5 Realising the Freedom of Religion or Belief Equally: Blasphemy in the Netherlands

5.1 Introduction

In the previous chapters, the importance of decriminalizing blasphemy for the universality and equal application of the freedom of religion or belief was discussed. In the current chapter, I demonstrate how this discussion was conducted in the Netherlands and how the freedom of religion or belief was realised equally in this liberal-democratic state. This chapter consists of a case study of the Netherlands, a country with, according to research conducted by the International Humanist and Ethical Union, one of the highest ratings on realising the freedom of religion or belief.[736]

This chapter analyses the Dutch discussion and the justification for the abolition of blasphemy, but it also tries to broaden it in order to ascertain how this legislative change is desirable in light of the international debate discussed in the previous chapters. I demonstrate that, despite the fact that the Dutch state system was *de facto* committed to the freedom of religion or belief, it was *de jure* not adequately equipped to ensure a full exercise of the right until the criminalisation of blasphemy was ended in 2014.[737]

Building on this, I argue that the Dutch blasphemy legislation has led to a non-equal, or rather a discriminatory application of the freedom of religion or belief, resulting in tension with the universal status of this right. I argue that the Dutch case can function as an exemplar of how the freedom of religion or belief ought to be realised in a state.

In the first sections, a brief historical sketch is provided to explain what the rationale behind this law was. This context also helps identify what is at stake for those whose interests were served by the blasphemy ban. In the following sections, I indicate how religious beliefs relate to non-religious ones, a topic on which the question arises whether the principle of equality is undermined if religious positions enjoy special protection. Furthermore, I discuss whose interests may be served by ending the ban on blasphemy. Also at issue is the freedom of speech, for the main focus in the Dutch debate was on this liberty and how it conflicted with the interests of the religious believers. For that reason, a connection is made with John Stuart Mill's harm principle. The 'motion Schrijver' is also evaluated, after which I examine if an alternative statutory provision can fill the legal void after the abolition, and whether this is desirable. As discussed in the previous chapters, it is evident that this topic has international aspects; therefore, the international dimension is also briefly discussed. Furthermore, it is argued that the Netherlands can and should play a prominent role in this discussion. In conclusion, it is argued that the Netherlands has set an example by permanently removing the undesirable blasphemy prohibition from Dutch criminal law.

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[736] This chapter is an elaborated version of the (double-blind, peer-reviewed) article B.M. Van Schaik & J. Doomen, 'Blasfemie in de huidige context', *Netherlands Journal of Legal Philosophy*, Vol. 44, No. 1, 2015, pp. 47-61. See also B.M. Van Schaik & J. Doomen, 'De toekomst van godslastering', *Nederlands Juristenblad*, Vol. 30, No. 89, 2014, pp. 2110-2116. The Netherlands is rated as 'Free and Equal' with regard to the realisation of the freedom of thought, religion and belief. International Humanist and Ethical Union, 'Freedom of Thought Report 2015. A Global Report on Discrimination Against Humanists, Atheists, and the Non-religious', *International Humanist and Ethical Union*, fot.humanists.international, pp. 509-510; International Humanist and Ethical Union, 'Freedom of Thought Report 2017. A Global Report on the Rights, Legal Status and Discrimination Against Humanists, Atheists and the Non-religious', *International Humanist and Ethical Union*, fot.humanists.international, p. 9.

[737] The change went into effect on 1 March, 2014, Stb. 2014, 39.

5.2 The Legislative History of Blasphemy in the Netherlands

It is clear that blasphemy has not always been assessed in the same way. Philosopher and theologian Thomas Aquinas (1225–1274) said that blasphemy should be considered one of man's gravest sins. Blasphemy is a mortal sin, because it insults or shows contempt or lack of reverence for God, a sin that should be considered worse than the deliberate killing of another human being.[738] In line with Aquinas' ideas, blasphemy was qualified as a punishable act in the Netherlands in the nineteenth century. This was changed during the Enlightenment. With the introduction of the Penal Code in 1811 and the Dutch Criminal Code in 1881, the offence of blasphemy was no longer part of the criminal law.[739]

However, in 1932 there was an adjustment in the Criminal Code, and the ban on blasphemy returned to enable legal action against anti-religious statements from communists.[740] In particular, the article *Weg met het Kerstfeest* (*Away with Christmas*) published in 1930 in the magazine of the Communist Party of Holland, the so-called *Tribune*, created social turmoil and unrest. In translation, it included the following:

> O, he is a great pleasure, that good God. He is an exceptionally useful thing. He leads the way in the march to war. He lends his lustre to the smear campaign against the Soviet Union. He is the patron of every Christian and unchristian exploiter. He symbolizes the stultification of the masses. He has a seat on the civil administration, where the unemployed are starved. He is the patron of the exploiters. Christ on the dunghill! The Virgin Mary in the stable! The Holy Fathers to the devil! Long Live the voice of the canon, the canon of the proletarian revolution![741]

In the following weeks, in the same journal, an article with several cartoons appeared in which God was portrayed as a poisoner. For former Minister of Justice Jan Donner, this 'communist propaganda' was reason to introduce to the Parliament the so-called 'Lex Donner', a bill that introduced 'scornful blasphemy' as a punishable offence.[742] After comprehensive parliamentary debate, Articles 147, 147a, and 429bis of the Criminal Code were introduced, encompassing provisions relating to blasphemy and the defamation of religion.

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738 T. Aquinas, *Summa Theologiae (2a2ae Complete Works vol. 8)*, Rome, S.C. de Propaganda Fide, 1895 [1274]., q. 13, art. 3.

739 K. Plooy, *Strafbare godslastering*, Amsterdam, Buijten en Schipperheijn, 1986, p. 25; B. Van Stokkom, H. Sackers & J.-P. Wils, *Godslastering, discriminerende uitingen wegens godsdienst en haatuitingen (WODC, 248)*, Den Haag, Boom Juridische Uitgevers, 2007, pp. 45, 85-88.

740 Plooy, 1986, pp. 28,30. Parl. Doc., House of Rep. 2009/10, 32203, 4, p. 2; M. De Blois, 'Smalende Godslastering', in M. De Blois, R. Van De Poll & R. Van Woudenberg (eds.), *Vloeken als een Hollander. Godslastering: religieuze, juridische en culturele aspecten*, Kampen, Ten Have, 2007, pp. 12-25.

