



Bill Digest

Thirty-seventh Amendment of
the Constitution (Repeal of
offence of publication or
utterance of blasphemous matter)
Bill 2018

Bill No. 87 of 2018

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Abstract

The *Thirty-seventh Amendment of the Constitution (Repeal of the offence of publication or utterance of blasphemous matter) Bill 2018* proposes the removal of the offence of blasphemy from the Constitution by way of referendum. Under the current framework the Constitution provides that the offence of blasphemy is punishable according to law. The *Defamation Act 2009* defines the offence and provides that a person shall be liable upon conviction on indictment for a maximum fine of €25,000. This Digest sets out recent events and controversies relating to blasphemy; assesses its historical and legislative development as well as relevant case-law. Finally, the Digest provides a comparative analysis with European and international countries.

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Summary

The [*Thirty-seventh Amendment of the Constitution \(Repeal of offence of publication or utterance of blasphemous matter\) Bill 2018*](#) contains the wording of a proposed constitutional amendment to Article 40.6.1.i of the Constitution.

Proposed Amendment

The Bill proposes to substitute the current Article 40.6.1.i, which reads:

The publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law.

The Bill provides for the following, proposed substitution:

“seditious” shall be substituted for “blasphemous, seditious” in paragraph i of subsection 1° of section 6 of the English text

Definition of Blasphemy

The original provision for the offence of blasphemy was inserted into the Constitution in 1937 and instructed that blasphemous material should be punished in accordance with the law. [Section 13](#) of the [*Defamation Act 1961*](#) set out the penalties for printing or publishing blasphemous libel; it did not, however, provide a definition of the offence¹:

13.—(1) Every person who composes, prints or publishes any blasphemous or obscene libel shall, on conviction thereof on indictment, be liable to a fine not exceeding five hundred pounds or to imprisonment for a term not exceeding two years or to both such fine and imprisonment or to penal servitude for a term not exceeding seven years.

A definition for blasphemy was not inserted into legislation until 2009 as a result of an amendment to the [*Defamation Act 2009*](#). This gap was first highlighted in the 1999 [Corway case](#). As a result a definition was provided in [section 36](#) of the 2009 Act:

¹ £500 is the equivalent of approximately €635.

(2) *For the purposes of this section, a person publishes or utters blasphemous matter if—*

(a) *he or she publishes or utters matter that 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, and*

(b) *he or she intends, by the publication or utterance of the matter concerned, to cause such outrage.*

Since 1991 various reviews of the law have been undertaken recommending the removal of the offence of blasphemy from the Constitution, a view which has been endorsed by international bodies and institutions. In more recent times, the [Stephen Fry](#)² investigation placed blasphemy back in the spotlight, highlighting the onerous level of proof required to secure a prosecution and conviction under the [Defamation Act 2009](#). This is reflected in the fact that no-one has been convicted of blasphemy in Ireland since 1855.

In the event that a referendum approves the removal of the offence of blasphemy from the Constitution, separate legislation will be required to amend [sections 36](#) and [37](#) of the *Defamation Act 2009* to remove the offence of blasphemy from the statute book.

Reviews of the offence of blasphemy

Table 1 is a summary of recommendations from different international and national bodies recommending the removal of the offence of blasphemy:

Table 1: Overview of reports and official commentary on Article 40.6.1.i

| Date | Body | Recommendation |
|------|----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1991 | Law Reform Commission The Crime of Libel | The LRC recommended that “any revision which may be undertaken by referendum of the Constitution, so much of Article 40.6.1.i which renders the publication or utterance of blasphemous matter an offence should be deleted”. They advised that religious adherents could be protected by the incitement to hatred legislation instead. |
| 1995 | Constitution Review Group | The Review Group recommended that Article 40.6.1.i should be replaced with a new clause protecting free speech modelled on Article 10 of the European Convention on Human Rights (ECHR) because it allows for the balancing of other competing values. |

² McMahon, C., “[Gardaí launch blasphemy probe into Stephen Fry comments on 'The Meaning of Life'](#)” *Irish News* (06 May 2017).

| | | |
|-------------|-----------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2006 | Report of the Special Rapporteur on freedom of religion or belief | The Rapporteur recommended that expressions should only be prohibited under article 20 of the International Covenant on Civil and Political Rights (ICCPR) ³ if they constitute incitement to imminent acts of violence or discrimination against a specific individual or group. |
| 2007 | Report of the Joint Oireachtas Committee on the Constitution | The Committee endorsed the view of the Constitution Review Group, also recommending that Article 40.6.1.i should be deleted. |
| 2010 | The Venice Commission | The report concluded that incitement to hatred, including religious hatred, should be a crime; that insult to religious feelings should not be a crime; and that the offence of blasphemy should be abolished and should not be reintroduced. |
| 2011 | UN Human Rights Committee, General Comment 34 , section 48 | The Committee said “prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, [...] it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.” |
| 2014 | Convention on the Constitution | The majority of members of the Convention voted in favour of removal of blasphemy from the Constitution and replacing it with a general constitutional prohibition/legislative provision of incitement to religious hatred. |

Source: Compiled by Library & Research Service.

Table 2 sets out some of the arguments for and against retention of the offence of blasphemy in the Constitution:

Table 2: Arguments for and Against the Retention of Blasphemy

| Arguments in favour of Retention | Arguments against Retention |
|-------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|
| It protects religious beliefs and sensibilities and deters disrespect of religion | The Article on blasphemy is unworkable because neither the courts nor the legislature have successfully defined what it means |
| Its removal might result in the downgrading of religion as a value worth recognising | The provision does not protect non-believers |
| It serves to protect Ireland's multicultural society by providing protection to all religious beliefs | Sufficient legislation already exists in the area |

³ Ireland ratified The International Covenant on Civil and Political Rights (ICCPR) in 1989. The ICCPR considers blasphemy and religious defamation laws as contrary to human rights and constituting violations of international law. Article 20(2) considers that only extreme speech should be banned and the test should be set at a very high level.

| | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|
| It does not do any harm as it stands because there have been no convictions under the Constitutional provision. Therefore removing it could do more harm than good and it is preferable to retain the status quo | The law belongs to a different time |
| If it is removed it would be difficult to have it reinserted in the Constitution | There should be a separation between Church and State |
| | It elevates religion over other forms of discrimination |

Source: The Convention on the Constitution, [Sixth Report of the Convention on the Constitution](#) (January 2014)

The overwhelming majority of reviews, arguments, academics and legal commentary discussed in this Digest all strongly recommend the deletion of the offence of blasphemy. This conclusion is

European Convention on Human Rights (ECHR), formally the *Convention for the Protection of Human Rights and Fundamental Freedoms*, is an international treaty to protect human rights and political freedoms in Europe.

