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BLASPHEMY AND RELIGIOUS ABUSE IN THE HUNGARIAN LEGAL SYSTEM

Introduction

Prejudicial expressions aimed at religions, religious feelings, or the believers themselves are basically as old as religions. In the early days of religious expansion, legal restrictions on such opinions and their persecution with serious punishments were generally accepted. With the expansion of fundamental rights, which include the freedom of expression, debates have intensified on how to resolve a legal problem, which exists due to a clash between two key rights, the freedom of expression and the freedom of religion, in cases involving blasphemous or offensive remarks about religions, religious actors or religious life.

Currently, it is widely-accepted in democratic states that legal restrictions on the freedom of expression are only possible in a limited number of situations. Furthermore, there is a generally held consensus in European thinking that rancorous, abusive opinions, including those which hurt the human dignity of believers, are within these limits. However, a great number of thinkers say that the possibility of restricting the freedom of opinion or the specific standards governing this are not crystal clear.

The issue of restricting blasphemy is a complicated one, not only because it is difficult to determine which law or rightful interest is violated by someone who makes a blasphemous opinion. If we accept that hurting religious feelings may be the valid reason for the restriction of expression, we would be facing a problem that is almost impossible to find a general definition about what level of injury should warrant the limitation of freedom of expression. The reason this task is so challenging is that religion belongs to the innermost core of

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an individual's personality, it is one of the most important components of one's personality and the attitude of believers towards religion is so diverse, that it is extremely difficult to identify a generally accepted legal standard protecting religious feelings from blasphemy. This is difficult to do even for the followers of one religion, whose opinions are clearly not homogenous about this issue, so logically, finding a valid general standard applicable for multiple religions is almost impossible.

That is why, I do not intend to go into much detail in my theoretical inquisition about the limits on blasphemous opinions, instead I will only outline the history of the Hungarian regulation of blasphemy and the effective (criminal-, civil-, and media-code) regulations, highlighting the application of these regulations in judicial practice.

The History of the Hungarian Regulation of Blasphemy

Legal efforts aiming to repress blasphemy, thoughts against religions or religious people go back to the period of the Turkish conquest in Hungary. (ANGYAL 1902, 32–51.) The first act, which punished profanities was enacted in the middle of the 16th century. The justification for the prohibition of blasphemy by Act 42 of 1563, similarly to many contemporary foreign regulations, was “fear of the wrath of God and so the propitiation of God”.

Profanity, which here means blasphemy, was also prohibited in the Feudal and Early Modern era criminal law. (MEZEY 1986, 56.) The proposed bill in 1791 would have dedicated a whole chapter to verbal, written or physical blasphemy. According to this draft legislation these acts would have been punishable by the criminal courts. Although the bill did not pass, still, it can be regarded as a decisive breakthrough since legal experts agreed that blasphemous acts should not be penalized by grave physical punishment like mutilation or death.

The next significant achievement in the codification effort was the bill of 1843, which unlike the previous bill did not mention blasphemy at all. According to the written text of the bill's debate, (ANGYAL 1902, 42–46.) which happened at the session of the National Assembly, a wide spectrum of pros and cons were voiced. For example, representatives who supported making blasphemy a misdemeanour argued that this was necessary for “the promotion of religion and good morals”. However, those who opposed this proposition were of the opinion that “if profanity is penalized, it is the most serious anthropomorphism, as if God was a human being, with feelings of love, anger, revenge”.

Similarly, the bills of 1873 and 1875 did not originally mention blasphemy, yet during the debate in the Parliament, there was a clear demand for its inclusion in the new Criminal Code, therefore, the draft legislation was amended accordingly. So the first Hungarian Penal Code, the so-called *Codex Csemegi*, contained a clause which made it legally possible the punishment of a person who “causes a public scandal by the use of blasphemous words”. (190. §) Besides, the Penal Code on Infringements (Act 40 of 1879) also indirectly included blasphemy and threatened any person with imprisonment who “causes a public scandal by publicly abusing a subject of the religious respect of a state-recognized denomination, outside the facility of religious service and not at the religious service”. (51. §)

The current Hungarian legal system does not include a specific prohibition of blasphemy, yet certain regulations can be relevant in this respect. These regulations are the following.