741 'Weg met het Kerstfeest', *De Tribune*, 24 December 1930. An interesting fact is that, 36 years after the publication of *Away with Christmas,* the author came forward. It turned out to have been written by A.J. Koejemans, who said in *Vrij Nederland*, a Dutch Magazine, that it was aimed at the hypocrisy that arose during Christmas. J. Fekkens, *De God van je Tante. Ofwel het Ezel-Proces van Gerard Korneleis van het Reve*, Amsterdam, de Arbeiderspers, 1968, p. 13.

742 J. De Ruiter, 'Drie maal godslastering in het parlement', in C.C. van Baalen, A.S. Bos, W. Breedveld, P.B.V.D. Heiden, J.J.M.R. Ramakers & W.P. Secker (eds.), *Jaarboek parlementaire geschiedenis 2005: God in de Nederlandse politiek*, Den Haag, Sdu Uitgevers, 2005, pp. 41-43.

Article 147 criminalises: 1. 'any person who publicly, either verbally or in writing or through images, offends religious sensibilities by disparaging and blasphemous utterances; 2. ridicules a minister of religion in the lawful performance of his duties; 3. makes derogatory statements about objects used for religious celebration at a time and place at which such celebration is lawful'. These crimes were punishable by a maximum of three months imprisonment or a fine. With the introduction of Article 147a, it was criminalized to distribute (or to have in store to be distributed), publicly display, or post written matter or an image containing statements that offended religious sensibilities by reason of their disparaging and blasphemous nature. This crime was punishable by a prison sentence of two months or a fine. In addition, Article 429bis criminalized 'any person who, in a place visible from a public road, places or fails to remove words or images that offend religious sensibilities by reason of their disparaging and blasphemous nature'. This violation was punishable by a maximum of one-month imprisonment or a fine. These three provisions aimed to protect certain utterances hurtful to religious feelings.[743]

Despite the existence of this legislation, there have only been nine convictions based on Article 147 Criminal Code, and three cases were dismissed. Three legal cases are known for the distribution of blasphemous writings under Article 147a Criminal Code.[744]

5.2.1 Van het Reve and God as a Donkey

In 1968, the Dutch Supreme Court (Hoge Raad) considered the issue of blasphemy in its 'Donkey verdict' (in Dutch: Ezelsarrest). This case was prompted by the parliamentary questions asked on 2 February of 1966 regarding the works of Dutch writer Gerard Kornelis van het Reve (1923–2006) by Parliamentarian Cornelis Nicolaas van Dis (1893–1973) of the orthodox Protestant Calvinist political party (SGP) in the Netherlands. This was, however, not the first time that Van het Reve's work had been questioned. In 1951, Van het Reve had been denied a literary award because of objections made by Senator Jozef Maria Laurens Theo Cals (1914–1971), a member of the Catholic political party. In 1963, he had been denied a government subsidy after protests made by Senator Hendrik Algra (1896–1982), member of the Protestant Christian-democratic political party. According to Algra, Van het Reve had, 'with ruthless brutality', equated homosexuality with the 'wonderful act of love between man and woman'.[745]

Van Dis raised the parliamentary questions regarding the uproar that had arisen in the media after a letter written by Van het Reve had been published in the magazine *Dialoog*.[746] The letter was called *Brief aan mijn bank (A Letter to My Bank)*, and in it, he discussed the return of God: 'If God again surrenders himself in Living Dust, He shall return as a Donkey, at most capable to formulate a few syllables, misunderstood, maligned and beaten, but I shall understand Him and immediately go to bed with him, but I shall tie bandages around His tiny hooves so that I will not

[743] Parl. Doc., House of Rep. 1930/31, 348. (Aanvulling Wetboek van Strafrecht met voorzieningen betreffende bepaalde voor godsdienstige gevoelens krenkende uitingen).

[744] Parl. Doc., House of Rep. 2009/10, 32203, 3, p. 4; Van Stokkom, Sackers & Wils, 2007, p. 98.

[745] D. Bos, 'En God Zelf zou bij mij langs komen in de gedaante van een éénjarige, muisgrijze Ezel', *Trouw*, 17 February 2006; Fekkens, 1968, pp. 16-17.

[746] Dialoog is a magazine for homosexuality and society. Van het Reve was an editor of the magazine.

get too scratched if He flounders when He orgasms'.[747] The passage triggered some fierce reactions, which were also printed in the magazine. One of these came from J. Gottschalk, a priest, and A.J.R. Brussaard, a reformed minister. They were of the opinion that Reve had intended to hurt their religious feelings.[748] In the same magazine, Van het Reve replied to their 'accusation' in a literary fashion, wondering about the image of Jesus. He decided to create his own image of him:

> Many people wish to imagine Him with far too long, parted in the middle, brilliantine drenched hair, wearing a white dress with an embroidered collar, and preferably without genitals, or, at least, without sexual activity. For me, however, the Son of God has pretty decent proportioned genitalia, which he decisively refused to let rust away; I imagine him as bisexual, albeit with a predominantly homosexual tendency, slightly neurotic, but without hatred towards any creature because God is the Love that cannot exclude any creature from himself. [749]

Van het Reve wrote that this was *his* image of God's son and that he did not want to *impose* it on anyone, but that he was also unwilling to let anyone take it away from him.[750] Van Dis did not like Van het Reve's response and urged the Minister to prosecute him on the basis of Article 147 Criminal Code. The political pressure to criminally prosecute Van het Reve worked,[751] and he was soon put on trial. In the summons, the aforementioned quotation about God as a donkey was mentioned, and the prosecutor had added some paragraphs from Reve´s novel *Nader tot u* (*Closer to You*),[752] including the paragraph:

> And God Himself would stop by my house in the form of a year-old, mouse-grey Donkey and stand at the door and ring the bell and say, 'Gerard, that book of yours—you know I cried at some parts?' 'My Lord and my God! Hallowed be Thy Name unto all Eternity! I love You so very much', I would try to say, but halfway through I would already burst out crying and start to kiss Him and pull him inside, and after scrambling up the stairs to the bedroom, I would take him three long times in His Secret Opening, and then give him a free copy, not stitched but bonded—not that greedy and stuffy kind—with the inscription: *For the Infinite. Without Words.*[753]

The prosecutor, Jan Jacobus Abspoel (1935–1987), had not added this paragraph on his own initiative, however, but at Van het Reve's request. The reason for Van het Reve's request was that, with the addition, he could explain his motives better and demonstrate that he was in fact making use of his freedom of speech.[754] An interesting fact is that Abspoel was not that eager to prosecute.

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747 Fekkens, 1968, p. 24.