European Court of Human Rights (ECtHR) is the judicial organ established in 1959 that is charged with supervising the enforcement of the European Convention on Human Rights.

European Commission on Human Rights Although the European Commission on Human Rights became obsolete in 1998 with the restructuring of the European Court of Human Rights, it held an important role in assisting the European Court of Human Rights from 1953 to 1998.

also supported by the lack of any successful prosecution since its inception within the Constitution in 1937. However, consideration should also be given to the fact that 38% of people balloted in the Convention on the Constitution did agree that blasphemy should be kept in the Constitution while 53% agreed that it should be replaced with a new more general provision that included incitement to hatred. In addition, rulings by the European Court of Human Rights (ECtHR) show that those courts allow a considerable margin of appreciation in the construction and operation of domestic blasphemy laws and are not considered to be incompatible with the European Convention on Human Rights.

Background to the Bill's Introduction

In the 2016 [A Programme for a Partnership Government](#), commitments were made to hold a number of referenda, including:

- Article 41.2.1 of the Constitution regarding a “woman’s life within the home”;
- The question of amending Article 40.6.1(i) of the Constitution to remove the offence of blasphemy;
- Ireland’s participation in the Universal Patent Court;
- Giving the Office of the Ceann Comhairle constitutional standing, as recommended by the Constitutional Convention.⁴

On 11 July 2017 two Private Member Bills⁵ were introduced in the Dáil by Catherine Murphy and Róisín Shorthall of the Social Democrats. The first Bill allowed for the holding of a referendum to repeal Article 40.6.1(i) and the second provided for an amendment to the *Defamation Act 2009* by deleting sections 36–37. Neither Bill progressed past second stage.

The current Bill was placed on the Government Legislative Programme for spring/summer 2018. Due to the intention to hold referenda in October 2018 the Department sought and was granted an exemption from pre-legislative scrutiny by the Dáil Business Committee in June 2018. This was to allow sufficient time for a Referendum Commission to be established and to launch an information campaign. The intention is to hold a referendum on both the removal of blasphemy and the woman’s life within the home on the same day as the forthcoming presidential election.

The Bill was approved by Government on 5 July 2018 was published on the 13th of July 2018, provides for the removal of the word “blasphemous” from Article 40.6.1(i) of the Constitution. Section 1(b) provides that the English text will amend Article 40 as follows:

“*“seditious” shall be substituted for “blasphemous, seditious” in paragraph 1 of subsection 1° of section 6 of the English text.*”

Section 2 is a standard provision setting out the citation of the Bill as the *Thirty-seventh Amendment of the Constitution (Repeal of offence of publication or utterance of blasphemous matter) Act 2018*.

⁴ A Programme for A Partnership for Government (May 2016), p.153.

⁵ [Thirty-fifth Amendment of the Constitution \(Blasphemy\) Bill 2017](#) and [Defamation \(Amendment\) Bill 2017](#).

In a [press release](#)⁶, the Minister for Justice and Equality, Charlie Flanagan, commented that:

“In terms of Ireland’s international reputation, this is an important step. Regrettably, there are some countries in the world where blasphemy is an offence, the punishment of which is being put to death. In these countries, such laws are not an anachronism but a very real threat to the lives of those who do not share the views of those enforcing the laws. Such situations are abhorrent to our beliefs and values. By removing this provision from our Constitution, we can send a strong message to the world that laws against blasphemy do not reflect Irish values and that we do not believe such laws should exist.”

If this Bill is passed by the Houses of the Oireachtas the wording of the Bill will be put to the people by way of referendum. A referendum will be held within 30 and 90 days of the issuing of a Ministerial Order which itself will be issued after the Bill has been passed by the Houses of the Oireachtas.

The [Referendum Commission](#), whose role it is to prepare, publish and distribute to the electorate a statement containing a general explanation of the subject matter of the referendum, and to promote awareness of the referendum and encourage the electorate to vote, will then begin its campaign.

It is important to note that if a referendum results in a vote to approve the removal of the word ‘blasphemous’ from the Constitution, the offence of blasphemy will still exist on the statute books. Separate legislation will be required to amend sections [36](#) and [37](#) of the [Defamation Act 2009](#).

Amending *Bunreacht na hÉireann*

[Article 46](#) of the Constitution provides that any Article of the Constitution can be amended. However, articles cannot be altered by the Oireachtas alone. In line with the procedure for amending the Constitution, outlined in Article 46.2 of the Constitution, this Bill must be initiated in the Dáil. If it is passed by the Oireachtas it must be submitted to the people by way of a referendum. If a majority of the votes cast are in favour of the amendment, the Bill will be signed into law by the President.

The Minister for Justice and Equality, Charlie Flanagan, has indicated an intention to hold a referendum in October 2018. A Bill to amend the Constitution cannot contain any other proposal (e.g. amendments to Acts to reflect the change if passed) and is in effect a Bill designed to facilitate future legislative change.

⁶ Department of Justice and Equality, “[Minister Flanagan announces Government approval for the holding of a Referendum on the removal of the offence of blasphemy from the Constitution](#)” (12 June 2018).

Historical Context

The Old Testament terms for blasphemy stem from the words 'Naatas' and 'Naqab' which mean to pierce or sting and the word 'Gadaph' which means to cut into or revile which suggests that within Judaism, blasphemy involves an attack that causes pain.⁷ Cox argues that historically, blasphemy protects against an attack on the divine and not on the believer. Where a state has a law against blasphemy, what it is prohibiting is gross irreverence which offends against a fundamental element of public morality; the idea is that speech of this kind is intolerable for the state.^{8,9} Cox adds that the blasphemy laws which operated since the 17th century are not really blasphemy laws at all but are laws against heresy and treason in one instance and laws aimed at protecting people from being offended on the other.¹⁰

In England there were a significant number of prosecutions for blasphemy in the 18th and 19th centuries. The earliest recorded case is that of John Taylor¹¹ from Surrey who proclaimed in 1676 that he was the 'younger brother of Christ' and that religion was a cheat. Justice Hale presided over the case and said that to reproach Christianity is to 'speak in subversion of the law' and so the accused was convicted and 'pilloried' in three different places, holding a warrant stating that his punishment was for blasphemous words tending to the subversion of all government.¹² By the time of the Enlightenment the law began to shift from the treason foundation laid down in Taylor's case, to the protection of society against public insults that could lead to violence, rather than the mere denial of Christianity. In 1917's House of Lords decision [Bowman v Secular Society](#)¹³, Lord Parker stated that blasphemy involved "such an element of vilification, ridicule, or irreverence as would be likely to exasperate the feelings of others and so lead to a breach of the peace".¹⁴

