not to regulate.¹⁶⁷ So, if “gratuitous offence” has taken place, the State, following the “legitimate aim” is allowed to restrict the freedom of expression.

It is seen the need to strike a balance between freedom of expression and the responsibility to avoid the excessive and unimportant offences. A famous journalist in Albania, Lutfi Dervishi says: “Offending, hurting, and provoking faith is not a test that measures the degree of media freedom. Media has ample possibility to use when it wants and how it wants. It can focus on religious leaders, power of religion, corruptive affairs of religious institutions, but it can refrain from hurting and provoking in unnecessary ways.”¹⁶⁸ Freedom of speech in public sphere enjoys a particular protection, taking into account also the degree of exaggeration in a certain degree, but this does not mean that it has the right to offend and insult the others, in this case the Muslim community of France for religious or other reasons. Charlie Hebdo will contend that not to be the case, but it will have to be observed also from the optic of the harmed people.

The level of democracy in a country is measured by the level of the respect of the rights towards the minorities, because the majority is already the one making the order. France has in its composition the largest Muslim community in Europe, more than 5 million which makes more than 8% of the population, which still makes a good minority. France is a multicultural society.

A close, second look of well-established principles of freedom of expression and cultural relativism invites careful reconsideration of conventional statutory limitations on freedom of

¹⁶⁶ Otto-Preminger-Institut, *supra nota* 137, § 49 ; Evans, *supra nota* 1, 349

¹⁶⁷ *Ibid.*, 47 ; Evans, *supra nota* 1, 349

¹⁶⁸ Dervishi, L., (2015, January 18), *Panorama*, Retrieved from <http://www.panorama.com.al/media-si-karikature-e-fjales-se-lire/> ; The Charlie Hebdo Effect in Balkans, A project implemented by The Center for Independent Journalism, Retrieved from <https://www.seenpm.org/wp-content/uploads/2015/07/CharlieHebdo-FINAL.pdf>

expression.¹⁶⁹ Consequently, it follows that the legitimate implementation of those principles may call for reconceptualization of freedom of expression, to an extent that it is interpreted as being subject to further normative limitations from a socio-legal perspective, so long as the seemingly genuine exercise of such freedom is found to have in effect crossed the line demarcated by the social integrity standard in the cultural relativism context.¹⁷⁰

3.2.1. Cartoons source of hate speech and intolerance?

Often, deviation of freedom of expression brings unwanted derivations such as hate speech, fear speech and incite to discrimination and hatred. This becomes a source of intolerance and conflict in the society. Hate speech is one of the worst derivations of abuse of freedom of expression. There would seem to be some truth in the adage, "sticks and stones can break my bones, but words will never hurt me."¹⁷¹ Yet speech often hurts. It can offend, injure reputation, fan prejudice or passion, and ignite the world.¹⁷² Hate speech is a broad term used to describe speech which attacks others on the grounds of their race, nationality, religious identity, gender, sexual orientation or other group membership, where this group membership is a morally arbitrary distinguishing feature.¹⁷³

In the cartoons case the problem arose on the publishing of cartoons and associated speech over Prophet Muhammed. The language used has a great nuance of violence and terror and perversity on grounds of religion put as the speech of Prophet Muhammed. In one of the cartoons Prophet Muhammed appears saying "It is hard to be loved by idiots". This and all the other cartoons caused a lot of reactions from the Muslim Communities around the world. In addition to the heavy messages conveyed through the cartoons, the accompanying speech has hatred content. The supportive attitude and the expression of the society in some respects may have turned to fear

¹⁶⁹ Yoo, K. (2017). When Does Cultural Satire Cross the Line in the Global Human Rights Regime?: The Charlie Hebdo Controversy and Its Implication for Creating a New Paradigm to Assess the Bounds of Freedom of Expression, *Brooklyn Journal of International Law*, 42(2), 761–806, 764

¹⁷⁰ *Ibid.*

¹⁷¹ Wellington, H. (1979). On Freedom of Expression. *The Yale Law Journal*, 88(6), 1105-1142, 1106

¹⁷² *Ibid.*

¹⁷³ Yong, C., (2011), Does Freedom of Speech Include Hate Speech, *Res Publica* 17(4), 385–403, 386

speech for the good and dissent believers of the community, who, in such cases feel a need to distance themselves from the terrorist acts.

