

IN THE EUROPEAN COURT OF HUMAN RIGHTS

(Case No. 11/1993/406/485)

BETWEEN:

OTTO-PREMIINGER-INSTITUT

Applicant

-and-

AUSTRIA

Respondent

WRITTEN COMMENTS SUBMITTED BY ARTICLE 19, THE INTERNATIONAL
CENTRE AGAINST CENSORSHIP, AND INTERIGHTS, THE INTERNATIONAL
CENTRE FOR THE LEGAL PROTECTION OF HUMAN RIGHTS

PURSUANT TO RULE 37 OF THE RULES OF THE COURT

Frances D'Souza, Director and Sandra Colliver, Law Programme
Director, ARTICLE 19, 90 Borough High St., London SE1 1LL, UK

Emma Playfair, Director and Natalia Schiffrin, Legal Officer,
INTERIGHTS, 5-15 Cromer St., London WC1H 8LS, UK

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TABLE OF CONTENTS

| | |
|--|----|
| I. INTRODUCTION..... | 1 |
| II. INTEREST OF ARTICLE 19 AND INTERRIGHTS..... | 1 |
| III. THE LEGAL ISSUE..... | 2 |
| IV. DISCUSSION..... | 4 |
| A. Countries that have abolished or have not recently applied laws that prohibit insult to religious beliefs..... | 4 |
| B. Countries that prohibit the display of material that may be offensive to religious beliefs, but not where display is to consenting adults only... | 7 |
| C. Countries in which art may be banned for offending religious beliefs..... | 13 |
| D. Seizure of allegedly blasphemous materials..... | 15 |
| E. Community standards and the power of local authorities to seize materials..... | 19 |
| V. CONCLUSION..... | 20 |

ANNEXES: DECLARATIONS BY EXPERTS ON NATIONAL LAW

1. Belgium: Declaration by Prof. Dr. Dirk Voorhoof,
Department of Media Law, University of Ghent
2. Denmark: Declaration of Morten Kjaerum,
Director of the Danish Centre for Human Rights
3. England: Declaration of Clive Lewis, Barrister-at-law,
Sometime Lecturer in Law at the University of
Cambridge and Fellow of Selwyn College Cambridge
4. France: Declaration of Roger Errera,
Member of the Conseil d' Etat
5. Germany: Declaration of Prof. Dr. Jur. Ulrich Karpen,
Professor of Law at the University of Hamburg School
of Law; Member of Hamburg State Legislature
6. Italy: Declaration of Dott. Proc. Gaetano Viciconte,
Partner, Chiti, Viciconte & Associati (and English
language translation)
7. The Netherlands: Declaration of Tjeerd Schiphof,
Senior Researcher at the Institute for Information
Law of the University of Amsterdam
8. Spain: Declaration of Prof. Dr. Angel Rodriguez-Vergara
Diaz, Professor of Constitutional Law, University of Malaga
9. USA: Declaration of Richard B. Lillich,
Professor of Law at the University of
Virginia School of Law

I. INTRODUCTION

These written comments are submitted by ARTICLE 19, the International Centre Against Censorship, and INTERIGHTS, the International Centre for the Legal Protection of Human Rights, pursuant to the permission granted by the President, Mr. Ryssdal, in accordance with Rule 37 s.2 of the Rules of the Court, by letter dated 14 September 1993. As authorised by that letter, these comments are limited to the provision of relevant comparative materials.

The present comments draw substantially upon the statements of legal experts from eight European countries and the United States concerning the law of blasphemy and prior restraint in their respective countries.¹ Annexed to these comments are declarations or affidavits from each of the nine experts, from Belgium, Denmark, England, France, Germany, Italy, the Netherlands, Spain and the United States. These comments also briefly consider the relevant laws of Norway and Sweden.

II. INTEREST OF ARTICLE 19 AND INTERIGHTS

ARTICLE 19 is an international human rights organisation and a registered charity, independent of all ideologies and governments. It takes its name and mandate from the nineteenth article of the Universal Declaration of Human Rights which proclaims the right to freedom of

¹ Except as where otherwise indicated, all references to the law of a specific country are taken from the declaration or statement provided by the legal expert from that country.

expression, including the right to receive and impart information and ideas. ARTICLE 19 seeks to develop and strengthen the international standards which protect freedom of expression by, among other methods, assisting lawyers involved in litigation before national and international courts, convening consultations of experts on free speech issues, and making submissions to international tribunals.