Recent controversies and attitudes in regards to blasphemy in Ireland

Apart from one failed application for leave to commence criminal proceedings for blasphemous libel in 1999 [Corway v Independent News](#) (see pages 23 & 29 for further detail) there has been no blasphemy case before the Irish courts since 1855; consequently, the ambit of this constitutional crime is uncertain. However, writing in 1960, O'Higgins stated that it was well known Eamon de Valera prepared the first draft of the present Constitution. Mr. de Valera insisted that the

⁷ The Convention on the Constitution, [Sixth Report of the Convention on the Constitution: Removal of the offence of blasphemy from the Constitution](#) (January 2014). See Expert Presentation by Cox on 'Introduction and the Irish context'.

⁸ [Dr Neville Cox](#) is a Professor of Law at Trinity College Dublin.

⁹ Convention on the Constitution, *supra* note 7.

¹⁰ Convention on the Constitution, *supra* note 7.

¹¹ Taylor's case (1676) 1 Vent 293.

¹² Charleton and Pratt-O'Brien, *infra* note 72, p.16.

¹³ [1917] A.C. 406

¹⁴ *Ibid*, p.446.

Constitution did not create a new offence of blasphemy, but simply mirrored the existing common law offence.¹⁵

A small number of high profile incidents have thrown the issue into recent public debate.

1997 comedy sketch-The Late Late Show

In 1997 the comedian Tommy Tiernan performed a sketch on RTE's 'The Late Late Show'. His routine consisted of a mock homily by a Roman Catholic priest and material which poked fun at the crucifixion of Jesus and the concept of the 'Lamb of God'. His act generated a large number of complaints to RTE and the national press. The issue was raised in the Seanad where Senator Ó Murchú argued that "there is a very thin line between satire and blasphemy. I believe that that line was breached on the Late Late Show last Friday night. It is totally unacceptable in a country which is largely Christian, North and South, that we must be subjected to what happened on the Late Late Show because it is not right".¹⁶

Charlie Hebdo

In January 2015, 12 people were killed at the offices of Charlie Hebdo, a French satirical magazine. The attacks were carried out by two gunmen in retaliation against satirical cartoons depicting the prophet Mohammed. In Ireland, there were fears that, although there have been no cases under the *Defamation Act 2009*, the provision for the offence of blasphemy contained therein creates "the chilling effect of self-censorship" whereby media outlets were deterred from publishing the cartoons because of fears of a €25,000 fine.¹⁷ Murphy, at her [presentation at the Venice Commission conference](#) commented that it was impossible to say whether this 'chilling effect' was responsible for the failure by most Irish media to publish the Charlie Hebdo cartoons or whether it was due to the view, expressed by the Irish Times, that "publication of the cartoons was likely to be seen by Muslims as gratuitously offensive and would not contribute significantly to advancing or clarifying the debate on the freedom of expression".^{18, 19} It was also suggested in the Irish media that publication by national newspapers of the 'Charlie Hebdo' cartoons could form the basis of a blasphemy prosecution, following comments from Muslim cleric Dr Ali Selim of the Islamic Cultural Centre of Ireland.²⁰ Dr. Selim said he would take legal action under Ireland's blasphemy laws.

¹⁵ O'Higgins, P., "Blasphemy in Irish Law" (1960) 23 *MLR* 150 p.153. O'Higgins reference taken from Cox, N., "[Sacilege and Sensibility: The Value of Irish Blasphemy Law](#)" (1997) 19(1) *Dublin University Law Journal* 87.

¹⁶ [Seanad Debates](#) (26 November 1997).

¹⁷ RTE, [Prime Time](#) (08 January 2015).

¹⁸ Sarahrose Murphy is an Executive Legal Officer of the Supreme Court of Ireland.

¹⁹ O'Sullivan, K. "[The Irish Times and the cartoon](#)" *The Irish Times* (13 January 2015).

²⁰ "[Irish media asked not to publish images of Charlie Hebdo cover](#)" *Irish Examiner* (14 January 2015); "[Dublin-based Islamic cleric warns of legal action over religious depictions](#)" *RTE News* (8 January 2015).

Stephen Fry- 'The Meaning of Life'

Only one month later Stephen Fry was accused of making blasphemous comments on an RTE interview, aired in February 2015, with Gay Byrne, entitled "The Meaning of Life". When asked by Byrne what he would say if he met God, he replied "how dare you create a world in which there is such misery that is not our fault? It's not right. It's utterly, utterly evil. Why should I respect a capricious, mean-minded, stupid God who creates a world which is so full of injustice and pain?"²¹ The British writer and comedian added that any deity presiding over a world in which children got bone cancer was "quite clearly a maniac, an utter maniac, totally selfish". A Garda investigation commenced on foot of the comments after a complaint was made to Ennis Garda Station that the comments were blasphemous under the [Defamation Act 2009](#). However, because the Gardaí were unable to find a substantial number of 'outraged'²² people and the investigation was dropped.²³

In a media interview following the Stephen Fry case, former Minister for Justice, Equality and Law Reform, Mr Dermot Ahern, who introduced the definition of blasphemy into the 2009 Act, said that he had no choice but to do so as it was required by the Constitution. He added that the blasphemy provision was implemented in such a way as to make it virtually impossible to prosecute, saying "we diluted it in a way that made it pretty ineffectual".²⁴ In a speech before the Dáil Committee on Justice, Equality, Defence and Women's Rights, in 2009, the Minister stated that his preference was to abolish the blasphemy provision by way of referendum, but he recognised that the country's economic climate, at that time, meant they were not in a position to do so, due to the expense it would incur.²⁵

2017 opinion poll

In a poll conducted by [Amárach Research](#) for the Claire Byrne Live show on RTE in 2017, a majority of people said they believed there should be a referendum on the issue. According to the results:

- 52% said there should be a referendum;
- 33% disagreed with a referendum;
- 15% were undecided.²⁶

The results further showed that:

²¹ Coyle, C., "[Stephen Fry Blasphemy inquiry is welcomed](#)" *The Sunday Times* (07 May 2017).

²² The 2009 Act requires that the publication or utterance of blasphemous material is intended to outrage or causes outrage to a substantial number of adherents of that religion to constitute an offence. The 2009 Act is discussed in greater detail below.