Moreover, the increase of hate speech can often lead to hate crimes. In a large survey of hate crimes, the Organization for Security and Cooperation in Europe found that violence and hate crimes often occur in a context of intolerant or racist public discourse.¹⁷⁴ Thus although we do not know precisely what the importance of a particular expression is in a specific situation of violence, ‘we do know that it counts’.¹⁷⁵ The overlap between the two forms of potentially dangerous speech, expressions that incite hatred and those that may lead to violence, relates to one of the core issues of the freedom of expression: when can and should such speech usefully and legitimately be curtailed?¹⁷⁶ Most countries in the world address hate speech issues to their national laws and international guidelines, but there is no certain framework on how to deal with hate speech. In some countries like France and other European countries there is a legal framework prohibiting statements of hate speech and denial of Holocaust. Europe is a model that gives importance to peace-building, human dignity and equality so it has a more constructive way of dealing with hate speech compared to America, which has a tolerant approach that derives from the First Amendment.

“Congress shall make no law (...) abridging the freedom of speech, or of the press (...)” guarantees free speech, and in order to justify restriction of the freedom of expression the reasons must be significant and very well founded.¹⁷⁷

America has its own, particular way of dealing with speech issues; so does Europe.¹⁷⁸ According to the analysis that Alexander Meiklejohn makes in the book "Political Freedom" related to the provisions of the First Amendment of the US Constitution, says the amendment was projected as

¹⁷⁴ BUYSE, A., (2014, April), DANGEROUS EXPRESSIONS: THE ECHR, VIOLENCE AND FREE SPEECH. *International & Comparative Law Quarterly*. 63(2), 491-503, 49

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*

¹⁷⁷ First Amendment of US

¹⁷⁸ Khan, Robert A., (2013) "Why Do Europeans Ban Hate Speech? A Debate Between Karl Loewenstein and Robert Post", *Hofstra Law Review*, 41(3), Article 2, 545-585, 548

the final solution to the problems of freedom of expression, but later was seen a conflict that emerged between the two social interest groups, the conflict between the ones promoting and exercising free speech and social interest which is neglected from its exercise. So, it is with the phenomenon that we call in America “hate speech,” which can cover things as diverse as cross-burnings, racial epithets, bestial and other offensive depictions of vulnerable minorities in leaflets, posters, or on the internet, broad-brush ascriptions of criminality or dangerousness, calls to unite against the members of a hated group, genocidal radio-broadcasts in Rwanda in 1994, and Nazis marching in Skokie, Illinois, with swastikas and placards saying “Hitler should have finished the job”.¹⁷⁹ Not everyone in America is happy with the constitutional untouchability of race leaflets in Chicago, Nazi banners in Skokie, and burning crosses in Virginia; not everyone thinks that state and municipal legislators must be compelled to stand back and let this material take possession of society.¹⁸⁰

While in Europe the context is different. The history related to colonization, holocaust and Second World War and their consequences have indicated the building of the European legal framework even related to freedom of expression. European approach in this regard is somehow even stricter with the time compared to American trend.

Everybody would be interested in restrictions on published materials that combine hate speech. The issue is publication and the harm done to individuals and groups through the disfiguring of our social environment by visible, public and semi-permanent announcements to the effect that in the opinion of one group in the community, perhaps the majority, members of another group are not worthy of equal citizenship.¹⁸¹ Such expressions that incite, spread or justify hatred make a coup against human dignity.

¹⁷⁹ Waldron, J. (2009, October), Why Call Hate Speech Group Libel? - Holmes Lectures: Harvard Law School