INTERIGHTS is an international human rights law centre. It is a registered charity, free of all ideologies and governments. It focuses on providing legal representation in select cases before international human rights fora, advising on legal rights and remedies under international human rights law, and assisting lawyers and non-governmental organisations in the preparation of cases before international and regional tribunals.

III. THE LEGAL ISSUE

This case concerns the seizure and subsequent forfeiture of an allegedly blasphemous film from the applicant, a private association, by the respondent state, Austria. Both the seizure and the forfeiture were found by to be in violation of Article 10 of the ECHR by the European Commission of Human Rights in its Report of 14 January 1993.

The legal issue addressed in these comments is whether the interference by the State Party was proportionate to the legitimate aim pursued, and therefore "necessary in a democratic society" within the meaning of Article 10(2). "Proportionality" is discussed in view of the

practice of other states. These comments draw upon an illustrative rather than exhaustive body of comparative caselaw, and seek to provide for the Court a survey of the laws concerning blasphemy and prior restraint in several other Western democracies.

These comments demonstrate that in several European countries the crime of blasphemy has either been entirely abolished or substantially narrowed. While the majority of countries surveyed maintain a prohibition of blasphemy and/or insult to religious beliefs, in eight of the ten European countries studied (namely, Belgium, Denmark, France, Germany, the Netherlands, Norway, Spain and Sweden), no form of artistic expression that was shown only to consenting adults has been banned in recent years for causing insult to religious beliefs.

The crimes of blasphemy and religious insult have been entirely abolished in Sweden and the U.S. Only in Italy and England² might a film be prosecuted for religious insult even if shown only to adults who have warning that it might be offensive.

Moreover, in Spain, seizure of an allegedly blasphemous film prior to its display would not be permitted under any circumstances, and in Denmark, France, Germany, and the Netherlands, seizure of an allegedly blasphemous work of art would most likely not be permitted pending a judicial decision on the merits of a case so long as the artwork was shown only to consenting adults.

² These comment are limited to England and Wales and do not extend to the whole of the United Kingdom because we were unable to obtain expert information on the blasphemy law of Scotland and Northern Ireland.

IV. DISCUSSION

A. Countries That Have Abolished or Have Not Recently Applied Laws Prohibiting Insult to Religious Belief: Denmark, Norway, Sweden and the United States

In a few European countries, blasphemy laws have been repealed entirely. For instance, laws prohibiting blasphemy in Sweden were abolished decades ago³ and in Spain the crime of blasphemy was repealed in 1988.

In Denmark, while a law prohibiting blasphemy exists under Section 140 of the Danish Penal Code, it has not been used since 1938. The Danish Penal Code also contains a provision (Section 266b) against expressions that threaten, deride or degrade on the grounds of race, colour, national or ethnic origin, belief or sexual orientation. That provision, however, has never been used against statements offensive to religion. In 1984 a local art club asked an artist, Jens Jørgen Thorsen, to create a "happening" on the wall of the local railway station. The work displayed a naked Jesus with an erect penis. The work caused considerable controversy, and was eventually removed, but no legal charges were ever brought. In 1992, a film made by the same artists was shown in cinemas all over Denmark. The film portrayed Jesus as sexually active and the clergy as corrupt. Though the film caused debate, no legal measures were taken and no charges were laid.

³ According to information received from the Swedish chapter of PEN (the international organisation of poets, publishers, essayists, novelists and other writers), the general crime of blasphemy was abolished in 1949, and a narrower crime of religious insult was abolished in 1970.