²³ Doyle, K., "[Gay Byrne brands Stephen Fry inquiry 'ridiculous nonsense' as blasphemy case dropped](#)" *Irish Independent* (09 May 2017).

²⁴ Nugent, R., "[We made blasphemy law 'almost impossible to prosecute' - former minister says about Stephen Fry Garda investigation](#)" *Irish Independent* (08 May 2017).

²⁵ Speech by Mr Dermot Ahern, Minister for Justice Equality and Law Reform at the Dáil Committee on Justice, Equality, Defence and Women's Rights, "[Amending the Law on Blasphemous Libel](#)" (20 May 2009).

²⁶ Murray, S., "[Most people would vote to remove the offence of blasphemy from the Constitution](#)" *The Journal* (08 May 2017).

- 62% of Irish people said they would vote to remove blasphemy from the Constitution;
- 14% of Irish people said they would keep it in the Constitution;
- 24% were undecided.²⁷

The solidarity argument-criticising other countries with blasphemy laws

Mairéad McGuinness, Vice-President of the European Parliament, responsible for its dialogue with churches, religions and non-confessional organisations, argued for removing blasphemy in 2017.²⁸ She contended that doing so would improve the part of the Constitution which addresses freedom of expression. She also wrote that “removing blasphemy from our statute books would increase our moral authority to push for such laws to be repealed worldwide”. She argued that, the fact that Ireland has a blasphemy law weakened Europe’s hand in dialogue with other parts of the world where blasphemy laws can be a matter of life or death²⁹:

“Ireland should set an example by undertaking this necessary reform and then we should urge our EU partners to follow suit. This is a good opportunity for Ireland to show leadership on a fundamental human rights issue.”

This sentiment was reiterated by Michael Nugent, chairperson of Atheist Ireland, who argues that Ireland’s blasphemy laws are being cited by Islamic states as justification and best practice for promoting blasphemy laws and persecuting religious dissidents.³⁰ In Pakistan a Christian woman was convicted and sentenced to the death penalty in 2010 for supposedly blaspheming against Islam (the woman is maintaining, through her lawyers, that she was being victimised because of a petty quarrel with fellow farm labourers who are Muslim). The woman is still on ‘death row’ awaiting appeal to the higher courts. At the time of her conviction Ireland had just passed the *Defamation Act 2009* and critics of the law said it sent the wrong signal at a time when Pakistan and other countries were lobbying at the United Nations for acceptance of the principle that religions (as opposed to individuals who might or might not practice a religion) deserved legal protection.³¹ These concerns materialised when Islamic governments argued in defence of blasphemy laws at international forums, citing Ireland as an example of Western governments protecting their historic faith.³²

²⁷ *Ibid.*

²⁸ McGuinness, M., “[Irish blasphemy laws are a mild inconvenience. In other parts of the world, they're a matter of life or death](#)” *The Journal* (06 August 2017) and “[Ranking countries by their blasphemy laws](#)” *The Economist* (13 August 2017).

²⁹ *Ibid.*

³⁰ Humphreys, J. “[Ireland's blasphemy laws condemned](#)” *Irish Times* (26 November 2012) and Nugent, M. “[Why it's time to get rid of Ireland's blasphemy laws](#)” *The Journal* (28 July 2013).

³¹ “[An evil that resonates](#)” *The Economist* (17 October 2014).

³² *Ibid.*

A report published by the Commission on International Religious Freedom (USCIRF) identified 71 countries which punished blasphemy and ranked them according to severity.³³ Ireland was considered the least extreme of all the countries because it adheres to international principles and its laws do not discriminate against different belief groups. Joelle Fiss, a human rights activist and one of the authors of the USCIRF [blasphemy report](#), called on Ireland to repeal its blasphemy law so that it could express solidarity with those who are persecuted in the name of blasphemy.³⁴

³³ United States Commission on International Religious Freedom, [Respecting Rights? Measuring the Worlds Blasphemy Laws](#) (USCIRF, 2017) p.19.

³⁴ Phelan, S., ["Ireland's blasphemy laws least restrictive in the world"](#) *Irish Independent* (19 June 2018).

Reviews of the Law on Blasphemy

Since the Corway case, a number of reviews have collectively recommended its removal.³⁵ The Law Reform Commission in 1991, the Constitution Review Group in 1996, the Joint Oireachtas Committee on the Constitution in 2007 and finally the Convention on the Constitution in 2014 all supported removing the offence of blasphemy from the Constitution. The former recommended replacing the offence of blasphemy with a general constitutional prohibition of incitement to religious hatred. Below is a detailed discussion of the different reviews.

Law Reform Commission Review

Eight years prior to the Corway case the Law Reform Commission (LRC) produced a report on the [“The Crime of Libel”](#) in which they examined blasphemous libel.³⁶ In the absence of any statutory definition at the time the LRC suggested that the offence originated in a period of religious intolerance and was governed by different conceptions of the role of the Church in State matters and would therefore be incompatible with modern conditions. It considered in its [consultation paper](#)³⁷ that the constitutional reference to blasphemy “was intended to be confined to religious beliefs in the Judaeo-Christian tradition”.³⁸ As a result it could be argued that the offence of blasphemy is confined to Christian religions. However, Article 44.2.3 guarantees non-discrimination and equality of religious treatment; this suggests that the offence of blasphemy would extend to all religions. It also argued that the offence might be considered unconstitutional in two circumstances: because it restricts freedom of speech ([Article 40.6.1.i](#)) and is in breach of the constitutional guarantee of religious equality ([Article 44](#)). It contended that arguments which suggested blasphemy caused injury to feelings were a tenuous basis on which to restrict freedom of speech. It observed that the offence was unclear about the *actus reus* (guilty act) and the *mens rea* (guilty intention)³⁹:

“Bearing in mind that the Constitution guarantees freedom of conscience and profession of religion (Article 44.2) as well as freedom of speech, it seems most unlikely that the offence of blasphemy envisaged in the Constitution would extend to a denial of the truth of the doctrines of Christianity, as distinct from an insulting and outrageous attack upon such doctrines.”

³⁵ Law Reform Commission, [The Crime of Libel](#) LRC 41-1991; [Report of the Constitution Review Group](#) (Dublin, 1996); Joint Committee on the Constitution [“First Report Article 40.6.1.i-Freedom of Expression”](#) (July 2008); The Convention on the Constitution, [Sixth Report of the Convention on the Constitution: Removal of the offence of blasphemy from the Constitution](#) (January 2014).

³⁶ Law Reform Commission, [The Crime of Libel](#) LRC 41-1991.