748 Fekkens, 1968, pp. 24-25.

749 Fekkens, 1968, p. 27.

750 Fekkens, 1968, p. 27.

751 The questions that were asked of the Ministers were very interesting. One was: 'should the Ministers not acknowledge that the article is blasphemous, immoral, bestial and even satanic in content and therefore extremely offensive to the religious feelings of very many of our people?' in Fekkens, 1968, p. 29.

752 Fekkens, 1968, pp. 31-33.

753 G. Reve, *Nader tot u*, Amsterdam, De bezige bij, 2001 [1966], p. 138. Fekkens, 1968, pp. 32-33.

754 G.K. Van het Reve, *Vier Pleidooien*, Amsterdam, Athenaeum–Polak & Van Gennep, 1971.

He even stated in his indictment that he considered the provision to be abhorrent, but as a prosecutor he noted that the law, which was still in force, had been violated.[755]

The Court ruled that the passages were indeed blasphemous, but that they did not have a scornful character: the charges were therefore dismissed. However, Van het Reve was not satisfied with this outcome, for he wanted to be acquitted. Van het Reve appealed and conducted his own defence in court.[756] In his fascinating pleadings, Van het Reve talked of what drove him religiously and explained his concept of God.[757] To him, 'God [was] not the "wholly other", the emanent, but the "most personal", that is: the immanent. […] I do not have a fixed image of God, but if I had to give a definition of God, then it would be: God is the deepest hidden, most defenceless, most essential, and imperishable in ourselves'.[758] Continuing, Van het Reve explained that his work was based on this conception of God and that *his* concept of God was contrasted with that of the 'God of the Netherlands'. His conception, however, was seen as 'haughty, infantile, or primitive'.[759]

Van het Reve's appeal was considered justified, and he was acquitted of the charge of scornful blasphemy.[760] In 1968, the Dutch Supreme Court confirmed the verdict.[761] The Supreme Court ruled in its decision that, with the term 'scornful', the legislature had had the intent, or rather, '[...] sought to bring out the subjective element of the accused'.[762] This means that the accused must have had the intention to bring down the 'highest Supreme Being', which was, and is, difficult to prove for the public prosecution.[763] Following this verdict, the prohibition against scornful blasphemy lost its essential function and became practically obsolete.[764] In the subsequent years, some attempts and initiatives arose to prosecute so-called blasphemous actions by mainly public figures.

5.2.2 Donner & Hirsch Ballin: Reviving the Law

In 1995, the *Bond tegen het vloeken* (*The Association against Cursing*) filed a formal complaint against Theo van Gogh (1957–2004), a film director and author, on account of his having referred to Jesus as the 'rotten fish from Nazareth' in his column in the magazine *HP/De Tijd*.[765] In this column,

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[755] Fekkens, 1968, p. 85; Bos, 'En God Zelf zou bij mij langs komen in de gedaante van een éénjarige, muisgrijze Ezel', *Trouw*, 17 February 2006.

[756] Van het Reve, 1971, p. 14. Van het Van het Reve also wrote that he had wanted to conduct his own defence from the beginning of the process, but he had let himself be deterred by his publisher G.A. van Oorschot. Van het Reve, 1971, p. 7.

[757] Reve's closing remarks in court and his speech during his appeal are included in his book *Vier Pleidooien* (*Four Pleas*). It is not only eloquently written but also strongly argued legally.

[758] Van het Reve, 1971, p. 17.

[759] Van het Reve, 1971, pp. 17-18.

[760] Hoge Raad, 2 April 1968, *NJ* 1968/373 (*Ezelsarrest*).

[761] A year after this verdict, Van het Reve was awarded De P.C. Hooft-prijs, which is one of the most important literary prizes in the Netherlands. In his acceptance speech, which is also published in his *Vier Pleidooien*, he addressed the allegations of scornful blasphemy and states that is was a 'somewhat foolish and in fact a constitutionally unworthy' display. Van het Reve, 1971, p. 54.

[762] Hoge Raad 2 April 1968, *NJ* 1968/373 (*Ezelsarrest*). In Dutch 'opzet ofwel, […] het subjectieve element bij de verdachte tot uitdrukking heeft willen brengen'.

[763] Hoge Raad 2 April 1968, *NJ* 1968/373 (*Ezelsarrest*). See also, Plooy, 1986, p. 77.

[764] Plooy, 1986, p. 83; Van Stokkom, Sackers & Wils, 2007, p. 109.

[765] H. Nhass, 'En toen ...kwam Theo van Gogh voor de rechter', *Trouw*, 22 November, 2004.

Van Gogh had stood up for his fellow writer Theodor Holman (born 1953), who had been summoned to court after he had written: 'Still I think every Christian dog is a felon'. The Court acquitted Holman, and the public prosecutor decided not to prosecute Van Gogh.

In 2004, when Van Gogh was murdered by Mohammed Bouyeri (born 1978), there was a discussion in Parliament about whether or not to revive the blasphemy provisions. The Minister of Justice, Piet Hein Donner (the grandson of the Minister who had introduced the blasphemy laws), said that people's feelings should not be hurt when it came to their most profound religious convictions. Donner's view was strongly criticised, and he soon abandoned his plans.[766]

In 2006, there was another call for prosecution for alleged blasphemy by a public figure. This time, pop-singer Madonna was accused of blasphemy after her performance in Amsterdam, where she had sung the song *Living to Tell* whilst hanging on a cross, wearing a crown of thorns on her head. Questions were asked in Parliament, and a formal complaint of scornful blasphemy was made by the youth department of the Reformed Political Party and several other organisations. The public prosecution service saw no reason to prosecute, arguing that Madonna had been commenting on global events and was not trying to insult God. For this reason, her actions could not be qualified as the criminal offence of scornful blasphemy. In the United States, the TV network NBC did not broadcast Madonna's performance because of its allegedly blasphemous character.[767]

On 29 April, 2008, Minister of Justice Ernst Hirsch Ballin expressed in a letter addressed to the Parliament, which was published online, that the laws regarding religious blasphemy should not merely be revived but should also be expanded to insults of (non-religious) convictions. However, the Department of Justice later said that it had published the letter accidentally, and it was removed from the website. Some members of Parliament thought that the deletion of the letter was not sufficient and believed that the Minister should have formally renounced the content of the letter.[768]

The blasphemy ban, which was only subjected to one minor change in all the years since its conception,[769] remained in force until 3 December, 2013. Then effect was given to the initiative proposal from 2009 by, at that time, Members of Parliament Van der Ham, De Wit, and Teeven, who were representatives from social-liberal and conservative-liberal parties, to remove Articles 147 and 147a of the Criminal Code concerning the prohibition against offensive blasphemy. The proposal was introduced after Hirsch Ballin's accidentally published letter.[770] After the conservative liberals withdrew their support and Van der Ham left Parliament, the bill was finalized by Schouw and De Wit in 2014.[771]

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766 P.B. Cliteur, 'Godslastering en zelfcensuur na de moord op Theo van Gogh', *Nederlands Juristenblad*, Vol. 2004, No. 45, 2004. Parl. Doc., Acts House of Rep. 2004/05, 23, p. 1336.

