BLASPHEMY AND FILM CENSORSHIP:

SUBMISSION TO THE EUROPEAN COURT OF HUMAN RIGHTS IN RESPECT OF *NIGEL WINGROVE V. THE UNITED KINGDOM*

ARTICLE 19 and INTERIGHTS

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These written comments are submitted by INTERIGHTS, the International Centre for the Legal Protection of Human Rights, and ARTICLE 19, the International Centre Against Censorship, pursuant to the permission granted by the President of the Court in accordance with Rule 37 s.2 of the Rules of the Court, by letter dated 17 November 1995. 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 ten European countries and the United States concerning the law of blasphemy and pre publication regulation of films and videos in their respective countries. The countries surveyed are Belgium, Czech Republic, Denmark, France, Germany, Italy, the Netherlands, Norway, Spain, Sweden and the United States.

II. INTEREST OF ARTICLE 19 AND INTERIGHTS

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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.

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 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.

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At issue in this case is whether or not the refusal of the British Board of Film Classification ("BBFC") to grant a classification certificate to the applicant for his video film "Visions of Ecstasy" is compatible with the guarantee of freedom of expression provided in Article 10 of the European Convention of Human Rights. "Visions of Ecstasy" is an 18 minute video which portrays the applicant's interpretation of the ecstatic visions of St Teresa of Avila, a 16th century Carmelite nun. Its classification certificate was denied by the BBFC and upheld by the Video Appeals Committee, on the ground that it is blasphemous. Under the Video Recordings Act 1984, subject to certain exemptions, it is an offence to supply or offer to supply a video in respect of which no classification

certificate has been issued.

These comments seek to assist the Court by presenting information about the ways in which other democracies balance the right to freedom of artistic expression with the aim of protecting the right of others not to be offended in their religious feelings. This review focuses on two issues:

> 1) Under what, if any, circumstances may an artistic expression that is shown only to consenting adults be restricted on the ground that it is likely to offend the religious sensibilities of others?
>
> 2) In what, if any, circumstances may a film be subject to prior censorship by an administrative or executive review body?

These comments seek to assist the Court in deciding this case by looking at how, in other democracies, the need to ensure religious peace and prevent offense to religious beliefs is balanced with freedom of artistic expression. This review focuses on the extent to which artistic expression which may be considered blasphemous or offensive is permitted in the countries reviewed, and on the question of prior censorship by film and video administrative or executive review bodies in these countries.

This survey finds that the practice of the respondent State is not in keeping with the relevant practices of the majority of countries reviewed.

This Court has recognised that states enjoy a certain margin of appreciation in relation to the protection of morals and matters concerning major cultural differences. Nonetheless, this margin of appreciation is not unlimited. In the often cited words of this Court, "it goes hand in hand with Convention Supervision". This especially applies to cases involving the use of prior censorship. This Court has emphasized that "the dangers inherent in prior restraints are such that they call for the most careful scrutiny on the part of the Court".

Clearly, under the Convention, the practice of states may vary according to their specific circumstances. However, it is submitted that the respondent has not advanced any argument which could justify restrictions on artistic expression in the United Kingdom which have not been found necessary in many other European states.

In light of this comparative law survey, these comments respectfully conclude that the denial of certification of the film in this case was a disproportionate measure and, is therefore not "necessary in a democratic society".

IV. COMPARATIVE LAW SURVEY

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A. Summary

These comments examine the law and jurisprudence concerning blasphemy and pre-publication regulation of films in ten European countries (Belgium, Czech Republic, Denmark, France, Germany, the Netherlands, Norway, Spain, and Sweden) and the United States. These countries were chosen because they reflect a range of legal systems and attitudes towards religion and also because INTERIGHTS and ARTICLE 19 have working relationships with distinguished experts on freedom of expression issues in all of these countries. These comments are based upon statements of law

prepared by these experts (which are appended), unless otherwise stated.

The expert statements show that in none of the countries studied has an artistic film shown only to consenting adults been banned in recent years on the ground that it caused insult to religious beliefs.

The crimes of blasphemy and religious insult have been entirely abolished in Sweden and the U.S. In the Czech Republic, Denmark, and Norway, laws remain on the books but have not been successfully applied in recent years. In another five countries (Belgium, France, Germany, the Netherlands and Spain) the display of materials may be regulated if likely to offend religious beliefs, but their display to consenting adults is unlikely to be banned. In Italy, laws prohibiting insults to religion have been used with decreasing success in recent years.

In the majority of the countries surveyed, (Belgium, Czech Republic, Germany, Denmark, the Netherlands and the United States) film classification systems are strictly voluntary and have no power to prevent a film from being released. The classification systems in Italy, Spain, Sweden and France permit prior censorship of films or videos.

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

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In some European countries, blasphemy laws have been repealed entirely. In Sweden, the general law of blasphemy was abolished in 1949 and a narrower crime of religious insult was abolished in 1970.