³⁷ Law Reform Commission, [The Crime of Libel Consultation Paper](#) (Law Reform Commission, August 1991) p.82.

³⁸ In the English High Court judgement of *R v Chief Magistrate, ex p Choudhury* [1991] QB 429 it was held that the common law offence of blasphemy was confined to the Christian religions and so the publication of The Satanic Verses (a book considered by some Muslims to be blasphemous) did not constitute blasphemous libel.

³⁹ Law Reform Commission Consultation Paper, note 37, p.81.

In addition, the LRC concluded that the absence of any prosecutions for the offence weakened arguments which suggested that freedom to insult religion would threaten the stability of society by impairing harmony between groups.

The LRC recommended that *“any revision which may be undertaken by referendum of the Constitution, so much of Article 40.6.1.i which renders the publication or utterance of blasphemous matter an offence should be deleted”*.⁴⁰ They advised that religious adherents could be protected by the incitement to hatred legislation instead (discussed above).

However, the LRC recognised that a referendum could be seen as time wasting and expensive. As an alternative proposal the LRC redefined a more limited offence of the publication of *“matter the sole effect of which is likely to cause outrage to a substantial number of the adherents of any religion by virtue of its insulting content concerning matters held sacred by that religion”*. In line with this definition the offence would be extended to protect Christian and non-Christian religions, including Islam. The prosecution would have to show that the publisher knew that the material was likely to cause outrage and that this was the sole intent.⁴¹

Constitution Review Group

In 1995 the Government established the [Constitution Review Group](#) to examine areas where constitutional change may be desirable or necessary. The Group referred extensively to the Law Reform Commission’s review on blasphemy and fully endorsed its recommendations to remove the constitutional reference⁴²:

“The Review Group considers that the retention of the constitutional offence of blasphemy is not appropriate. The contents of the offence are totally unclear and are potentially at variance with guarantees of free speech and freedom of conscience in a pluralistic society. Moreover, there has been no prosecution for blasphemy in the history of the State.”

It recommended that Article 40.6.1.i should be replaced with a new clause protecting free speech modelled on [Article 10](#) of the ECHR⁴³ which allows for the balancing of other competing values.⁴⁴ This model would allow for a presumption in favour of freedom of expression, but recognises that this right is not absolute and should be tempered by competing concerns.⁴⁵

⁴⁰ Law Reform Commission, [The Crime of Libel](#) LRC 41-1991, para.21.

⁴¹ *Ibid.*, pp. 11-12.

⁴² [Report of the Constitution Review Group](#) (Dublin, 1996).

⁴³ Article 10 provides individuals with the right to freedom of expression, subject to limitations which can be prescribed by law in order to protect against disorder in a democratic society. See section on ‘Blasphemy and the European Convention on Human Rights’ above.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

Report of the Joint Oireachtas Committee on the Constitution

In 2007 the Joint Committee on the Constitution was established by the Houses of the Oireachtas. It was assigned with the task of identifying areas requiring reform and recommending change. The Report concentrated on the right to freedom of expression, including the prohibition against blasphemy. The Committee endorsed the view of the Constitution Review Group, also recommending that Article 40.6.1.i should be deleted. It commented that⁴⁶:

“in a modern Constitution, blasphemy is not a phenomenon against which there should be an express constitutional prohibition” and “[if] there is a need to protect against religious offence of incitement, it is more appropriate that this be dealt with by way of legislative intervention, with due regard to the fundamental right to free speech”.

United Nations Human Rights Committee

The UNCHR is a body composed of 18 independent human rights experts tasked with monitoring states' implementation of the rights guaranteed by the [International Covenant on Civil and Political Rights](#) (ICCPR). In its [General Comment No. 34](#) in 2011, the Committee stated that “Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with” [Article 19 of the ICCPR](#) which guarantees freedom of expression and [Article 26](#) which secures non-discrimination in the enjoyment of Covenant Rights. Thus, **“it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers”**.

With regard to Ireland, the Committee, in its [fourth periodic report](#)⁴⁷, expressed its concern “that blasphemy continues to be an offence” under the Constitution and in statute. It recommended that the “State party should consider removing the prohibition of blasphemy from the Constitution” as advised by the Convention on the Constitution. In response to the Committee’s findings McLoughlin argues that the current domestic constitutional and legal framework governing blasphemy is incompatible with the State's international human rights obligations.^{48, 49} The purpose of section 36 of the 2009 Act is to protect the sensibilities and feelings of religious persons from offence or insult. However, according to the Human Rights Committee this is not a sufficient justification for the restriction upon freedom of expression that a blasphemy prohibition represents.

Limitations on freedom of expression can only be justified in the specific circumstances

⁴⁶ First Report of the Joint Committee on the Constitution, [Article 40.6.1.i-Freedom of Expression](#) (2008) p.73.

⁴⁷ UN Human Rights Committee (HRC), “Concluding observations on the fourth periodic report of Ireland” (19 August 2014) CCPR/C/IRL/CO/4.

⁴⁸ McLoughlin is a BCL candidate at Oxford University.

⁴⁹ McLoughlin, J., [“In the Presence of Almighty God” - The Human Rights Violations at the Heart of the Irish Constitution](#) (2017) 35(17) *Irish Law Times* pp.230-235.

envisaged in Article 20⁵⁰, paragraph 2 which allows for the prohibition of “propaganda for war” and incitement of religious hatred.

McLoughlin also considers that section 36 of the 2009 Act contravenes the guarantee of non-discrimination, set out in Article 26 of the ICCPR, because **it only affords protection to religious beliefs and does not apply to non-religious beliefs**.⁵¹ In effect, it is argued, a person is free to blaspheme against and insult the beliefs of non-religious people such as humanists and atheists. In the absence of any definition of “religion” it is unclear what religious beliefs section 36 refers to. McLoughlin subsequently argues that, given that section 36 stems from the constitutional prohibition of blasphemy, its protections only extend to “religious beliefs in the Judaeo-Christian religion” owing to the heavy Christian influence present in the Constitution.⁵² Therefore, the beliefs held sacred by Muslims or Buddhists, for example, would not be covered and this would also be inconsistent with Article 26 ICCPR.⁵³

The Convention on the Constitution

More recently, the Convention on the Constitution was established in 2012 to examine proposed amendments to the Constitution. The Convention comprised of 100 members, 66 of whom were randomly selected citizens and 33 parliamentarians and an independent chairman. It was tasked with reviewing a number of issues, one of which was blasphemy. In its [sixth report](#), it made recommendations on the removal of the offence of blasphemy. A range of options were considered ranging from leaving the provision as it is, to removing it completely or replacing it with text that is more aligned with international norms. A ballot of the members was conducted and the following results were collated:

| | Yes | No | Undecided/No Opinion |
|-------------------------------------------------------|-----|-----|----------------------|
| Should blasphemy be kept in the Constitution? | 38% | 61% | 1% |
| Should there be a legislative provision for blasphemy | 49% | 50% | 1% |

Source: The Convention on the Constitution, [Sixth Report of the Convention on the Constitution](#) (January 2014)

⁵⁰ Article 20 of the International Covenant on Civil and Political Rights.