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid.*

3.2.2. Values that change

This part will present very interesting news regarding the situation of French media in five years from the events in Charlie Hebdo. In the beginning of this year in a writing in “The Conversation”¹⁸² Jonathan Ervine¹⁸³ treated several noticeable inconsistencies with regard to the reaction toward Charlie Hebdo media-like. Immediately after the tragedy in Charlie Hebdo, most of the satirical comedy shows were not shown on French televisions because they tried to find a way to humorously interact with these tragic incidents. An exception that attracted attention was the show “Les Guignols” in the Canal Plus. The daily satirical latex puppet show had a very similar style of humor and satire with Charlie Hebdo. Just a few hours from the attack the show broadcasted several sketches related to it. This show involved jokes about increased levels of terror threats and also a latex puppet of the Prophet Muhammad distancing himself from the attackers.¹⁸⁴ It concluded with a sketch in which several of the Charlie Hebdo cartoonists who had been killed were allowed into heaven despite having frequently mocked religion.¹⁸⁵ Ervine says that French society in general and French media in particular started being reluctant in embracing this kind of dark humor. The comedian of the show Jérémy Ferrari said that many TV stations that had planned interviews with him about his show, canceled them. There was a highly noticeable reluctance to support the humor and mocking of war and terrorism. In a school north of Paris, a pupil was reportedly disciplined for laughing at a joke about the name of a gunman who killed several people in the days after the Charlie Hebdo attack, and was made to repeatedly write the phrase “one does not laugh about serious things”.¹⁸⁶ Ervine states that several years on, as he explores his recent book on the topic, French comedians seem torn between insisting on the importance of being able to joke about whatever topics they wish and worrying about the consequences of doing so and five

¹⁸² The Conversation is an independent source of news and views, sourced from the academic and research community and delivered direct to the public <https://theconversation.com/uk/who-we-are>

¹⁸³ Senior Lecturer in French and Francophone Studies, Bangor University

¹⁸⁴ Ervine, J., (2020, January 6), Five years on from the Charlie Hebdo attack, ‘Je suis Charlie’ rings hollow *The Conversation*, <https://theconversation.com/five-years-on-from-the-charlie-hebdo-attack-je-suis-charlie-rings-hollow-129151>

¹⁸⁵ *Ibid.*

¹⁸⁶ *Ibid.*

years on, it is crystal clear that France has not continued to embrace values associated with Charlie Hebdo. As regards the weekly satirical, at the time the events took place, the number of subscribers rose up to 260 000, the selling also up to 120 000 copies per week. Meanwhile until 2018, the number of subscribers and selling to non-subscribers went to 35 000. Ervine describes how the weekly satirical experienced continuous decline in sales and in the fourth anniversary of the attack in 2019 asked the readers with an editorial: “Are you still there?” One thing that is certainly not still there is Canal Plus’s *Les Guignols*, the satirical show featuring latex puppets and also its four main writers that were fired in summer 2015 and the show moved to a less prominent slot until 2018 when the iconic show was finally cancelled by Canal.¹⁸⁷ Ervine presents the metamorphosis of French society and French media in the last 5 years regarding the willingness to embrace biting satirical humor. Has the society reflected on the freedom of expressions issues? It is clear that the values protected with fanaticism regarding the unconditional freedom of speech have been subject to a sort of change. The thing that remains unchangeable is the truth of a multicultural society and the conditions for its well being are mutual tolerance and respect. All the parts of the society take place within a multicultural context where diversity is richness. Our modern times rest on a firm basis of the spirit of tolerance that calls upon us to acknowledge and accommodate disparate ideas, cultures, or religions of others.¹⁸⁸ Even if other values change, these should be values that do not change.

3.3. Balancing of freedoms

In every democratic society the separation of powers avoids the risk of possible abuse of power by the government against the citizens. So, the parliaments, which are elected by the citizens, are responsible for determining the democratic rights and responsibilities, which later on are protected

¹⁸⁷ *Ibid.*

¹⁸⁸ Yoo, K. (2017). When Does Cultural Satire Cross the Line in the Global Human Rights Regime?: The Charlie Hebdo Controversy and Its Implication for Creating a New Paradigm to Assess the Bounds of Freedom of Expression. *Brooklyn Journal of International Law*, 42(2), 761–806, 762

by constitutions and laws. The application and functioning of the laws are provided by the judiciary. Moreover, the adopted international law framework sets some minimum binding standards in protection of universal human rights.

However, there is always going to be collision among freedoms or rights as far as humankind will be in existence because every being is so unique in his/her diversity, in all of the possible meanings, physical, metaphysical, cultural, in means of perspective, horizon etc. The important thing is to be able to find the solution of the problems by addressing them to competent organs.

3.3.1. Freedom of expression and public interest

Nothing can be above the human being; everything should be in service of his benefit. In democracy, the rights and freedoms are inalienable but they are not supposed to be divinely bestowed as such. As these rights and freedoms are exercised in a world of competing interests, they would have to be associated with responsibility in order to obtain a peaceful coexistence and a balance of interest.