767 J. Meijers, 'Madonna niet vervolgd voor godslastering', *Trouw*, 29 January, 2007.

768 'Justitie trekt brief over godslastering in', *Trouw*, 2 May, 2008; 'Bos: andere brief over godslastering', *NRC*, 10 May, 2008.

769 Stb. 1984, 91, entered into force on 1 May, 1984, due to the introduction of the penalty categories.

770 Parl. Doc., House of Rep. 2009/10, 32203, 2.

771 Parl. Doc., House of Rep. 2011/12, 32203, 8; Parl. Doc., Acts Senate 2013/14, 11, item 5, pp. 28-29; The change went into effect on 1 March, 2014, Stb. 2014, 39.

5.3 Reasoning against Blasphemy

The justification of the proposal to remove the blasphemy provisions rests on several arguments. One is that, despite the loss of function of the blasphemy provisions after the previously discussed Supreme Court judgment, there is still the possibility to appeal to the blasphemy provisions.[772] Furthermore, it is unclear what entity is protected by the provision, because the definition of God is not clear.[773] In addition, the initiators stated that the neutrality of the state is at stake if it is forced to take a position on this subject, while at the same time the equal treatment of religions and beliefs is endangered. They also pointed out the existing possibilities under Articles 137c-137e in the Criminal Code, which are more suited to fighting hateful, discriminatory, and insulting utterances than Articles 147 and 147a.[774] The initiators also thought the ban on scornful blasphemy to be unnecessary to prevent disturbances of the public order. Utterances of a scornfully blasphemous nature should be dealt with in the public debate.[775]

In the following sections, these arguments are analysed and evaluated, and several other arguments are offered for the justification of the abolition of the blasphemy ban. For that reason, this chapter first considers religious perspectives, as opposed to the non-religious views discussed within academia.

5.3.1 A *Status Aparte* for Believers

The first issue with the Dutch blasphemy ban is that it leads to an unequal appreciation of religious and other philosophical beliefs.[776] As already stated in the previous section, this was an important reason to submit the draft bill. The argument that religious beliefs have a component that other types of beliefs lack is not convincing, since it is not clear that a sharp divide can be made between religious and non-religious beliefs.[777] Even if such a clear divide can be made at all, it is difficult to do this on legal grounds.[778] The law, at least in a non-totalitarian system, can only decide how to deal with certain issues, and not what the content thereof is, or should be.

A discussion about the question whether or not religious feelings are at stake will quickly turn into a theological debate, in which a parliamentarian or judge cannot engage, especially since experts, or even believers themselves, cannot agree on this. This is also indicated by Nieuwenhuis and Janssens, who add that strongly divergent views may be more likely to be subject to criminal law than generally accepted views.[779] Moreover, in contrast to Article 147, it is striking that Articles 145 and 146 Criminal Code treat religious and non-religious beliefs equally.[780]

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772 Parl. Doc., House of Rep. 2009/10, 32203, 3, pp. 6-7.

773 Parl. Doc., House of Rep. 2009/10, 32203, 3, p. 7.

774 The upcoming sections will include many references to article 147 Criminal Code; the points made in these cases also apply, *mutatis mutandis*, to article 147a Sr.

775 Parl. Doc., House of Rep. 2009/10, 32203, 3, pp. 7-11.

776 Here 'religious' beliefs are contrasted with 'philosophical' beliefs. This distinction is also made by the legislature, for example, in Articles 145 and 146 Criminal Code.

777 Parl. Doc., House of Rep. 2009/10, 32203, 4, p. 9.

778 K. Van Der Wal, 'Is de vrijheid van godsdienst in de moderne multiculturele samenleving nog een hanteerbaar recht?', *Netherlands Journal of Legal Philosophy*, Vol. 39, No. 2, 2010, pp. 135-154; J. Doomen, *Freedom and Equality in a Liberal Democratic State*, Gent, Bruylant, 2014, p. 118.

779 A. Nieuwenhuis & A. Janssens, *Uitingsdelicten*, Deventer, Kluwer, 2011, p. 336.

780 Parl. Doc., House of Rep. 2011/12, 32203, 7, p. 4. Article 145 penalises: "Any person who by an act of violence

The latter articles deal with, respectively, the prevention and disturbance of religious or philosophical public gatherings or (funeral) ceremonies. Even though the provisions are focused on different aspects, the discrepancy seems challenging to defend. In the next paragraph, this point is further elucidated.

Having analysed Article 147 Criminal Code, Paul de Beer argues that it should not be relevant for the state if there is a religious element in the ridicule.[781] The question is whether or not this is correct. Believers often argue that an important aspect is insufficiently addressed, *viz.*, the importance of religion for the religious person. De Blois puts it as follows:

> We cannot simply equate [...] religion and conviction with a mere opinion which is protected by the freedom of speech. It is about consistent views of a fundamental nature, which have to do directly with what is (most) essential to being human. When it comes to a religious belief […], it is about the relationship between man and his Creator or a higher power […]. In a non-religious conviction, it is about […] the set of beliefs that give direction and meaning to existence, sometimes based on publications by important thinkers.[782]

Although this is an interesting view, some remarks are in order. First of all, religious and non-religious beliefs are contrasted here with 'just an opinion'.[783] Secondly, it relates to what (to the believer) is experienced as meaningful. De Blois takes a moderate position here, but some academics consider religion to be something so unique that it should have a *status aparte*. Ben Vermeulen writes that religious beliefs, at least for believers, are of a higher order; they are about the basis for their very existence and points of reference for a meaningful life.[784] To this Vermeulen adds that the specificity of the religious dimension is its meaningful and comprehensive identity-determining character.[785]

It is, however, difficult to understand why meaningfulness can only stem from a religious conviction. Roel Schutgens therefore rightly notes: 'Irreligious and anti-religious beliefs exist, and can be fundamental and meaningful for those who hold these views'.[786] Communism, for example,

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or by threat of violence prevents either a lawful public gathering to profess a religion or a belief, or a lawful ceremony to profess a religion or a belief, or a lawful funeral service from taking place, shall be liable to a term of imprisonment not exceeding one year or a fine of the third category. Article 146: Any person who, by creating disorder or by making noise, intentionally disturbs either a lawful public gathering to profess a religion or a belief, or a lawful ceremony to profess a religion or a belief, or a lawful funeral service, shall be liable to a term of imprisonment not exceeding two months or a fine of the second category."