⁵¹ McLoughlin, *supra* note 49.

⁵² McLoughlin, *supra* note 49.

⁵³ McLoughlin, *supra* note 49.

In the event that change to the Constitution is approved, should the offence of blasphemy be:

| Removed altogether | Replaced with a new general provision which includes incitement to hatred | Undecided/no opinion |
|--------------------|---------------------------------------------------------------------------|----------------------|
| 38% | 53% | 9% |

Source: The Convention on the Constitution, [Sixth Report of the Convention on the Constitution](#) (January 2014)

In the event that a legislative provision is preferred, it should be:

| The existing blasphemy provision | A new set of detailed legislative provisions to include incitement to religious hatred | Undecided/no opinion |
|----------------------------------|----------------------------------------------------------------------------------------|----------------------|
| 11% | 82% | 7% |

Source: The Convention on the Constitution, [Sixth Report of the Convention on the Constitution](#) (January 2014)

The ballot indicates a clear majority towards the removal of blasphemy from the Constitution (61%) and a new legislative provision in its place (50%) which would include provisions to protect against incitement to religious hatred (82%). However, it also highlights that 38% of people balloted in the Convention on the Constitution did agree that blasphemy should be kept in the Constitution while 53% agreed that it should be replaced with a new more general provision that included incitement to hatred. The arguments for and against retention of blasphemy in the Constitution are set out in Table 3 below:

Table 3: Arguments for and Against the Retention of Blasphemy

| Arguments in favour of Retention | Arguments against Retention |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|
| It protects religious beliefs and sensibilities and deters disrespect of religion | The Article on blasphemy is unworkable because neither the courts nor the legislature have successfully defined what it means |
| Its removal might result in the downgrading of religion as a value worth recognising | The provision does not protect non-believers |
| It serves to protect Ireland's multicultural society by providing protection to all religious beliefs | Sufficient legislation already exists in the area |
| It does not do any harm as it stands because there have been no convictions under the Constitutional provision. Therefore removing it could do more harm than good and it is preferable to retain the status quo | The law belongs to a different time |
| If it is removed it would be difficult to have it reinserted in the Constitution | There should be a separation between Church and State |

| | |
|--|---------------------------------------------------------|
| | It elevates religion over other forms of discrimination |
|--|---------------------------------------------------------|

Source: The Convention on the Constitution, [Sixth Report of the Convention on the Constitution](#) (January 2014)

O'Dell posits responses to each of the options examined by the Convention. In terms of keeping Article 40.6.1.i, he argues that the courts have struggled in the past to interpret and apply the provision.^{54, 55} He suggests that if the blasphemous reference is removed it may be too limited an amendment, leaving other constitutional crimes intact. However, removing the last sentence of Article 40.6.1.i, could remove good social and political reasons for providing constitutional status to the principle that the 'publication or utterance of blasphemous, seditious or indecent matter should be offences punishable in accordance with law'.⁵⁶ O'Dell does recognise that while there may be good reasons for regulating the former, creating a constitutional crime is not the way to do so. Finally, O'Dell recommends replacing Article 40.6.1.i in its entirety and follows the recommendations of the Constitution Review Group whereby it is replaced by a text modelled on Article 10 of Convention.⁵⁷

Other Views

In the most recent census in Ireland (2016), figures show that 'No Religion' is the second largest category of respondents after Roman Catholic. In 2016, 468,421 people marked themselves as having no religion; this constitutes 9.8% of the population, which has increased from 5.9% in the last census in 2011 (when 'no religion' was also the second largest category of respondents).⁵⁸ In its submission to the Constitutional Convention in 2014, the [Humanist Association of Ireland](#) argued that the Article on blasphemy actively discriminates against the non-religious because they cannot express their irreligiosity for fear they might cause offence and be punished under the provision.⁵⁹ Similarly, Atheist Ireland also sought to have the offence of blasphemy removed, citing it as⁶⁰:

- (a) Endangering freedom of speech and denying equality;
- (b) Infringing on human rights around the world;
- (c) Having been condemned by reputable international bodies.

The Irish Council of Churches and Irish Inter-Church Meeting, which is an umbrella group representing 15 different Christian Churches in Ireland⁶¹, described the current reference to

⁵⁴ [Dr Eoin O'Dell](#) is a Professor at law in Trinity College Dublin.

⁵⁵ [The State \(Lynch\) v Cooney](#) [1982] ILRM 190 and [AG v Paperlink](#) [1994] ILRM 373.

⁵⁶ O'Dell, E., "Implications/options for change and a comparative study", Expert presentation for [Sixth Report of the Convention on the Constitution](#) (January 2014).

⁵⁷ *Ibid.*

⁵⁸ Central Statistics Office, "[Census of Population 2016 – Profile 8 Irish Travellers, Ethnicity and Religion](#)"

⁵⁹ Humanist Association of Ireland, "[Submission: Removal of the Offence of Blasphemy 2014](#)" (2014).

⁶⁰ Atheist Ireland, "[Submission to Constitutional Convention on removing blasphemy](#)" (July 2013).

⁶¹ Antiochian Orthodox Church; Church of Ireland; Cherubim and Seraphim; Greek Orthodox Church; Lutheran Church in Ireland; Methodist Church in Ireland; Moravian Church (Irish District); Non-Subscribing Presbyterian Church; Romanian

blasphemy in the Constitution as “largely obsolete”.⁶² They expressed concerns about “the way such measures have been used to justify violence and oppression against minorities in other parts of the world” and recognised “the human right of faith communities to contribute to public life, including public debate on issues that are of importance to everyone, without being subjected to attack or ridicule, needs to be acknowledged and respected”.⁶³

Orthodox Church; Presbyterian Church; Religious Society of Friends; Redeemed Christian Church of God; Roman; Catholic Church in Ireland; Russian Orthodox Church; Salvation Army (Ireland Division).

⁶² Irish Catholics Bishops' Conference, “[Submission to the Convention on the Constitution for its consideration on the removal of blasphemy](#)” (November 2013).