In Norway, Section 142 of the Penal Code provides the possibility of punishment for any person who "publicly insults or in an offensive manner shows contempt for any religious creed...or for the doctrines or worship of any religious community lawfully existing here." However, this provision has not been applied by the courts since 1936, when an author, Arnulf Øverland was acquitted under this provision. More recently, several Muslim leaders brought a lawsuit against the Norwegian publisher of "Satanic Verses", but withdrew it, apparently in recognition of the fact that they had virtually no chance of success.⁴

In the United States, blasphemy laws have uniformly been struck down as unconstitutional under the First Amendment guarantee of freedom of speech. While blasphemy statutes and ordinances were generally upheld in earlier state court cases, the U.S. Supreme Court effectively brought an end to blasphemy proceedings in the United States with its decision in Joseph Burstyn, Inc v. Wilson, 343 U.S. 495 (1952). In that case the State of New York banned the showing of a film by the Italian producer/director Roberto Rossellini entitled "The Miracle" on the ground that it was "sacrilegious." The film's distributors thereupon brought an action arguing that the statute pursuant to which it was banned was an unconstitutional prior restraint upon freedom of speech. The Supreme Court, in a unanimous decision, agreed with this argument. Justice Clarke explained the Court's reasoning as follows:
In seeking to apply the broad and all-inclusive definition of "sacrilegious" given by the New York Courts, the censor is set adrift

⁴ See Steingrim Wolland, "Press Law in Norway" in Press Law and Practice, (Article 19, London 1993) at 128.

upon a boundless sea amid a myriad of conflicting currents of religious views, with no charts but those provided by the most vocal and powerful orthodoxies. New York cannot vest such unlimited restraining control over motion pictures in a censor...under such a standard the most careful and tolerant censor would find it virtually impossible to avoid favoring one religion over another, and he would be subject to an inevitable tendency to ban the expression of unpopular sentiments sacred to a religious minority.

Id. at 504-05 (emphasis added). Justice Clarke, concluded by observing that,

It is not the business of government in our nation to suppress real or imagined attacks upon a particular religious doctrine, whether they appear in publications, speeches or motion pictures.

Id.

In a recent civil case the plaintiff sought to enjoin the showing of Martin Scorsese's "The Last Temptation of Christ" on the ground that the film was a defamatory interpretation of the life of Jesus Christ that infringed on his and other believers' constitutional right of freedom of worship and religion. (Nyack v. MCA Inc., 911 F.2d 1082 (5th Cir 1990), cert. denied, 498 U.S. 1087 (1991)). The U.S. Court of Appeals for the Fifth Circuit, citing Burstyn, affirmed the dismissal of the application. Id. at 1083. The Supreme Court refused to hear the case, allowing the Court of Appeal's decision to stand.

B. Countries that Prohibit the Display of Materials Offensive to Religious Beliefs, But Not their Display to Consenting Adults Only: Belgium, Germany, the Netherlands and Spain

Although Germany, the Netherlands and Belgium all have laws that proscribe a narrow category of insult to religious belief, in none of

those countries have people been convicted in recent years for displays that were shown only to consenting adults.

In Germany, Section 166 of the Criminal Code forbids insults to a religion or "Weltanschauung" (world outlook), publicly or by dissemination of publications. It states:

1. Whoever publicly or by distribution of printed materials insults religious belief or Weltanschauung of others in manner that reasonably could be expected to disturb public peace, is subject to...[punishment]

2. The same applies to persons who publicly insult... a church or other association devoted to a religion or Weltanschauung.

For an insult to be punishable under this law "the manner and content" of the insult must be such that an objective onlooker could reasonably apprehend that the insult would disturb the peace of those who share the insulted belief. (Court of Appeal of Celle, Neue Juristische Wochenschrift, 1986, p. 1275.) Moreover, to be convicted, an offender must intend or at least be aware that his or her action constituted an offence. In applying Section 166 to a work of art, the freedom of art as guaranteed by Article 5(3) of the Basic Law must be taken into account.

Although the Federal Constitutional Court has not issued a judgment dealing specifically with the freedom of art vis-a-vis the freedom of religious beliefs, various penal courts have done so. For example, in a 1981 case, the Penal Court of Appeal of Cologne held that a caricature with words of Maria and Josef, dealing with faecal issues

and abortion, did not in all circumstances show hostility against Christians (Neue Juristische Wochenschrift 1982, p. 657). In a 1985 case, the Court of Appeal of Karlsruhe ruled that a printed article which dealt sarcastically with the Last Supper did not constitute an insult. (Neue Strafrechtszeitung 1986, pp. 363 ff.) In 1988, the Penal Court of Bochum held that a leaflet, even if an insult, which addressed "the Vatican and fascism" and included caricatures, was not of a character to disturb the peace. Even if the German Court were to find a film such as Das Liebeskonzil to be a religious insult, it most likely would not prohibit its display so long as its viewing was limited to adults who had been informed in advance of its nature and contents.