In the Czech Republic, the concept of the crime of blasphemy is unknown in the legal order. The Czech Republic has only Criminal Code Section § 198 (No 140/1961 Coll of Law) which provides that insults to the nationality, race or conviction of a group of inhabitants of the Republic can be punished by up to one year of imprisonment. There are (currently no/never any?) cases under this section concerning religious conviction. We are aware of one currently pending case involving song lyrics claimed to be insulting to the Roma minority.

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.

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.

Indeed, In Norway, the abolition of Section 142 is being debated. The removal of that section from the penal code is suggested in a report commissioned by the Norwegian Department of Culture in 1993 entitled "New Threats against Freedom of Information in the Nordic Countries - Diagnosis and Suggestions". The Report suggests that "this law implies an unacceptable encroachment on freedom of expression."

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 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...[U]nder such a standard the most careful and tolerant censor would find it virtually impossible to avoid favouring 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. 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 Scorcese'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.

2. Countries Where the Display of Materials Offensive to Religious Beliefs May Be Prohibited Under Certain Circumstances Such as Intent of Publisher and Age of Audience: Belgium, France, Germany, Italy, the Netherlands and Spain

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The use of laws against blasphemy or religious insult is curtailed in many countries by consideration of factors such as the intent to the publisher, the age of the prospective audience, or the likelihood of a breach of the peace.

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. In considering cases involving religious insult, German courts most likely would not prohibit such displays so long as the viewing was limited to adults who had been informed in advance of the nature and contents of the material.

In the Netherlands, blasphemy is a criminal offence under the Penal Code Article 147 (introduction and sub 1 Wetboek van Strafrecht), but this provision only covers expressions concerning God, and not saints and other revered religious figures ("godslastering"). 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-Suringa, H.D. Tjeenk Willink, Alphen aan den Rijn, 1979, p. 163). Thus, even if it were 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 Kornelis 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 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 Scorcese'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.)

The French Code of Civil Procedure, which permits courts by way of expedited procedure to order preventative measures to limit imminent damage or to stop trouble which is manifestly illegal, has been used to place certain limits upon the advertising of films. 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 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 bonnes 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 Proces, 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).

However, accessibility to the public is not necessarily a determinative factor in Belgium. Under Section 383 (3) of the Penal Code, production, import, possession or distribution of pornographic films is prohibited, and a conviction may stand regardless of whether the materials were presented to, for example, unwitting audiences or minors. (Cass., 15 March 1994, Recente Arresten van het Hof van Cassatie, 1994-1995, 245 and Court of Appeal Antwerp, 24 November 1994, Rechtskundig Weekblad, 1994-1995, 1372).

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 as well as 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.

In Italy, Articles 402-406 of the Penal Code prohibit offence to the State religion. A lesser offence of "bestemmia" (words insulting to religion) is contained in Article 724. These provisions were thrown into confusion by the law of 25 March 1985 n. 121 (Accordo di Modifica del Concordato Lateranense), repealing the law proclaiming Catholicism to be the official State religion in Italy. Since that time, there has been disagreement concerning whether Articles 402-406 remain in force due to the fact that these provisions concern only insult to the "State religion". Two recent cases have suggested that these provisions are no longer in force and that § 724 does not apply only to the "State religion". (Corte Cost., ord 23 aprile 1987 n. 147 in "Giurisprudenza constituzionale" 1987, I, p. 991 s.)

The use of these provisions have been declining in recent years. Only two cases have been brought concerning the application of these provisions in relation to films since 1985, and both were struck down. (v. sent. Trib. Bologna 27 luglio 1985, imp. Addobbati, in "Cassazione penale" 1987, p 211 s. and v. sent. Trib. Venezia 8 ottobre, imp. Scorsese e altro, in "Foro italiano" 1988, II, c. 705 ss). One concerned the French film "Je vous salue, Marie" and the second concerned "The Last Temptation of Christ". Both cases, brought under § 402, were struck down in view of the 1985 law. In the latter case, the court of first instance had noted that there was no intent to insult.

C. Prior Restraint of Films and Videos by Administrative or Executive Bodies

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The Commission, in its report adopted 10 January 1995 in this case, drew attention to the fact that "the element of prior restraint...is a striking feature in the present case." (Report, para 53). We agree and furthermore submit that this element alone could suffice to distinguish the case from, and compel a different result than that reached in, the Otto Preminger Institut case.

In the majority of the countries surveyed, the system of film classification is entirely voluntary and is intended primarily as a means to protect minors from being exposed to undesirable films or videos.

1. Countries with No Mandatory Bodies Vested With the Authority to Pre-censor Films or Videos

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In the Netherlands, Basic Law article 7 (3) prohibits any prior interference by the Government with the showing of films and videos. The only exception to this rule concerns classifications of films for minors. The Netherlands Film Classification Board (Nederlandse Filmkeuring) has the authority to classify films as permissible for twelve years and older, sixteen years and older or for all ages. Submission of films to this Board is voluntary, and any film that is not reviewed receives a classification of sixteen years and older.