In his book “The nature and sources of law”¹⁸⁹, John Gray builds a triangle structure of the problems that implicate freedom of expression and the damage that it can cause to the public interest. According to this triangle, in the first corner stands the right of people who want to enjoy freedom of expression, that means to be able to express themselves and also allow and welcome the others expressing themselves. In the second corner, stands the rest of the society, who can be affected and damaged from the first group’s freedom of expressing themselves. And in the third corner of the triangle stands the state, who is responsible for granting the protection and respect of both, the first and the second group. In this meaning, the rights of both of the groups, in the legal context can be considered social interest and the state’s role is to protect them, since social interest which is public interest is undivided from state’s interest.

In our context the distinction between public interest and private interest is made by the concept of freedom of thought¹⁹⁰, which does not face any limitation differently from freedom of

¹⁸⁹ Gray Ch. J., (2012, July 8) The nature and Sources of the Law, Quid Pro, LLC, 18

¹⁹⁰ Article 9, ECHR https://www.echr.coe.int/Documents/Convention_ENG.pdf

expression. Freedom of thought, based on Article 9 of ECHR and Article 18 of ICCPR as Mill says based on his “Harm Principle”, is an absolute freedom, and it never faces any legal restriction. As opposed to the right to freedom of thought, the right to freedom of expression is not considered to be an absolute right, a right which “cannot be overridden under any empirical circumstance whatsoever”, unlike, for instance the freedom from torture or slavery.¹⁹¹

In this context also media or mass media, considered as a form of communicating the expression in the public sphere, have their primary aim the exhumation of the truth and bringing it up to the attention of the social interest.¹⁹² This crucial mission of all mediums to transmit the information based on the criteria of the truth holds a great responsibility in accordance with public interest in a way that fulfils all the criteria imposed by the law such as respect of the rights or reputations of others, the protection of national security or of public order, or of public health or morals.

In the cartoons case, the satirical weekly Charlie Hebdo is considered correct in its right to publish certain offensive content without taking into account limits of this right as are prescribed by law. An empirical researched over the Muslim Community in France and beyond would be needed to measure the consequences in their lives after the publication of the cartoons.

3.3.2. Dignity in the core of every right

From the history, the concept of *dignitas hominis* which is known as a western norm started to be used during the Roman times in the meaning of honor and respect. Honour and respect should be accorded to someone who was worthy of that honour and respect because of a particular status that he or she had.¹⁹³ In legal systems based on Roman law, dignity was seen as a right of personality and status, and criminal and civil remedies were frequently provided if dignity in this sense was

¹⁹¹ Gewirth, A., (1981). Are There Any Absolute Rights? *The Philosophical Quarterly* (1950-), 31(122), 1-16, 2

¹⁹² Shehu, R.,Gjana, F., *supra nota* 65, 153

¹⁹³ McCrudden, Ch., (2008, September), Human Dignity and Judicial Interpretation of Human Rights, *European Journal of International Law*, 19(4), 655–724, 656, 657 Retrieved from <https://doi.org/10.1093/ejil/chn043>

infringed.¹⁹⁴ The three core international human rights instruments which laid the foundations of the international human rights order, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Cultural and Social Rights all assert that rights to be respected and to be upheld in terms of these instruments derive from the inherent dignity of the human person.¹⁹⁵

Article 1 of the UDHR provides:

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

Also, in the preamble of International Covenant on Economic, Social and Cultural Rights (ICESCR), the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family it is considered as the foundation of freedom, justice and peace in the world. All the rights and freedoms derive from the inherent dignity of the human person. In accordance with the UDHR, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.¹⁹⁶ All the most important human rights instruments give a great place to human dignity. Dignity of human beings stands in the core of every right as much as the accordance of every right to the human being is the guarantee of dignity. Consequently, violations of human rights are violations to human dignity. The preamble underlines the obligation of States under the Charter of the United Nations (UN) to promote universal respect for, and observance of, human rights and freedoms and adds that also the individual has duties to other individuals and to the community to which he belongs for the promotion and observance of the rights recognized in the Covenant. So, beside the states the duty to respect and promote human

¹⁹⁴ *Ibid.*

¹⁹⁵ Chaskalson, A., (2002), Human Dignity as a Constitutional Value: A South African Perspective, *American University International Law Review*, 26(5), 1377- 1407, 1382

¹⁹⁶ Preamble of ICESCR

rights is also of each person for other people. In this context, this research lets serve as a call for respect and tolerance for human dignity and human beings in their diversity.