Moreover, satire as an art form is to be given considerable latitude. In a 1987 case, the Federal Constitutional Court decided a case involving a caricature depicting the Prime Minister of Bavaria as a pig copulating with another pig in judicial attire. Noting that caricature as an artistic form depends on exaggeration and distortion, the Court held that it was necessary to distinguish between "form" and "content", and apply a more liberal approach to the former. The Court thus held that although the message of the satire violated the personal honour of the plaintiff by implying an immoral complicity between him and the judiciary, the form of the satire did not. (3 June 1987, (office coll, vol. 75, pp. 369 ff.) ("Strauss")).

In France, while there is no law against blasphemy, Article 283 of the Penal Law proscribes the showing of a film contrary to good morals,

("contraires aux bonnes moeurs"). Apparently, no film has ever been prosecuted under this provision, and furthermore, the new penal code (in force from 1 March 1994) contains no such provision (except concerning minors). In a 1988 case, several groups asked the court to ban the showing of Martin Scorsese's "The Last Temptation of Christ". The court rejected this application, noting that the right to respect for beliefs should not interfere in an unjustified manner with artistic creativity. In upholding the lower court's decision, the Court of Appeal ordered that all advertisements for the film should include an announcement that the film was based on a novel and not upon the Gospel. (Cour d' appel de Paris, 28 September 1988.)

In the Netherlands, blasphemy is a criminal offence under the Penal Code Article 147 (introduction and sub 1 Wetboek van Strefrecht), but this provision only covers expressions concerning God, and not saints and other revered religious figures ("godalaatering"). Further, the criminal offence of blasphemy has been interpreted to require that the person who makes the expression must have had the intention to be "scornful" ("smalend"). This is a stricter test than normally is applied to the intent of the defendant. (Hazelwinkel-Suringe, H.D. Tjeenk Willink, Alphen aan den Rijn, 1979, p. 163). Thus, even if it was objectively foreseeable that people would be aggrieved, and those people actually were aggrieved, there is no offence if the speaker did not have the intent to be scornful.

This intent requirement was confirmed in one of the very few blasphemy cases in the Netherlands. An established Dutch writer, Gerard Kornells

van het Reve, represented God in a novel as a donkey. Moreover, the storyteller contemplated having sexual intercourse with the animal. In 1968, the Hoge Raad (the highest appellate court) acquitted the author because it was not proven that his aim was to be scornful. (Hoge Raad 2 April 1968, NJ 1968 no 373).

In Belgium, there is no longer a law criminalising blasphemy in general. Article 4 of the Decree of 23 September 1814, which penalised writings and images offensive to religion was abrogated by the Fundamental Law of 1815 (Constitution of the "Kingdom of the United Netherlands"). Article 144 of the Penal Code does, however, proscribe a very restricted offence of religious insult, by penalizing those who offend the objects of religion in places of religious worship or at public religious celebrations. This provision is inapplicable to offences to religion expressed outside the context of a religious celebration or a place of worship.

Other articles of the Penal Code may be applied to writings, images, paintings, or films defaming religion, in particular, Articles 443-452 which penalize defamation, and Articles 383-386(bis), which penalize public offence to morals and sexuality. These articles have been applied to religious offences. For instance, in 1988, the Court of Appeal of Ghent held that some artists had violated Article 383 by displaying 14 paintings depicting the Stations of the Cross in the middle of the historic centre of Ghent. (Court of Appeal, 2 May 1988, reprinted in D. Voorhoof, Actuele vraagstukken van Mediarecht. Doctrine en jurisprudentie, at 133). The display included very large

paintings of Jesus Christ and emphasised his genitals including an erect penis with the use of fluorescent paint. According to the Court, the paintings also depicted all sorts of sexual perversities, such as paedophilia, masturbation, anal sex and sadism. It is important to note, however, that, in finding that the paintings offended good morals, "les bonne moeurs" - "goede zeden", within the meaning of Article 383 of the Penal Code, the Court emphasised that the paintings were publicly displayed in the middle of the historic centre of the city, and that a large public would inevitably and without their consent have been confronted with these paintings.