Media Regulation

The restriction of hate speech in the media regulation before 2010

The Hungarian media regulation has restricted expressions of hatred since the passing of the first media act (Rttv.)² became effective in 1996. The Rttv. Section 3. § (2) stipulated the prohibition of incitement to hatred regarding minorities, religion or religious group, section (3) of the act prohibited the insult, discrimination, presentation or condemnation of communities, based on racial aspects.

Regarding the exact contents of incitement to hatred and discrimination, the Constitutional Court (CC) in its resolution 1006/B/2001 formulated the justifications, based on which it ruled that – besides contents qualifying as incitement to hatred – all, including less severe prohibitions, are constitutional, even if they are not part of the penal code. According to the court’s decision:

“[the] penal law is the final means in the legal responsibility system. Meaning, if concerning a socially harmful behaviour – in this case, incitement or instigation to hatred – criminal responsibility is not excessive, nor unconstitutional, more lenient prohibitions in other branches of law cannot be excessive or unconstitutional either.”³

² Act I of 1996 on radio and television broadcast (Rttv.).

³ 1006/B/2001 CC resolution, commentary Section III. 5. 1.

So the CC uses the term instigation to hatred in the media law as an equivalent to “incitement to hatred”, meaning, even if its constitutionality is not disputed, the law enforcement regulatory authorities – based on the above interpretation – have to judge the contents strictly, in harmony with the standards of the penal law, in order to avoid restricting unnecessarily the freedom of expression.

However, regarding the interpretation of discrimination, the above-mentioned decisions of the CC did not include any guidance, although the court agreed, that “broadcasts aiming at discriminating persons, social groups, (minorities, or even the majority) [...] can have a negative, unforeseeably harmful effect.”⁴ In this decision, the court decided that discrimination is considered a less harmful type of behaviour than incitement to hatred and the corresponding penal law category, instigation to hatred.

One emblematic example of legal practice under the 1996 Media Code towards powerful remarks about religious communities, in this case, about Christians, proved to be unlawful. The 2003 case of Tilos Rádió (Prohibited Radio) deserves to be mentioned. In that case, the National Radio and Television Board (NRTB), which body was responsible for the regulation of the media under the Media Code, ruled that some of the above-mentioned radio’s December 2003 broadcasts seriously violated the above-mentioned section 3. § (3) of the Media Code. One of the broadcasts entitled *Biciklis század* [Bicycle Century], violated the law once, while the other, entitled *Honty és Hanna* [Honty and Hanna], violated it two times.⁵

According to the board, the broadcasts – one of which was aired on Christmas day – included expressions, which were insulting to Christian symbols, they “interpreted the Biblical text in a sacrilegious way”, this broadcast was deemed to be harmful towards Christian people because “they distortedly told a fake Biblical story, and the hosts of the program used several expressions which were openly or obliquely insulting”. Besides the use of multiple obscene expressions by the hosts, they also said “I want to exterminate all the Christians”, which attracted large media attention. The radio channel admitted the violations, so the subject of the legal debate was reviewed by a court to find out if the board’s decision was proportionate or not.⁶

⁴ 1006/B/2001. CC resolution, commentary Section 5. 2.

⁵ 54/2004. (I. 21.) NRTB resolution.

⁶ See Capital Court judgements 24.K.30820/2004/5. Capital Court of Appeals 2.Kf.27.153/2004/7. judgements.

