



18 June 2009

STATEMENT

Ireland: Blasphemy Amendment Contrary to Free Speech

The Irish government's amendment on "blasphemous matter", introduced in the Defamation Bill 2006, is contrary to the right to freedom of expression under international human rights law. ARTICLE 19 urges Ireland's Parliament, the Houses of the Oireachtas, to reject this amendment.¹

ARTICLE 19 very much welcomes the primary motivation behind the Defamation Bill 2006, inasmuch as it seeks to modernise defamation law in Ireland by decriminalising defamation and removing imprisonment as punishment for defamation. This is a result which ARTICLE 19 has been promoting globally for some time now and it is good that Western European countries are finally joining other countries around the world that have decriminalised defamation.

The government amendment, which was submitted to the Select Committee on Justice, Equality, Defence and Women's Rights on 14 May 2009, provides for the offence of blasphemy whenever a person publishes matter which is "*grossly abusive or insulting in relation to matters held sacred by any religion, thereby causing outrage among a substantial number of the adherents of that religion*" with the intention of causing such outrage. Conviction can lead to a fine of up to €100,000. There is a defence of "genuine literary, artistic, political, scientific, or academic value".

The amendment has attracted significant criticism from within Ireland² and beyond, including from the OSCE Representative on Freedom of the Media, Miklos Harazti, who has said that it "*violates OSCE media freedom commitments and other international standards upholding the right to freely discuss issues of religion*" and has "*a chilling effect on freedom of expression*".³

We acknowledge the Irish government's position that, whilst it would prefer to abolish blasphemous libel altogether,⁴ the constitution precludes this, as Article 40(6)(1)(i) of the constitution of Ireland provides that the publication of blasphemous

¹ ARTICLE 19 reviewed an earlier draft of the Defamation Bill in September 2006. See <http://www.article19.org/pdfs/press/ireland-priv-def-pr.pdf>.

² See the campaign of Atheist Ireland at <http://blog.atheist.ie/?p=64>. See also Carole Coulter, "For God's sake, why have blasphemous libel" *Irish Times*, 30 April 2009; John Waters, "Crime of blasphemy dangerous and silly" *Irish Times*, 1 May 2009; and Henry McDonald, "Atheists fight to keep God out of Irish law" *The Observer*, 3 May 2009.

³ OSCE Press Release, 19 May 2009. Available at: http://www.osce.org/fom/item_1_37737.html.

⁴ See "Amending the Law on Blasphemous Libel Speech" by Mr Dermot Ahern TD, Minister, Equality and Law Reform at the Dail Committee on Justice, Equality and Women's Rights, Wednesday 20 May 2009.

matter is an offence punishable by law. The Minister of Justice, Equality and Law Reform, Dermot Ahern, has indicated that the government does not intend to propose a constitutional amendment at this time. He has further explained the government's reasons for proposing the amendment by suggesting that a 1999 decision which held that the common law offence of blasphemous libel did not survive the adoption of the constitution, *Corway v Independent Newspapers (Ireland) Limited*,⁵ had left a legal void which the government was bound to fill through legislation on the matter.

We consider that the amendment on “blasphemous matter” should be rejected for three reasons.

- (1) We consider that the offence of blasphemy is inconsistent with a modern interpretation of international guarantees of freedom of expression, notwithstanding the continued presence of such offences in many countries. Blasphemy laws do not protect individuals against harm but serve instead to insulate the sensitivities of religious adherents by protecting religious ideas, symbols or objects from attack or insult. Blasphemy laws discriminate against atheists and non-theists by providing special protection for religious beliefs but not other deeply held views. We note that the Special Rapporteur on Freedom of Religion or Belief has expressed concern about blasphemy laws and suggested that a useful alternative to blasphemy laws would instead be proper implementation of Article 20 of the ICCPR, providing for prohibition of incitement to hatred, including on the basis of religion.⁶ It also goes against current trends toward abolition of blasphemy laws in democracies. Notably, in 2008, the common law offences of blasphemy and blasphemous libel were abolished in the UK.⁷
- (2) We note that the amendment does not provide for prison sanctions for blasphemy, but it does provide for a fine of up to €100,000. This is a considerable sanction, which is likely to have a chilling effect upon speech concerning religion, as suggested by the OSCE Special Representative on Freedom of the Media.
- (3) We recognise the government's argument that, if the amendment is adopted, the Irish law on blasphemy will be limited and prosecutions will be highly improbable. This cannot detract from the principled point made above, namely that the very idea of a blasphemy law runs counter to respect for freedom of expression. We note that the impact of the amendment will be felt well beyond Ireland. A compelling reason to reject this amendment is the negative message it sends to illiberal regimes seeking to justify their own repressive laws on religious offence, including blasphemy laws. It will also be seen as providing support to the arguments raised by the Organisation of Islamic Conference (OIC) and its supporters in favour of the continuation of adoption by UN bodies of resolutions on “combating defamation of religions”.⁸

⁵ [2001] 1 IRLM 426.

⁶ See note 5, paras. 70 and 76.

⁷ The abolition of blasphemy in England and Wales entered into force on 8 July 2008. See Article 79 of the Criminal Justice and Immigration Act 2008 (c 4). See ARTICLE 19 Press Release of 6 March 2008 at: <http://www.article19.org/pdfs/press/uk-blasphemy-repeal.pdf>.

⁸ See ARTICLE 19's recent Statement calling Human Rights Council members to vote against resolutions on defamation of religions of 25 March at: <http://www.article19.org/pdfs/press/human-rights-council-article-19-calls-on-hrc-members-to-vote-against-propose.pdf>.

Instead of adopting a blasphemy law, the Irish government should respond positively to the essence of the *Corway* judgment, in which the Irish Supreme Court, in holding that the common law offence of blasphemy was void, emphasised the secular nature of the constitution and its guarantees of the right to freedom of conscience, of religion and of expression. The government should not add an offence of blasphemy to the existing law and should, instead, present in due course a referendum to delete Article 40(6)(1)(i) of the constitution, as recommended by both the Constitutional Review Group and the Joint Oireachtas Committee on the Constitution.

FURTHER INFORMATION:

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- ARTICLE 19 is an independent human rights organisation that works around the world to protect and promote the right to freedom of expression. It takes its name from Article 19 of the Universal Declaration of Human Rights, which guarantees free speech.