Where only consenting and well-informed adults are to be exposed to the material, courts in Belgium are less likely to prohibit the showing of pornographic or blasphemous materials. For example, in a 1991 decision, the Court of Appeal of Brussels held that given the limited nature of the sexual acts depicted, it would not ban images which offended certain individual spectators but which were not offensive to most of the spectators in light of the fact that all of the spectators had consented to see the film. (Court of Appeal of Brussels, 24 April 1991, Journal des Procès, 1991, nr. 195, 30 en J.T., 1992, 15). Likewise, in another case concerning a "peep show" the Court of Appeal of Mons said that the fact that a majority of individuals may find certain images offensive does not mean that other individuals, who may represent a minority, should not be permitted to view them, provided that they are adults who have expressed their willingness to do so. (Court of Appeal Mons, 3 March 1989, J.L.M.B., 1991, 1360).

In Spain, though the crime of blasphemy was abolished in 1988, the Constitutional Court has ruled that the right to freedom of expression, broadly protected by Article 20 of the Constitution, can be subject to restrictions aimed both at the protection of the rights of others or at the protection of other constitutionally protected interests. The extent to which "rights of others" may justify a restriction is construed narrowly by the Court; generally speaking, the other must be an identified individual whose fundamental rights have been directly affected by the expression.

Although there is no case-law from the Constitutional Court regarding the extent to which the right of freedom of religion could be posited as a ground for restricting freedom of speech, it can be assumed on the basis of prior case-law that another ground, such as the protection of morals, would have to be relied upon to justify a restriction of freedom of expression, for instance in the case of a film offensive to the Catholic Church. The fact that only interested adults are likely to be the audience of a work of art is also a relevant consideration under Spanish law.

C. Countries in Which Art May Be Banned for Offending Religious Beliefs: England and Italy

In England, although the offence of blasphemy exists at common law, there has only been one modern prosecution. In that case the jury convicted a writer and publisher for publishing a poem describing homosexual acts performed on the body of Christ after his death. The conviction

was upheld by the House of Lords even though the magazine had a primarily homosexual readership and thus no intent to cause offence could be proven beyond a reasonable doubt. (Whitehouse v. Lemon [1979] A.C. 617). The House of Lords held that no intent to shock or outrage was necessary; the only intent required for conviction was the intent to publish material that a jury found blasphemous.⁵

A recent case made clear that the offence of blasphemy does not extend to material affecting religions other than Christianity, and therefore, no prosecution could be brought against Salman Rushdie on the grounds that his book, "Satanic Verses", blasphemed against Islam. R. v. Chief Metropolitan Stipendiary Magistrate ex parte Choudhury [1990] 3 W.L.R. 986.

In 1985, the Law Commission (a body established by statute to review English law), published a report recommending that the common law offences of blasphemy and blasphemous libel be abolished, calling them an unnecessary part of a modern criminal code. The Law Commission considered in detail -- and rejected -- the four main arguments for retaining the law of blasphemy, namely, the protection of (a) religion

⁵ Since that decision, the Lords have, on several occasions, accorded greater weight to the right of freedom of expression than previously. (See, e.g. Gleaves v. Deakin [1980] AC 477 at 483, in which Lord Diplock questioned whether the English Law of criminal libel is compatible with Article 10 of the European Convention on Human Rights; Derbyshire County Council v. Times Newspapers Ltd [1993] 2 WLR 449, in which a majority of the Lords noted the relevance of Article 10. See also the decision of the Court of Appeal in Middlebrook Mushrooms Ltd v. Transport and General Workers Union and Ors, Judgment of 16 December 1992, in which the Court stated that restrictions on freedom of expression must be necessary within the meaning of Article 10(2). For the above reasons, it is possible that the Lemon case would be decided differently today.)

and religious beliefs, (b) public order, (c) society and (d) religious feelings. In particular, it rejected the argument that blasphemy

should be retained to punish attacks that ridicule religious beliefs: Ridicule has long been an acceptable means of focusing attention upon a particular aspect of religious practice or dogma which its opponents regard as offending against the wider interests of society, and in that context use or abuse of insults may well be a legitimate means of expressing a point of view upon the matter...