The current hate speech regulation in Hungary

The currently binding media regulations, which became effective on 1 January 2011 (Smtv.)⁷ on the regulation of hate speech, were basically copied from the text of the 1996 media regulations. The text of the relevant law [Smtv. Section 17. § (2)] was amended twice within a year of its passing. After the first amendment of the Media Code, which was prepared after consultations with the European Commission, which led to the deletion of the phrase “open or oblique violation” from the legislation. So after April 2011 only messages containing direct incitement to hatred or expressions classified as discriminative remained prohibited. So in the future, content believed to be injurious to communities cannot be restricted by legal means. A couple of months later, in August 2011, another amendment became effective which removed the prohibition of content which could be classified as incitement to hatred or discrimination. The amendment was justified saying that the prohibition of hate speech already protected communities, social groups, so it is needless to include the clause in the Media Code which would have protected the individual. Regarding the scope of the regulation, the current media regulation rules apply not just to television and radio broadcasts, but also for the online and the printed media. It must be noted that in its December 2011 decision the CC ruled that effective regulation is constitutional in terms of its contents and scope – partly following its previous ruling.⁸

The protection of religious, ideological conviction in the media regulation

Regarding the protection of the dignity, e.g. religious, of communities, a piece of regulation must be mentioned, which in cases of content injurious to religious, faith-related and any other convictions, made it into a requirement for broadcasters to warn audiences about this fact. It is important to highlight that this regulation – a provision also present in the Rttv. with similar wording – significantly differs from the legal limitations mentioned in the previous sections of this paper, both in terms of its length and its nature.⁹ The new regulation simply sets broadcasting limitations for potentially injurious content, so it clearly lowered the standard of protection. However, it is important to note that this regulation may not be considered a clear prohibition in cases of incitement to hatred and discrimination, since for these type of content, the freedom of

⁷ Act CIV of 2010 on basic regulations of the freedom of press and media contents (Smtv.).

⁸ 165/2011. (XII. 20.) CC resolution.

⁹ Act CLXXXV Rttv. (Mttv.) 14. § Section 5. § (1) on media services and mass communication.

expression is more important than the feelings of the potentially offended audience, and the law only requires the broadcaster to warn its audience about this fact. So for such content, there is a kind of relative prohibition, but it must be added that the regulation does not focus – as a standard – on the hurt sensitivities of the person or group; instead the standard is linked to the injury of the conviction itself.

In addition to the aforementioned rule, the Media Code absolutely prohibits the broadcasting of one type of content deemed to be injurious toward religious convictions: in line with Smtv. 20. § (5) “in [m]edia contents, commercials injurious to religious or ideological convictions may not be broadcasted.” This type of commercial does not have to either target or popularize a Church, religion or their activities, religious events, services etc., but just the mere fact that its contents are injurious to the religious, faith-related conviction of the individuals of the communities involved led to a ban.

However, there is no long-standing and consistent domestic law enforcer practice about how to deal with such commercials. Nevertheless, it is worth noting that a few years ago the NRTB discussed several times the case of a commercial which used the story of the Genesis from the Bible in Biblical style to publicize a weekly paper.¹⁰ The board issued several decisions which said that the ad violated the binding media laws.¹¹ Yet in a later decision, the members of the board changed their minds and overturned one of their previous resolutions.¹² In the decision, the board justified their latest decision, amongst other arguments, by saying that “using a sacred object, text or story in a secular/profane context in itself does not qualify” so the broadcaster did not violate the prohibition of sharing a commercial which was injurious to religious convictions.¹³

¹⁰ The commercial’s contents: “On the first day there was light, then the skies and the land. On the fourth day, the Lord created the Sun and the stars. On the fifth day he populated the waters with fish, the skies with birds, and on the sixth day, he created man. On the seventh day, you also buy *Vasárnap Hírek* (Sunday News)!”

¹¹ See e.g. 416/2008. (II. 27.) and 1369/2008. (VII. 15.) NRTB resolutions.

¹² 1369/2008. (VII. 15.) NRTB resolution.

¹³ 1759/2008. (IX. 24.) NRTB resolution.

Penal Law and the Law of Misdemeanour

Prohibition on instigation against communities

The Penal Code (Btk.)¹⁴ in Section 332 defines instigation against communities as inciting to violence or hatred “publicly a) against the Hungarian nation; b) against a national, ethnic, racial, religious group, or its members, or c) against specific groups of the society, or its members – especially on grounds of disability, sexual identity, sexual orientation.” (A relevant change in the facts of the text is that until 2016 only incitement to hatred was included in it as a criminal offence.)