A similar voluntary procedure exists in Belgium, under legislation of 1 September 1920 and 27 September 1990. (This legislation applies only to films to be shown in cinemas). In Belgium, if a film maker does not submit a film for classification, it cannot be shown in cinemas where persons under the age of sixteen are permitted. This classification legislation does not provide for the general prohibition of a film's release. In Germany submission to the film classification Commission (established 20 August 1951) is voluntary and only for the purpose of receiving a certificate for tax reduction. There is a law concerning the protection of youth in public (25 February 1985) that governs film classifications, but is inapplicable to videos that are not to be shown publicly.

In the Czech Republic, there is no institution vested with the authority to pre-censor films or videos. Rather, there is a general responsibility that the production and display of films and videos be in accordance with the criminal code, including the provision concerning insult to race, nationality and conviction, discussed infra at section 3(B)(1).

In Denmark, the film classification procedure is obligatory. However, its purpose is solely to ensure that all films have a classification informing the public whether viewing is suitable for minors. The classification system has no power to prevent a film from being released.

In the United States, motion pictures and video releases of motion pictures have been classified voluntarily since 1968, when such a system was privately established by the motion picture industry. As a matter of self-regulation, producers and distributors voluntarily agree to submit their films to the Motion Pictures Association of America (MPAA) Rating Board, which determines the appropriate rating for each film. The stated purpose of the MPAA rating system is to provide advance information concerning the appropriateness of a given film for viewing by children. In the United States, any proposed governmental film rating system which attempts to regulate anything other than obscenity would have serious difficulty withstanding constitutional attack.

2. Countries With Administrative or Executive Bodies with the Authority to Pre-Censor Films or Videos

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In Italy, Sweden, Spain and France a video may be subject to prior censorship such that it may be a crime to display a video or a film that has not received prior approval.

In Sweden, however, the power is used almost exclusively to prohibit displays of extreme violence. practice is concerned primarily with violence. Films and videos intended for public viewing (including by hire) are subject to prior control under the Act on Monitoring and Control of Films and Videos (SFS 1990:886). Section 4 of the Act states, in rough translation, that films or videos or any parts thereof may not be approved for showing if the contents "can be brutalizing". Consideration is given to whether the film contains lengthy or detailed representations of aggravated violence against

people or animals, whether it depicts sexual violence or coercion or whether it depicts children in pornographic contexts. The Swedish expert indicated that the practice in Sweden is to be strict on violence in films but lenient towards the depiction of sexual activities.

In Spain, all films must receive a classification prior to release by either the Classification Subcommission, provided for by the Royal Decree 1067/1983 (27 April) or by the Film Classification Committee, as established by Article 6 of the Royal Decree 3071/1977 (11 November) and interpreted according to the law 1/1982 and the Royal Decree 1067/1983. If, during the film classification procedure, the Subcommission or the Commission is of the opinion that a crime may be committed by the distribution of the film, it shall notify the Public Prosector. The Public Prosecutor will then decide on the merits if the initiation of criminal proceedings is appropriate.

There is no video classification system under French Law. But while no video classification system exists, there is a system of classification for films. In France, no film may be shown publicly without a prior authorization from the Minister of Culture, acting on advice of a designated committee. The Minister may prohibit viewing of a film for minors under 12 or 7, or ban the film altogether. Where such a ban occurs, the Minister must provide reasons and there is close scrutiny by way of judicial review by the Conseil d'Etat. According to the French expert, total bans have not occurred on any film in the past 15 or 20 years.

In Italy, in order to be publicly shown, all films require permission from a government body, the "Dipartimento dello Spettacolo". This department decides whether films are publicly acceptable ("buon costume") or whether they would require editing. The department also decides whether a film may be shown to minors under the age of fourteen or eighteen.

V. CONCLUSION

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This survey of the law of eleven countries (ten European countries and the United States) has established that in all of these countries blasphemy or insult to religious belief are either no longer criminal offences, or, in recent years, have been narrowly interpreted and rarely applied.

Most successful prosecutions for blasphemy or related crimes have concerned situations where the offending artwork was displayed to the general public.

In contrast to instances where offending displays are very public, this survey shows that in none of the countries reviewed has the prohibition of an allegedly blasphemous film been prohibited in recent years where that film was to have been shown in private, to interested adults only.

Furthermore, and of considerable importance, in the majority of the countries surveyed, the film and video classification system is voluntary. Recognising the inherent dangers in film classification systems that allow prior censorship of films by non-judicial bodies, the majority of the countries surveyed maintain film classification systems that are voluntary procedures solely for the purpose of providing advance warning to viewers. In this way, viewers can choose for themselves whether the subject matter of a film is appropriate or not.

In sum, in light of this review of comparative law, it is respectfully submitted that the practice of the respondent State is not "necessary in a democratic society" and is therefore incompatible with the guarantee of freedom of expression provided by Article 10 of the European Convention of Human Rights.

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