781 P. De Beer, 'Waarom vrijheid van godsdienst uit de grondwet kan', *Socialisme en Democratie*, Vol. 10, No. 64, 2007, p. 22.

782 M. De Blois, 'Vóór godsdienstvrijheid', in H. Van Ooijen (ed.) *Godsdienstvrijheid: afschaffen of beschermen?*, Leiden, NJCM-Boekerij, 2008, p. 34.

783 Elsewhere De Blois argues that there are, in fact, significant differences: 'Equal treatment is at stake when it comes to similar cases. It seems evident to me that believers and unbelievers are not equal to each other in the context of blasphemy. The unbelievers lack the faith the believers adhere to. Unbelievers cannot complain about the fact that they are not protected against injury to feelings they do not have'. De Blois, 2008, p. 24.

784 B. Vermeulen, 'Waarom de vrijheid van godsdienst niet geschrapt mag worden', in H. Van Ooijen (ed.) *Godsdienstvrijheid: afschaffen of beschermen?*, Leiden, NJCM-Boekerij, 2008, pp. 20-21.

785 Vermeulen, 2008, pp. 20-21.

786 R. Schutgens, 'Waarom de godsdienst- en de uitingsvrijheid moeten samensmelten', *Tijdschrift voor Constitutioneel*

can be meaningful and fundamental to an individual. The same goes for Buddhism and other convictions. Thus, as Sager argues: 'There simply is no good reason for offering religion a priority over other deep passions and commitments'.[787]

An additional problem is that divergent views can quickly become problematic if religious beliefs receive special protection. The impression is then given that religious belief should not be criticised, which could result in an accusation of discrimination against those who do.[788] Worse, it would have serious consequences for the normative contours of the freedom of religion or belief, since it would detract from its non-discriminatory application. Although this risk is mitigated by the fact that it has to be 'scornful blaspheming in a manner that is offensive to religious feelings', it remains real.

5.3.2 Protecting the Public Order

On the basis of the preceding arguments, the impression may arise that this discussion is purely academic. However, this is not the case; the question that now comes to the fore is what it would mean in practice if all views were not treated equally, which is the case with the criminalisation of blasphemy.

The prevention of disturbances of the public order is cited as one of the reasons to justify the existence of Article 147 Criminal Code.[789] The initiators, however, state that '[...] the articles about scornful blasphemy have in any case proved not to be necessary or usable in the past decades for maintaining the public order, so nothing stands in the way of their deletion'.[790] Apart from that, '[...] there are [...] possibilities of preventing disruption of the public order outside the criminal law'.[791]

Subsequently, it may be argued that 'public order' should not, or not only, be understood in a negative sense, i.e. as the domain where the government does not intervene, but in a positive sense, which involves guaranteeing the possibility of professing one's belief.[792] It is clear that the initiators understand religious freedom in the first sense.[793] Such a position can be defended as long as it is believed that freedom of religion and freedom of speech can exist side by side.[794]

Evidently, the position one takes here depends on what is understood by 'confession' or professing one's belief. Mentko Nap argues, for example, that both freedoms must be protected in parallel, based on the consideration that 'confession' cannot be reduced to expressing opinions.[795]

Recht, Vol. 3, No. 1, 2012, p. 97.

787 L. Sager, 'The Moral Economy of Religious Freedom', in P. Cane, C. Evans & Z. Robinson (eds.), *Law and Religion in Theoretical and Historical Context*, Cambridge, Cambridge University Press, 2008, p. 18.

788 R. Ross, 'Blasphemy and the Modern, "Secular" State', *Appeal*, Vol. 17, 2012, p. 8.

789 P.H. Van Kempen, 'Religie in het Wetboek van Strafrecht', in H. Broeksteeg & A. Terlouw (eds.), *Overheid, recht en religie*, Deventer, Kluwer, 2011, pp. 170, 174.

790 Parl. Doc., House of Rep. 2009/10, 32203, 3, p. 9.

791 Parl. Doc., House of Rep. 2009/10, 32203, 3, p. 9.

792 A.P.H. Meijers, 'Het verbod op smalende krenkende godslastering: een legitieme strafbepaling?', *Nederlands Tijdschrift voor Kerk en Recht*, Vol. 1, 2007, p. 12.

793 Parl. Doc., House of Rep. 2009/10, 32203, 3, p. 9.

794 De Beer, 2007, p. 23; Schutgens, 2012, p. 99.

795 M. Nap, 'Waarom de vrijheid van godsdienst en de uitingsvrijheid niet kunnen samenvallen', *Tijdschrift voor Constitutioneel Recht*, Vol. 1, 2012, pp. 100-101.

Indeed, confession should not be thought of in such a reductionist way. It would be odd, for example, to qualify the wearing of a religious headscarf or religious services as expressions of opinion. These are, after all, practices. However, the issue is thus only theoretically clear; it still has to be examined what consequences should be attached to it.

In order for there to be room for religious practices, it is not necessary for Article 147 Criminal Code to be retained. For starters, there is the previously addressed problem of the unequal treatment of religious and non-religious beliefs. In that light, Meijers suggested redrafting the article so that both types of belief would be protected in the same way as in Articles 145 and 146 Criminal Code, which would thus increase the scope of the article.[796]

This, however, leads to a different concern, to wit, if Article 147 Criminal Code in its current form already leads to a restriction of the freedom of expression, this will *a fortiori* be the case with an extension of the scope of the article. It will also lead to interpretation problems: would it be allowed to speak scornfully about Marx or Lenin, even if this might offend a communist? Or portray Buddha in such a way that Buddhists might find offensive?

Moreover, this seems to 'dilute' the article in such a way that the absence of its necessity quickly becomes apparent. To substantiate his claim, Meijers argues that, in his suggestion, God's image would no longer be central, whereas this was precisely the characteristic of Article 147 Criminal Code.[797] If this is set aside, other provisions, such as 137c and following of the Criminal Code, seem to serve the purpose sufficiently.[798] The line between protecting convictions as such and the persons who adhere to them is then so blurred that the practical outcome will be the same.