Based on the 30/1992. (V. 26.) CC resolution, incitement to hatred is punishable if these hateful expressions are capable of inciting active, hostile behaviour or anger towards others. It is irrelevant that the intent to incite hate is not present, it may still be treated as a criminal act even if the accused does not expressly call for actual violence, but the perpetrator has to be aware of the fact that his/her words might lead to violent actions.

The protected legal subject is dual: on the one hand, it must include a threat to public order, on the other hand, incitement to active behaviour implies the danger of infringing the rights of an individual. The incitement to hatred in itself does not qualify as a crime if it is not capable of triggering other criminal acts. The CC did not define the extent of danger which is required to justify the restriction of the freedom of expression, what is certain – being an endangering, immaterial crime – that someone can commit a crime even if no hatred is created in the audience or if nobody commits, prepares or plans another criminal act after these remarks. The objective possibility, the suitability of the expression to cause harm to any member of the targeted community transforms a speech into a punishable crime.

Later, the court decided in its 18/2004. (V. 25.) CC and 95/2008. (VII. 3.) CC resolutions that exclusively “the acts threatening individual rights and the obvious, direct threat of violent acts” can be constitutionally penalized.

¹⁴ Act C of 2012 (Penal Code).

Further provisions of the penal law and the law of misdemeanour

The penal code in its chapter entitled *Crimes Against Human Dignity and Specific Basic Rights* prohibits the violation of religious and ideological freedom (215. §): “If a person a) restricts another person’s ideological freedom with violence or threats; b) restricts another person’s free practice of religion with violence or threats, can be sentenced with imprisonment up to 3 years.” Based on this provision (in line with the prohibition of identical contents in section 174/A. § of the 1978 penal code), the Supreme Court found that the crime was the same, as when the defendant drove his car into a procession and threatened using his pistol against the participants if they would not let him drive on.¹⁵ The code also made it illegal to damage or destroy religious objects or buildings which are used for religious services (considered a case of vandalism, 371. §). Based on the provisions of section (188. §) Act II of 2012 on misdemeanours, misdemeanour procedures and misdemeanour registration system, a person can be penalized if “a person causes a public scandal in a church or site of religious service, or abuses objects of religious respect, or those used in religious services in or outside a site of religious service, which qualifies as a misdemeanour”. This provision is classified as a more lenient misdemeanour, compared to the regulations in section 191. § of the Codex Csemegi.

It is common in these provisions, that they penalize the peculiar expression of the opinion, not the opinion itself, so applying them indirectly may bring about a state action against blasphemy, they do not qualify as a restricting blasphemy-prohibition judged by the contents of the opinion.

Prohibition of Hate Speech in the Civil Code*The provision of the Civil Code (Ptk.)*

The Civil Code (Ptk.),¹⁶ which was passed in February 2013 and is effective since 15 March 2014 – following its failed constitutional review in 2007 – made another attempt to restrict hate speech by the Civil Code. Based on section 2:54. § (5):

¹⁵ BH 1999. 292.

¹⁶ Act V of 2013.

“Any person may, on the grounds of his or her Hungarian or other nationality or affiliation with an ethnic, racial or religious community that is an integral part of his or her identity, seek to enforce all applicable rights if the relevant community is publicly insulted in a gravely offensive manner or in a manner that is unreasonably disparaging in terms of the way in which it is expressed, and may do so within a final deadline of 30 days following the violation. Any member of the relevant community may seek the enforcement of all applicable penalties with the exception of conceding financial advantages gained by the violation.”

The provision narrows down, those qualifying as protected communities (including religious communities) and states, that an act qualifies as a misdemeanour if being a member of the community involved can be considered an important feature of the person enforcing the law. The facts of the case prohibit expressions which are “gravely insulting or unjustifiably injurious in style”; the act of violation, requiring restriction, is a lot less serious than “instigation to hatred” as defined in the Penal Code.