⁶³ *Ibid.*

Current Legal Framework

Constitutional Provision for Blasphemy

[Article 40.6.1](#) of the Irish Constitution guarantees rights to freedom of expression, freedom of assembly and freedom to form associations and unions. However these rights are balanced with other rights in order to protect public order and morality. For instance, sub-section i of the Article details the constitutional offence of publication or utterance of blasphemous, seditious or indecent matter. This is the only offence provided for in the Irish Constitution.⁶⁴

Article 40.6.1

The State guarantees liberty for the exercise of the following rights, subject to public order and morality:

- i. The right of citizens to express freely their convictions and opinions The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavour to ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State.

The publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law.

The blasphemy clause is not the only reference to religion in the Constitution. Religious references are contained in: [Article 44.1](#), which provides that the State “acknowledges that the homage of public worship is due to Almighty God” and states that “[i]t shall hold His Name in reverence and shall respect and honour religion.” [Article 44.2.1](#) guarantees freedom of conscience and the free profession and practice of religion, “subject to public order and morality”. It prohibits the State from endowing any religion ([Article 44.2.2](#)) or imposing any disabilities or making any discrimination on the grounds of religious profession, belief or status ([Article 44.2.3](#)). The Constitution once referred to the “special position of the Roman Catholic church”⁶⁵ in addition to recognising certain other specified religious denominations.⁶⁶ However, the fifth amendment of the Constitution removed this provision in the early 1970s.⁶⁷

The Defamation Acts 1961 and 2009

Under [section 13 of the Defamation Act 1961](#) penalties for the offence of blasphemy were set out

⁶⁴ Murphy, *infra* note 73 p.3.

⁶⁵ Article 44.1.2 previously stated: “The State recognises the special position of the Holy Catholic Apostolic and Roman Church as the guardian of the Faith professed by the great majority of the citizens.”

⁶⁶ Article 44.1.3 previously provided: “The State also recognises the Church of Ireland, the Presbyterian Church in Ireland, the Methodist Church in Ireland, the Religious Society of Friends in Ireland, as well as the Jewish Congregations and the other religious denominations existing in Ireland at the date of the coming into operation of this Constitution.”

⁶⁷ [Fifth Amendment of the Constitution Act, 1972](#).

as follows:

“Every person who composes, prints or publishes any blasphemous or obscene libel shall, on conviction thereof on indictment, be liable to a fine not exceeding five hundred pounds or to imprisonment for a term not exceeding two years or to both such fine and imprisonment or to penal servitude for a term not exceeding seven years.”

The Act conferred powers on the courts to make orders of search and seizure in respect of material considered blasphemous. However, the Act failed to outline the precise scope and definition of the offence meaning a criminal conviction was not possible. As stated in the Supreme Court decision of [Corway v Independent News](#) (discussed in detail below)⁶⁸:

In this state of law, and in the absence of any legislative definition of the constitutional offence of blasphemy, it is impossible to say what the offence of blasphemy consisted...The task of defining the crime is one for the legislature not the courts. In the absence of legislation and in the present uncertain state of the law the Court could not see its way to authorising the institution of a criminal prosecution for blasphemy.”

In its conclusion of *Corway v Independent News*, the Supreme Court noted its inability to define blasphemy because of the separation of powers, as guaranteed under [Article 15](#) of the Constitution, directing that it was the function of the legislature.

In 2009, the then Minister for Justice, Equality and Law Reform, Dermot Ahern, remarked that, following advice from the Attorney General, he had to choose between holding a referendum on the issue of blasphemy or reform section 13 of the 1961 Act; by only repealing the relevant provisions of the 1961 Act a gap would be created in the case of these offences which are created by the Constitution.⁶⁹ Due to the country’s weak economic position at that time, it was considered that reforming the law and updating the law on blasphemy was more desirable than a referendum.⁷⁰

The law was subsequently reformed and now [Section 36](#) of the *Defamation Act 2009* gives statutory definition to the constitutional offence of blasphemy. Under [section 36\(2\)](#) publication or utterances of blasphemous matter occur when:

⁶⁸ [\[1999\] 4 IR 484, pp.436-437.](#)

⁶⁹ Select Committee on Justice, Equality, Defence and Women’s Rights Committee Debate, [“Defamation Bill 2006”](#) (20 May 2009)

⁷⁰ *Ibid.*

*(a) [a person] publishes or utters matter that 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, **and***

(b) he or she intends, by the publication or utterance of the matter concerned, to cause such outrage.

It provides for a maximum fine of €25,000 when convicted on indictment, for the publication or utterance of blasphemous matter. During the Select Committee debates, the Minister set out that the rationale for a significant monetary fine was to ensure there was no trivialisation of the constitutional position.

Under [section 36\(3\)](#) of the 2009 Act it is a defence where it can be proved that a reasonable person would find genuine literary, artistic, political, scientific or academic value in the matter to which the offence relates ([section 36\(3\)](#)). It has been noted that this means it would be very difficult to bring a successful prosecution for blasphemy and that arguably “the terms of the statutory offence are so tightly drawn that it is highly unlikely to have any application in practice”.⁷¹ Justice Peter Charleton sets out four conditions which highlight the demanding standards that need to be met in order to secure a conviction for blasphemy⁷²:

- i. There would need to be expert evidence that proves the matter being referred to is ‘sacred’ and that the reference was grossly abusive or insulting;
- ii. Proof would be required to show that the words produced cause outrage and would have substantial impact on a number of adherents;
- iii. It would have to be shown that it was the intention of the accused to cause outrage. Justice Charleton notes that this is a standard which is “notoriously difficult to prove, particularly intent based causation”;
- iv. Finally, the accused is also able to raise the defence that, while the matter was outrageous, a reasonable person would find a recognised value in the matter.

If a person is convicted of an offence under section 36 the court may issue a warrant permitting the Gardaí to enter the premises where it is believed the blasphemous material is contained to carry out a search and seizure ([section 37](#)). To date there have been no prosecutions for blasphemy under the 2009 Act.⁷³

⁷¹ The Convention on the Constitution, [Sixth Report of the Convention on the Constitution: Removal of the offence of blasphemy from the Constitution](#) (January 2014). See Expert Presentation by Cox on Introduction and the Irish context.

⁷² Charleton, P & Pratt-O’Brien, R., “[Blasphemy: Religion Challenges Freedom of Speech](#)” [2017] *Irish Judicial Studies Journal* Vol.1, pp.15-30.