5.4 Legislative Initiatives during the Abolition

Based on the previous sections, it may be stated that the abolition of the blasphemy prohibition can be interpreted as a positive development towards the neutral state and a stricter separation of church and state, which is of paramount importance for the Dutch state.[799] Subsequently, the unequal appreciation of religious and other philosophical beliefs would be eliminated.

As previously described, after various attempts, the Dutch blasphemy ban was finally abolished on 1 March, 2014.[800] This attempt was also not without challenges. During the deliberations of the relevant bill in the Senate, the motion Schrijver *cum suis* was adopted, which delayed the abolition process. In the motion, the Dutch government was requested to amend

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796 Meijers, 2007, p. 15.

797 Meijers, 2007, p. 15.

798 Article 137c Criminal Code penalises: "1. Any person who in public, either verbally or in writing or through images, intentionally makes an insulting statement about a group of persons because of their race, religion or beliefs, their hetero- or homosexual orientation or their physical, mental or intellectual disability, shall be liable to a term of imprisonment not exceeding one year or a fine of the third category.
2. If the offence is committed by a person who makes a profession or habit of it or by two or more persons in concert, a term of imprisonment not exceeding two years or a fine of the fourth category shall be imposed."

799 By contrast, there are Dutch academics who argue for the inclusion of a religious reference in the Dutch constitution, such as J.W. Sap, 'Dank aan God voor de vrijheid: Over het belang van een extern referentiepunt als 'bij de gratie Gods'', *Tijdschrift voor Recht en Religie (NTKR)*, No. 2, 2016, pp. 91-104 and B.C. Labuschagne, *Recht en religie: De civiele dimensie van godsdiensten als geestelijke grondslag van de democratische rechtsstaat*, Den Haag, Boom Juridische Uitgevers, 2007.

800 Stb. 2014, 39.

Articles 137 and following of the Criminal Code in such a way that believers are protected against an 'insult perceived as serious'.[801] As was argued above, it is impossible to define (the meaning of) religion in such a way that it becomes clear why religious views or what they refer to should not be ridiculed while other views should not be granted the same protection. Implementation of the motion would mean that an undesirable *status aparte* would be granted to religion once more.

The motion Schrijver *cum suis* was adopted on 3 December, 2013, and it was introduced with broad political support. However, the adoption of the motion raises questions about the motives of and the course set out by the Senate. By accepting this motion, the Senate sends out an ambiguous signal, since it requests the government '[…] to investigate whether a possible adoption of Article 137c to 137h Criminal Code may be useful in order to ensure that these articles also offer adequate protection against an insult to citizens' religion and religious experience that is perceived as serious, without unnecessarily restricting the effect of the freedom of expression'.[802] The study results were presented in the report *Belediging van Geloof (Criminalization of Defamation of Religion)* and were made public on 22 July, 2014.[803] Based on the results of the report, the government fortunately considered an adaptation of the criminal law to be unnecessary.[804]

5.4.1 Directly Discriminatory?

The first question that arises is: what is meant by 'religion and religious experience', 'sufficient protection', 'an insult perceived as serious', and 'unnecessarily restricting'? It is unclear what these concepts encompass since no explanation was provided in the legislative deliberations.[805]

The interpretation of one of these concepts, namely the offence of 'insulting religion', has been discussed in Dutch case law. On 10 March, 2009, the Dutch Supreme Court ruled on the scope of Article 137c Criminal Code and concluded that the article penalises offensive speech about a group of people because of their religion, but not insulting speech about religion, even if this is done in such a way that hurts the adherents of that religion in their religious sentiment.[806] The scope of the verdict is evident: only the *direct* discriminatory insult is punishable under Article 137c Criminal Code;[807] hurting religious sentiment by criticising a religion falls outside its scope.[808]

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801 Parl. Doc., Senate. 2013/14, 32203, E.

802 Parl. Doc., Senate. 2013/14, 32203, E.

803 The Dutch name of the report is 'Strafbaarstelling van belediging van geloof'. M. Van Noorloos, 'Strafbaarstelling van 'belediging van geloof'. Een onderzoek naar mogelijke aanpassing van de uitingsdelicten in het Wetboek van Strafrecht, mede in het licht van internationale verdragsverplichtingen (WODC)', Den Haag, Boom Lemma Uitgevers, 2014.

804 Parl. Doc., Senate. 2013/14, 32203, F.

805 Parl. Doc., Acts Senate 2013/14, 10, item 2, pp. 2-21; Parl. Doc., Acts Senate 2013/14, 10, item 12, pp. 44-65; Parl. Doc., Acts Senate 2013/14, 11, item 5, pp. 28-29.

806 Hoge Raad, 10 March 2009, ECLI:NL:HR:2009:BF0655, para 2.5.1.

807 G. Molier, 'De vrijheid van meningsuiting: it's politics all the way down', in A. Ellian, G. Molier & T. Zwart (eds.), *Mag ik dit zeggen? Beschouwingen over de vrijheid van meningsuiting*, Den Haag, Boom Juridische uitgevers, 2011, pp. 221-223.

808 E. Janssen & A. Nieuwenhuis, 'De verhouding tussen vrijheid van meningsuiting en discriminatie in het Wilders-proces. Een analyse van 'het proces van de eeuw', *Nederlands Tijdschrift voor de Mensenrechten*, Vol. 37, No. 2, 2012, p. 185.

In addition, it is necessary to examine what qualifies as a 'religious experience'. This is usually described as the emotional aspect of faith that is primarily founded in the believer's experience with his God. This emotional aspect is purely personal and thus subjective in nature; emphasising this is a remarkable departure from the current (criminal law) doctrine, which calls for more objectification. This argument of subjectivity also applies to the other concepts cited. With regard to the concept of 'sufficient protection', one must wonder where the line is to be drawn in terms of 'sufficient' since this is different for every believer. When is a believer sufficiently protected? This also applies to 'an insult perceived a serious'. When is the blasphemous speech perceived as serious?

Moreover, the Scientific Research and Documentation Centre (WODC) has already explored a possible adaptation of Article 137c and following of the Criminal Code. This has been addressed in the research into a possible expansion of the blasphemy provisions after the murder of Theo van Gogh in 2004.[809] The results of this study were evident: 'If religious harms are needlessly hurtful, with the exclusively purpose to hurt, and are (therefore) of no function in the public debate, the criminal law does not have to be ineffective. Excesses of intolerance can be criminally contested. Articles 137c and following of the Criminal Code have this function, and there is no impediment to actually prosecuting on that basis'.[810] The distinction as set out by the Dutch Supreme Court between religion and adherents of religion is also relevant in this context.