Case law

The restriction of hate speech was applied as it appears in the Civil Code, in a case where the defendants organized a demonstration against the abortion act in front of the Polish Embassy in Budapest, and one of the defendants – publicly – dressed in the clothes of a bishop, called on the people present “Come to the Holy Communion!”, then imitating the acts of a priest during a communion service, placed white pills from a bag with a clearly visible sign of *abortion pills*, on the tongue of another defendant, and on the tongues of others while saying “The body of Christ”. Meanwhile, the third defendant assisted them by holding a megaphone. The Capital Court of Appeals, in its sentence published later, stated the violation of the right of human dignity and religious freedom saying:

“[the] conduct complained had to be judged objectively, the conduct of the defendants mentioned above, evidently qualifies as the abuse of religion. However, the derisive conduct did not represent the position of the defendants in the issue of abortion, and like a scene in the performance, the placing of abortion pills on the tongue while communicating the message the body of »Christ«, could not be interpreted as the critique of the Church’s position in the abortion debate. The »communion« using abortion pills could be interpreted as

the abuse of the plaintiffs' religion by the defendants, which met the conditions stipulated in section 2:54. § (5) of the Civil Code, seriously and publicly injured the Catholic community."¹⁷

The resolution of principle, published in relation to the case, reached the conclusion that the opinion involved was outside the defensive scope of the freedom of expression:

"[t]he performance cannot be interpreted as the critique of the Church's position in the abortion debate, neither as an act of the freedom of expression, in which the participants mocking the faithful practising the Holy Communion of the Catholic Church, as they changed the host, symbolizing the body of Christ, to »abortion pills« which were placed on the tongues of the participants by the person acting as a priest while saying »the body of Christ«. This behaviour is outside the scope of public debate and is derisive in its contents, so it is seriously injurious to the individual feature of the members of the Catholic Church, and qualifies as the abuse of the religion."¹⁸

The Christmas 2014 issue of the *HVG* weekly paper appeared with the title *Nagy Harácsony* [Great Looting] on its title page, and the picture below showed the faces of government politicians in a transformed version of a 17th century Dutch painting. The picture on the title page was made using the painting by Gerard von Honthorst entitled *Adoration of the shepherds*; its presumed message may refer to the politicians, public actors in the picture as people pursuing material riches.

The lawsuit, in this case, was filed by a member of the Catholic community. The Curia considered that the title page was a political opinion which did not aim to injure the religious community:

"[the] title page involved, basically expresses the author(s)'(s) opinion that the persons depicted manifest a behaviour which can be interpreted, even in the scope of the freedom of expression, that the depicted persons show religious awe toward material assets and the different ways of gaining those, and form a community, based on material assets. This expression of opinion and the depicted subject matter did not aim to humiliate the Christian religion and its faithful community. So basically and definitely, it is the expression of political opinion, judgement of values, neither the title page nor the contents of the paper deals with religious life, the behaviour or judgement of the faithful."¹⁹

Compared with the former case, it is worth noting that even the abortion pills–communion case could have been linked to the discussion of another important public issue, birth control, yet in that case, the court of appeals decided that this behaviour-action was unjustifiably injurious, insulting, and can be penalized as such.

¹⁷ Court of Budapest 70.P.22.286/2016/13. and Court of Appeals of Budapest 2.Pf.20.151/2017/3/II. verdicts (the latter published: ÍH 2017. 53.).

¹⁸ ÍH 2017. 53.

¹⁹ Court of Budapest 22.P.20.171/2015/4. Court of Appeals of Budapest 7.Pf.20.862/2015/5. and Curia Pfv.IV.20.636/2016/4. verdicts.

Summary

The legal regulations of the modern age permit the restriction of blasphemous contents only in extreme cases when the rights of others are violated, and instead of approaching it from God, it does so in the interest of the dignity of believers and of those who express their opinions. Different branches of the law make parallel efforts to protect the dignity of those exercising their religion. Despite all this, it cannot be said that the followers of certain religions do not have to tolerate opinions they dislike or they find injurious.

The individual, personal feeling of injury in itself does not constitute a ground to restrict the opinions of others. However, the interests of discussing public affairs and establishing democratic publicity must also be considered, so unlike in the early, medieval paradigm when the blasphemous opinion was judged by its contents, today they must be judged by its form or style of expression.

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