In Italy, Articles 402-406 of the Penal code forbid offence to religion, including offence to religion during a performance, even where the offending performance was objectively aimed at arousing laughter or amusement. There is considerable debate in Italy concerning whether laws against insult to religion pertain only to Catholicism.

D. Seizure of Allegedly Blasphemous Materials

In most European countries surveyed, measures may be taken prior to a judicial decision on the merits to prevent the publication or display of a work of art against which blasphemy (or blasphemy-like) charges have been filed. However, all of the experts consulted by ARTICLE 19 and INTERIGHTS, other than the expert from Italy, are of the opinion that the courts of their countries would not authorise, or uphold, preventative measures so long as a work of art was being displayed only to consenting adults.

In Denmark, injunctions may be granted to prevent acts which are contrary to the rights of the applicant. In particular, Section 267 of the Penal Code permits injunctions in defamation cases, and Section 264D

permits injunctions against the unlawful dissemination of information concerning private matters. Because of recent cases in which the prosecutor refused even to file charges against the display of allegedly blasphemous pornography, the Danish expert consulted by ARTICLE 19 and INTERIGHTS is of the opinion that an injunction would not be authorised to stop the display of a film such as Das Liebeskonzil.

In France, the criminal code provisions pertaining to the showing of films contrary to good morals (discussed above) do not vest in the court any power to order the confiscation of films. However, the Code of Civil Procedure permits courts by way of expedited procedure to order preventative measures to limit imminent damage or to stop trouble which is manifestly illegal. Though the civil law has never been used for the total prohibition or confiscation of a film, certain limits have been upheld.

For example, in 1984, before the showing of the Jean-Luc Goddard film "Ave Marie", the advertising posters showed a naked crucified woman (a scene that did not appear in the film). Several Catholic associations asked the Court to withdraw the use of the posters because they considered them to be an outrage to Catholic values. The Court ordered the withdrawal of the posters, emphasising that the representation of the cross in this manner and under these conditions could constitute an aggressive and gratuitous intrusion upon individuals who are suddenly confronted, without their consent, to this public advertising display; central to the Court's finding was the fact that the

advertisements could be seen by people moving freely in public areas who had not chosen or were not seeking contact with these particular posters. (Tribunal de grande instance de Paris, 23 October 1984, Association Saint Pie V et autres contre Groupement des afficheurs parisiens et autres, D. 1985. 31, upheld on appeal, Cour d' appel de Paris, 26 decembre 1984, D. 1985, 728).

In the Netherlands, a film may be seized even if it has not been found unlawful if it is considered to be contrary to the public interest. The expert on Dutch law consulted by ARTICLE 19 and INTERIGHTS is of the opinion that a film such as Das Liebeskonzil would not be seized in light of the well-known 1968 case (mentioned above) in which a literary work was not found blasphemous despite its portrayal of God as a donkey about whom the storyteller had sexual fantasies.

Similarly, in Belgium, several courts and Ministers of Justice have viewed the seizure of a publication, painting, picture or film in the context of a criminal prosecution to be a permissible "a posteriori" measure rather than a prior restraint (an "a priori" or preventative measure). Although this interpretation has been sharply criticised by legal scholars, courts in several recent cases have applied it in ordering or upholding seizures and/or convictions concerning pornographic video-tapes or films. Nonetheless, the expert consulted on Belgian law concluded that the Belgian Courts would not order the seizure of an allegedly blasphemous film that was being shown only to consenting adults.

In Spain, seizure of a film prior to its showing clearly falls under the

prior censorship forbidden by the Constitution. According to Article 20(2), all of the rights listed in Article 20(1); freedom of expression, freedom of information and freedom of artistic creation, cannot be restricted by prior censorship. The Constitutional Court interprets this provision strictly, and so in Spain, according to the expert consulted, it would be impossible to seize a film prior to its showing to the public.