CONCLUSIONS

This research represented the conflict that was initiated from the publication of the cartoons of Prophet Muhammed as one of the most intriguing topics for the scholars of human rights in the last decade. This event initiated a lot of discussion regarding the clash of freedom of expression with freedom of religion in the way Prophet Muhammed was depicted with some heavy messages of violence, terror and perversity by causing a lot of indignation and offense toward the Muslim Community. Presence of media as a canal of realization of freedom of expression, and Charlie Hebdo weekly satirical per se was part of debate.

During the research it was found that, both, freedom of expression and freedom of religion are fundamental human rights embodied in European Convention on Human Rights in consecutive order Article 9 and 10. In terms of importance, both of the rights have been considered as essential for pluralism and democratic societies.

While in *Handyside v. the United Kingdom* case, ECtHR marked the importance of freedom of expression by saying that “freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for the development of everyone”¹⁹⁷ In the same way, in *Kokkinakis v. Greece* highlighted that “freedom of religion is one of the foundations of a democratic society ... It is one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned.”¹⁹⁸

During history, these freedoms have been actively repressed. After their recognition, most of the time they acted to complement each other. For instance, freedom of expression serves as a tool for realization of freedom of religion, and also manifestation of religion is a form of expression. Yet,

¹⁹⁷ *Handyside v the United Kingdom supra nota* 131, § 131

¹⁹⁸ *Kokkinakis v. Greece, supra nota* , § 132

it is possible to have a clash of these rights when certain expressions violate religious sentiments of believers like in cases *E.S v. Austria*, *Otto-Preminger-Institut v. Austria*, *Cartoons Case* etc.

Even if the religious sentiments are not mentioned in Article 9, ECtHR has stated that religious sentiments are related to the right to manifest the religion, so they fall under the protection of Article 9 of ECHR. Anyway “those who choose to exercise their freedom of religion . . . cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious belief and even the propagation by others of doctrines hostile to their faith.”¹⁹⁹ From the other side, freedom of expression is applicable not only to “information” or “ideas” that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that shock, offend or disturb the State or any sector of the population.²⁰⁰

Yet, in several cases the speech which exceeds the limits provided by law by depriving the believers from enjoying their religious rights is restricted form ECtHR. When the religious feelings of the believers are hurt, it means that particular expression interferes with the right of a person to exercise his religion. ECtHR needs to strike a balance between the rights when they clash with each other and also prioritize one of them according to the issue.

Referring to Article 9(2) of the ECHR, “this right can be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interest of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others”²⁰¹.

Freedom of expression also is exercised with duties and responsibilities. Its limits are defined in ECHR and also ICCPR. These limits are placed in order to guarantee the interests of national

¹⁹⁹ *Otto-Preminger-Institut*, *supra nota* 137, § 47

²⁰⁰ *Handyside v the United Kingdom* *supra nota* 131

²⁰¹ Article 9 (2) ECHR

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.²⁰²

According to the ECtHR none of the rights is absolute, they become subjects of justified limitations according to the case. In the right of religion restriction cases, it is not possible that the freedom of religion be restricted as a whole, but limitation can occur in regard to the manifestation of the faith in accordance with Article 9 (2). Just like in the freedom of expression limitation cases, where the thought is not limited, but the tangible forms of expressions are subjects of limitation in accordance with the prescription of Article 10 (2). The scope of Article 10 (2) is wider compared to Article 9 (2). Also, the ECtHR has approached the cases where the collision of these rights takes place through Article 10 (2) of ECHR. In this context the legitimate aim found in Article 10 (2) is prevention of disorder and protection of the rights of others. Expressions that seek to spread, incite or justify hatred based on intolerance, including religious intolerance, that ignite the feelings of the believers protected from Article 9 of ECHR, do not enjoy the protection afforded by Article 10 of the Convention. Therefore, the hypothesis proposed is proven to be true.