Furthermore, it may be argued that an amendment of Article 137 and following of the Criminal Code conflicts with what the initiators were actually trying to achieve with the deletion of Article 147 Criminal Code, namely creating a more neutral state and guaranteeing the freedoms of expression and religion or belief.[811] This will no longer be the case when a special status is again granted to religion, only now enshrined in a different section of the law. The repeal of Article 147 Criminal Code would be no more than the blasphemy ban in a new guise. Senator De Lange put it more aptly. He noted that '[...] the present motion in effect proposes casting out the devil of Article 147 with the Beelzebub of a possible change to Article 137. After all, the motion implies that undesirable and unwarranted asymmetry that characterizes Article 147 might now end up in end up in Article 137.'[812]

For these reasons, it is essential that the Senate realised what implications the motion would have. The related question is what the Senate wanted to achieve with this stance and, in light of what is stated in the following section, what consequences this example set by the Netherlands would have had for the significance of the freedoms of speech and religion or belief for the other states in the world. In fact, adopting such a stance on expression and religious freedom would have done countries where blasphemy can lead to severe penalties and repercussions a favour. Such countries may have found justification for their policies in Article 137c and following of the Criminal Code, on the grounds of which the injury of religious sentiment would then have been criminalized. As a result, the Netherlands would not only have lost its exemplary status in the field of the freedoms of religion and expression—obviously under the assumption that the Netherlands

[809] Parl. Doc., House of Rep. 2004/05, 29854, 3, p. 8; Parl. Doc., Senate. 2013/14, 32203, C, p. 4; Van Stokkom, Sackers & Wils, 2007, p. 5.
[810] Van Stokkom, Sackers & Wils, 2007, p. 137.
[811] Parl. Doc., House of Rep. 2009/10, 32203, 3, p. 1-2, 7.
[812] Parl. Doc., Acts Senate 2013/14, 11, item 5, p. 28-29.

actually has this status—but also its credibility in promoting these freedoms in countries where these rights are under pressure. This would have made it considerably more difficult for Bahia Tahzib-Lie, the Dutch Human Rights Ambassador, who was appointed for this arduous task.

Additionally, it should be pointed out that, after the abolition of the blasphemy ban, the Netherlands was granted the highest status with regard to the realisation of the freedom of thought, conscience, and religion by the International Humanist and Ethical Union:[813] a position worthy of emulation for other states, and one which would probably have been lost if Articles 137c and following Criminal Code had been changed.

Although the motion was not followed up on and the blasphemy ban was removed from the Dutch Criminal Code in 2014, a call has recently arisen to reintroduce the blasphemy ban in the Netherlands, this time aimed at protecting Islam. In the wake of the terrorist attack against Samuel Paty on 16 October, 2020, in France and the subsequent threats against a Dutch teacher on 2 November, 2020, a citizens' initiative (in the form of a petition) was launched calling on the Dutch government to criminalize insulting the Islamic prophet.[814] The initiator of the petition was Ismail Abou Soumayyah, the Imam of the Quba Mosque in The Hague.[815] A week earlier, Imam Yassin Elforkani of the Blue Mosque in Amsterdam had also called for such a ban.[816] In just a few days, the petition was signed more than 120.000 times.

The petition states: 'We Muslims strongly condemn all forms of violence as a result of the cartoons. Having said this, we Muslims also believe that insulting our prophet Mohammed has nothing to do with freedom of speech. Rather, it is a lack of decency and leads to social tensions as well as the structural insulting of Muslims. We therefore call on the government to make insulting the prophet (even all prophets) a punishable offence'.[817]

The petition was presented to Farid Azarkan, party leader of the political party Denk, which is known for its pro-immigration policies and combatting islamophobia and racism. Azarkan introduced the petition to the Senate during a debate about the freedom of expression and the terrorist attack in France. Although the petition did not receive much response from the members of the Senate, it is relevant to address an argument made by Azarkan during the debate. He emphasized that, at the time of the abolition of the blasphemy ban in 2014, it was stated that Article 137c Criminal Code offered sufficient guarantees; he thus refers to the motion Schrijver *cum suis*. He wondered if the current situation was not a case of 'progressive insight'.[818] Despite the petition being unsuccessful, the importance of the signal the senate sent out by adopting the motion Schrijver is underlined once again.[819]

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[813] Compare International Humanist and Ethical Union, 'Freedom of Thought Report 2012. A Global Report on Discrimination Against Humanists, Atheists, and the Non-religious', *International Humanist and Ethical Union*, fot.humanists.international. with International Humanist and Ethical Union, 'Freedom of Thought Report 2013. A Global Report on the Rights, Legal Status and Discrimination Against Humanists, Atheists and the Non-religious', *International Humanist and Ethical Union*, fot.humanists.international.

[814] B.M. Van Schaik, 'De strafbaarstelling van de belediging van geloof', *Open Universiteit*, 4 November, 2020.

[815] I. Abou Soumayyah, 'Strafbaar stellen beledigen van de profeet', *petities.com*, 2 November 2020.

[816] B. Soetenhorst, 'Imam Blauwe Moskee wil wetgeving tegen beledigen Mohammed', *Het Parool*, 30 October, 2020.

[817] Abou Soumayyah, 'Strafbaar stellen beledigen van de profeet', *petities.com*, 2 November, 2020.

[818] Parl. Doc., House of Rep., 24th meeting (Plenary Report), 12 November, 2020.

[819] J. Doomen & B.M. van Schaik (ed.), *Religious Ideas in Liberal Democratic States*, Lanham, Lexington Books (Rowman & Littlefield), 2021.

5.5 A European Perspective on Blasphemy

An important argument for the final abolition of the blasphemy ban that was not sufficiently emphasised in the Dutch parliamentary debate lies in the international domain. The removal of the ban on scornful blasphemy in the Netherlands is, in fact, characteristic of the European position in the debate on the defamation of religions resolutions within the United Nations, as was described in the previous chapter. After some considerations, the United States, Canada, and states from mainly Western Europe opposed the developments, since these defamation of religion resolutions carry various encroachments on the freedoms of expression and religion or belief, including the call for an international ban on blasphemy.

Although the Western governments generally voted against the defamation resolutions, having the liberty to express utterances of a scornfully blasphemous nature is not a given in Europe. After all, several European countries, including Austria, Germany, and Ireland, have laws that penalise blasphemy. In July 2013, a new law was introduced in Russia that makes insulting religious feelings a criminal offence.[820] In addition, some significant rulings of the ECtHR can be interpreted as protecting religious feelings by law. This is remarkable since no explicit right to have religious feelings respected is formulated in the freedom of religion or belief provisions.