In the United States, prior restraints on the dissemination of information by individuals or the media are all but forbidden. In the leading free speech case of Near v. Minnesota, 283 U.S. 697, 713 (1931), the Supreme Court stated emphatically that the "chief purpose of the [First Amendment] guaranty is to prevent previous restraints upon publication."

Only once in the 200 year history of the First Amendment has the Supreme Court upheld a prior restraint on speech, and then only for a few weeks and in extraordinary circumstances where publication might have violated a criminal defendant's right to a fair trial guaranteed by the Sixth Amendment. In United States v. Noriega, 752 F. Supp. 1032 (S.D. Fla.), aff'd, 917 F.2d 1543 (11th Cir.), cert. denied, 498 U.S. 976, General Manuel Noriega succeeded in obtaining a temporary injunction against a news agency that intended to broadcast a tape recording of possibly privileged conversations between Noriega and his lawyers. In upholding the injunction, the U.S. Court of Appeals for the Eleventh Circuit stressed that a clear threat of immediate and irreparable damage must be established before a prior restraint may be imposed by a court, even in the interest of assuring a criminal

defendant's right to a fair trial; there must be "an imminent, not merely a likely, threat to the administration of justice. The danger must not be remote or even probable, it must immediately imperil." 917 F.2d at 1549 (quoting Craig v. Harney, 331 U.S. 367, 376 (1947)). The Supreme Court refused to hear the case, allowing the Court of Appeal's decision to stand.

E. Community Standards and the Power of Local Authorities to Seize Materials

Three of the experts consulted -- from Germany, the Netherlands and Spain -- addressed the issue of whether local authorities may seize or ban materials pursuant to a community standard that is different from the rest of the country. All of them stated that local variation is not tolerated concerning important aspects of the freedom of artistic expression.

In Germany, local officials are authorised to take measures to maintain "public order", which includes norms -- in particular, regarding religion, sexuality and social behaviour -- that people of a region consider indispensable to their way of life. However, regional differences are playing an ever shrinking role owing to the growing mobility of the population and the omnipresence of the mass media. Accordingly, the expert on German law is of the opinion that the showing of a film to consenting adults could not be treated differently in different parts of the country.

Under Dutch law, local authorities may only take unusual measures to

maintain public order where necessary to avoid actual violence. In Spain, the Constitutional Court has ruled that there must only be a national standard concerning the extent to which the protection of morals, inter alia, may be the ground for restricting freedom of expression. (Judgments 49/1984 and 1983/052).

V. CONCLUSION

This survey of the law of ten European countries and the United States has established that four countries (Norway, Spain, Sweden and the U.S.) no longer make blasphemy or insult to religious belief a crime. In five other countries, (Belgium, Denmark, France, Germany and the Netherlands), laws prohibiting insult to religion have, in recent years, been narrowly interpreted and rarely applied. The declarations of experts document that prosecution against the showing of a film such as Das Liebeskonzil to consenting adults would have a possibility of success only in Italy and a lesser likelihood in England, and only in Italy and possibly Belgium might the courts order or approve a preventive measure.

It is thus respectfully submitted that in eight of the ten European countries surveyed, a successful prosecution of a film would not have occurred under the circumstances present in the Otto Preminger Institut case. Factors that courts would likely consider in such a prosecution include the satirical nature of the film, the fact that the contents of the film were publicized, and the likelihood that the audience would have been limited to adults who would have been informed of the film's nature and content. On these facts, courts in

eight of the ten countries not only would be likely to refuse to find that the showing would constitute a crime but also that the seizure could not be justified since the interest in freedom of expression and art would clearly outweigh any possible harm of showing a film under such circumstances.

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Sandra Coliver
Law Programme Director
ARTICLE 19
90 Borough High St
London SE1 1LL

(tel) (44 71) 403-4822
(fax) (44 71) 403-1943

Natalia Schiffrin
Legal Officer
INTERIGHTS
5-15 Cromer St
London WC1H 8LS

(tel) (44 71) 278-3230
(fax) (44 71) 278-4334