A wide margin of appreciation in judging the cases is left to the contracting states of the Convention. Each of the states has the right to intervene if the action is based on the national law. The restriction taken from the states should have a legitimate aim in accordance with Article 10 (2). And the last condition is related to the necessity of the restriction in the democratic society. In some cases, ECtHR has upheld the decision of the national courts and in some others the judgement of the ECtHR has been different from the national ones.

²⁰² Article 10 (2) ECHR

The exercise of freedom of expression in the cartoons case seems to have gone beyond the permissible limits of the objective debate by satirizing neither more nor less but the spiritual meaning of and not less than 2 billion people, the Prophet Muhammad. Such action is considered to be capable of stirring up prejudice and threatening religious peace because of the messages given through the cartoons incited religious intolerance and violated the of the rights of Muslim Community in France in the meaning of Article 10 (2) prescribed as rights of others.

The degrade of expression that derives from forms of hate speech and hate crimes and intolerance in the society violates the dignity of human beings that stands in the core of every right.

Something very striking in the cartoons case, is a noticeable negligence on the part of the Muslim population of France affected from the publishing of the cartoons in making a case before the European Court of Human Rights. The only Muslim believer who filed a case against Denmark was after the Prophet Muhammed Cartoons firstly published in 2005, and the cases was declared inadmissible form ECtHR since the claimant was a Moroccan national living in Morocco and ECtHR did not find any jurisdictional link between Denmark and Moroccan national complaining about the publications of the cartoons of Prophet Muhammed from a Danish newspaper. What is the reason for this lack of reaction in protection of their rights? The reasonable suspicion is that, this part of the population felt discriminated against on the basis of race, culture, religion and many people associate the terrorist act with Islam. Especially after the terrorist act in Charlie Hebdo, Muslim Community of the French society felt intimidated by the connection made to the terrorist act with Islam, and felt a need to withdraw into their own private space and make sure to distance themselves from the terrorist act more than to become part of public debate and protect their rights. This is supported by the fact that after the preliminary publication of the cartoons of the Prophet Muhammad by the Danish newspaper, there were peaceful protests in France by the Muslim population, while there was no similar reaction after the publication of the cartoons by Charlie Hebdo, and especially after the terrorist attack. This could be another research topic in the future

that will need an empirical study to evaluate the consequences of the events in the life of Muslim Community of France and research about the possible legal solutions for the problem.

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Other Sources

91. Bible

APPENDIXES

Appendix 1. The Table

The timeline of publication of Prophet Muhammed cartoons from “Charlie Hebdo”	
30 September 2005	Series of cartoons, some depicting the Prophet Mohammed as a terrorist with a bomb, published by Danish newspaper Jyllands-Posten.
8 February 2006	French satirical magazine Charlie Hebdo published the cartoons along with its own front page of Muhammed, saying: “It’s hard to be loved by imbeciles.”
6 February 2007	Charlie Hebdo sued by Muslim groups for publicly “insulting” Islam. Francois Hollande testifies in favor of freedom of expression.
7 February 2007	French newspaper Libération reprints the Mohammed cartoons anew.
22 March 2007	Charlie Hebdo cleared of “racial insults” for publishing controversial Danish cartoons.
2 November 2011	Charlie Hebdo’s Paris offices were burned in an apparent arson attack the day after it published an issue with the Prophet Mohammed as “editor-in-chief”. He is depicted on the front page saying: “100 lashes if you don’t die of laughter”.
19 September 2012	Charlie Hebdo once again publishes cartoons of the Prophet Mohammed just one year after the arson attack. The front cover, with the headline “The Untouchables 2”, shows the Prophet in a wheelchair saying “You mustn't mock”. Another cartoon inside the magazine depicts the Prophet naked.
20 September 2012	Riot police deployed around Charlie Hebdo’s offices in Paris and the magazine’s website was attacked.
8 December 2012	Two Muslim organizations launched legal proceedings against Charlie Hebdo, accusing it of inciting racial hatred.
2 January 2015	Charlie Hebdo releases a 65-page special edition illustrated biography of the Muslim prophet.
7 January 2015	Charlie Hebdo’s new Paris offices attacked by armed gunmen, killing 12, after publishing issue featuring Michel Houellebecq’s novel Submission – a fictional vision of France under Islamic rule in 2022 described as 'Islamophobic' by critics.
14 January 2015	Charlie Hebdo publishes 3 million copies of new edition showing Prophet Mohammed holding 'Je Suis Charlie' sign

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