In various cases, the ECtHR has ruled that a member state can legitimately restrict the freedom of expression in the case of hurtfully blasphemous utterances.[821] The Court ruled that '[…]it is not possible to arrive at a comprehensive definition of what constitutes a permissible interference with the exercise of the right to freedom of expression where such speech is directed against the religious feelings of others. A certain margin of appreciation is, therefore, to be left to the national authorities in assessing the existence and extent of the necessity of such interference'.[822] It is at the Member States' discretion to assess if certain boundaries are crossed regarding the injury

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[820] See for more about Russia, International Humanist and Ethical Union, 'Freedom of Thought Report 2013. A Global Report on the Rights, Legal Status and Discrimination Against Humanists, Atheists and the Non-religious', *International Humanist and Ethical Union*, fot.humanists.international, pp. 195-197.

[821] *Otto-Preminger-Institut v. Austria*, no. 13470/87, 20 September 1994, ECLI:CE:ECHR:1994:0920JUD001347087; *Wingrove v. UK*, no. 17419/90, 25 November 1996, ECLI:CE:ECHR:1996:1125JUD001741990; *I.A. v. Turkije*, no. 42571/98, 13 September 2005, ECLI:CE:ECHR:2005:0913JUD004257198; *Klein v. Slovakia*, no. 72208/01, 31 October 2006, ECLI:CE:ECHR:2006:1031JUD007220801; *I.A. v. Turkije*, no. 42571/98, 13 September 2005, ECLI:CE:ECHR:2005:0913JUD004257198. This enumeration is non-exhaustive. In the landmark case Otto-Preminger-Institut v. Austria the Court said: 'Those who choose to exercise the freedom to manifest their religion, irrespective of whether they do so as members of a religious majority or a minority, cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith. However, the manner in which religious beliefs and doctrines are opposed or denied is a matter which may engage the responsibility of the State, notably its responsibility to ensure the peaceful enjoyment of the right guaranteed under Article 9 (art.9) to the holders of those beliefs and doctrines. Indeed, in extreme cases the effect of particular methods of opposing or denying religious beliefs can be such as to inhibit those who hold such beliefs from exercising their freedom to hold and express them'. *Otto-Preminger-Institut v. Austria*, no. 13470/87, § 47, 20 September 1994, ECLI:CE:ECHR:1994:0920JUD001347087. The ECHR further stated: '[T]heir purpose was to protect the right of citizens not to be insulted in their religious feelings by the public expression of views of other persons [...]. [T]he Court accepts that the impugned measures pursued a legitimate aim under Article 10 para. 2, namely "the protection of the rights of others".' *Otto-Preminger-Institut v. Austria*, no. 13470/87, § 48, 20 September 1994, ECLI:CE:ECHR:1994:0920JUD001347087.

[822] *Wingrove v. UK*, no. 17419/90, § 50, 25 November 1996, ECLI:CE:ECHR:1996:1125JUD001741990.

to religious sentiment. These views have been confirmed in a more recent ECtHR ruling, *viz.*, E.S v. Austria.[823] In this case, the ECtHR upheld the Austrian court's conviction of a citizen who had implied that the Islamic prophet Mohammed was a paedophile.[824]

5.6 Conclusion

In this chapter, the Dutch concept of scornful blasphemy was examined, which is all the more interesting in the light of European and international developments. In the Dutch discussion about blasphemy, various—religious and non-religious—interests are at stake. It is essential to take these into consideration; however, it should be recognised that it is inevitable that some choices must be made. I have advocated that the emphasis should be on a more neutral government regarding religion and the freedoms of religion and expression rather than on protecting religions or religious feelings.

An important consideration is that it is difficult, or even impossible, to define religion in such a way that it would be clear why religious beliefs, or what they refer to, should not be ridiculed while other, non-religious views should not be protected in the same way. Moreover, I have emphasised that blasphemy bans as such are an encroachment on the freedom of religion or belief. Since instances of blasphemy may involve conflicts between two different religions or within one religion, it is challenging to justify the criminalization of blasphemy on the basis of freedom of religion or belief, for the reason that an individual's freedom of religion can violate another individual's freedom simply because they have a religious belief that contradicts or conflicts with the other's. There is such great diversity in the representation of a deity (or deities) that there will always be a group of people who feel hurt by what others say. This is the capriciousness of blasphemy. The individuals who, from a religious perspective, think they have an interest in the existence of a blasphemy ban should also consider the possibility that their own freedom of religion or belief could be significantly restricted.

The decision to abolish Article 147 Criminal Code has intensified the discussion. The request from Senator Schrijver *cum suis* to adapt Article 137c Criminal Code so that believers would be protected against 'insults perceived as serious' would again have led to an undesirable *status aparte* for religion, which would have not only jeopardized the neutrality of the state but also have constituted an infringement on the freedom of religion or belief. Fortunately, the outcome of the report following the motion Schrijver was clear.

Thus, despite the fact that the Dutch state system was *de facto* committed to the freedom of religion or belief, it was *de jure* not adequately equipped to ensure a full exercise of the right. The Dutch blasphemy legislation led to a non-equal, or rather a discriminatory application of the freedom of religion or belief, resulting in tension with the universality this right. Additionally, repealing the ban on blasphemy does not affect the existence of other provisions in the criminal code: the direct discriminatory insult is punishable under Article 137c Criminal Code, and believers will be able to continue to rely on it. Hurting religious sentiment by criticising a religion, however, falls outside its scope.

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[823] *E.S. v. Austria*, no. 38450/12, 25 October 2018, ECLI:CE:ECHR:2018:1025JUD003845012.

[824] *E.S. v. Austria*, no. 38450/12, 25 October 2018, ECLI:CE:ECHR:2018:1025JUD003845012.

Within the European order, it is unfortunately less unequivocal. Blasphemy is banned in several European states, and the ECtHR has not adopted a firm position against the adoption of blasphemy laws, even though the protection of religious feelings is not part of the freedom of religion or belief provision. As was demonstrated in the previous chapter, within the UN, the situation seems even more precarious. The OIC countries remain committed to striving for international criminalization. Globally, therefore, there is still much work to do in the international promotion of this right; the Netherlands should take a strong international stance and act as an exemplar. By abolishing the ban on blasphemy and applying the freedom of religion or belief equally, the Dutch government has demonstrated a strong commitment to protecting this right.