⁷³ Sarahrose Murphy, “[Blasphemy Law in Ireland: An overview of its historical development and current proposals for reform](#)”. Paper presented at the 14th meeting of the Joint Council on Constitutional Justice (Venice Commission) (Bucharest, 12 June 2015).

In his presentation to the Convention on the Constitution (discussed below) Eoin O'Dell provides a structured analysis against which section 36 can be examined to determine its constitutionality. It consists of four questions^{74, 75}:

1. Is there a protected constitutional right (in this instance it is the right to freedom of expression as protected by Article 40.6.1.i of the Constitution and Article 10 of the European Convention on Human Rights)?
2. Does section 36 amount to a restriction on this right?
3. Are there good reason for the restriction?
4. If the reasons are subject to scrutiny, are they sufficient to justify the restriction?

O'Dell argues that firstly, the right to freedom of expression is not clearly stated within the Constitution and its interpretation has caused the courts difficulty⁷⁶. Secondly, section 36 of the *Defamation Act 2009* does place a restriction on the freedom of expression. Thirdly, as a result, it is for the State to establish the reasons for this restriction. Fourthly, the courts will then be obliged to scrutinise the reasons for that restriction and establish their proportionality.⁷⁷ In effect, if there is a restriction on the right to freedom of expression, the State must have a good reason to justify the restriction which must be able to withstand review. According to O'Dell, if Article 40.6.1.i is applied in a challenge to section 36, the question will be whether the section is proportionate.

O'Dell goes on to consider whether the provisions of the *Defamation Act 2009* relating to blasphemy should be amended or repealed. In terms of amending, while he recognises that this is largely a matter of policy and politics rather than law, publications that are gratuitously offensive or insulting or likely to incite hatred will have difficulty seeking protection under Article 10 of the Convention. He therefore recommends the following text as an amendment to section 36 of the *Defamation Act 2009*⁷⁸:

“(2) For the purpose of this section, a person publishes or utters blasphemous matter if-
*(a) He or she publishes or utters matter that is grossly abusive or insulting in relation to matters held sacred by any religion, thereby **causing sufficient** outrage among a substantial number of the adherents of that religion that it gives rise to an imminent risk of **public disorder**, and*
*He or she intends, by the publication or utterance of the matter concerned, to cause such outrage and **risk of public disorder**.”*

⁷⁴ Eoin O'Dell is associate Professor of law at Trinity College Dublin.

⁷⁵ O'Dell, E., “Implications/options for change and a comparative study”, Expert presentation for [Sixth Report of the Convention on the Constitution](#) (January 2014).

⁷⁶ See [The State \(Lynch\) v Cooney](#) [1982] ILRM 190.

⁷⁷ O'Dell, E., “Implications/options for change and a comparative study”, Expert presentation for [Sixth Report of the Convention on the Constitution](#) (January 2014).

⁷⁸ *Ibid.*

In consideration of repealing section 36, O'Dell argues that the *Prohibition of Incitement to Hatred Act 1989* (discussed below) already prohibits hatred against a group of persons in the State based on, amongst other things, their religion. Consequently, a repeal of section 36 would raise questions about whether section 37 should remain (relating to the seizure of copies of blasphemous statements). O'Dell suggests that [section 11](#) of the *Prohibition of Incitement to Hatred Act 1989* (which provides for the forfeiture of any written material or recording which relates to the offence of incitement to hatred) would cover the same ground as section 37.

Prohibition of Incitement to Hatred

An attack on religion may constitute an offence under [section 2 the Prohibition of Incitement to Hatred Act 1989](#). This provision was a response to Ireland's obligations under the International Covenant on Civil and Political Rights.⁷⁹ The Act is a 'hate speech' law which prohibits the publication or distribution of written material and the use of words, behaviour, visual images or sounds which are "*threatening, abusive or insulting and are intended or, having regard to all the circumstance, are likely to stir up hatred*".⁸⁰ It has been suggested that the high standard of proof set by section 2 has resulted in a lack of prosecutions under the Act.⁸¹ However, in its 1991 report on the Crime of Libel, the Law Reform Commission noted that the provisions of the 1989 Act could sufficiently address any issues around blasphemy. It pointed out that the provisions of the Act which criminalised the publication of material designed to stir up hatred could encompass blasphemy. Hatred is defined under [section 1](#) as:

"hatred against a group of persons in the State or elsewhere on account of their...religion"

Common Law Developments

There are three recorded cases of blasphemy in the common law courts of Ireland prior to independence⁸²:

⁷⁹ The International Covenant on Civil and Political Rights (ICCPR) is an international human rights treaty adopted by the United Nations (UN) in 1966. It is one of the two treaties that give legal force to the Universal Declaration of Human Rights (the other being the International Covenant on Economic, Social and Cultural Rights, ICESCR). See <https://treaties.un.org/doc/publication/unt/volume%20999/volume-999-i-14668-english.pdf>

ICCPR commits the states signed up to it to protect and respect the civil and political rights of individuals.

⁸⁰ [Section 2\(1\)](#).

⁸¹ Cowhey, "Racist hate speech in Ireland: the need for reform" (2006) 4 *Cork Online Law Review* 34, p.39.

⁸² The earliest recorded case concerned the trial of a Unitarian Minister, Thomas Emlyn, the author of a book called *A Humble Enquiry into the Scripture Account of Jesus Christ*. The next blasphemy law trial in the common law courts was the 1852 case of John Syngean Bridegman, a Franciscan friar, who was convicted of "unlawfully, wickedly and blasphemously" setting fire to a Protestant Bible. For a discussion of these cases, see [Law Reform Commission, Consultation Paper on the Crime of Libel](#) (1991) pp.14 - 16.

1. The Thomas Emlyn case, unreported;
2. John Syngean Bridegman case, unreported;
3. R v Petcherine.

In the R v Petcherine⁸³ case a Redemptorist priest had organised a bonfire to destroy so called “vile English novels” and inadvertently burned a bible which was hidden within the books. He was acquitted because the Court found that for a blasphemy prosecution to be successful, it would have to be demonstrated that the accused intended to burn the Bible. The next case to come before the Irish courts on blasphemy was 140 years later; following Ireland’s independence and enactment of the Constitution. According to Cox, blasphemy has never been an issue which has troubled the Irish courts⁸⁴ because, since the enactment of the Irish Constitution there has only been one case.⁸⁵

Corway v Independent Newspapers

After Petcherine, a case of blasphemy did not come before the courts again until 1999. As noted above, in [John Corway v Independent Newspapers](#)⁸⁶ the respondents published an article in the newspaper insinuating that the influence of the Catholic Church in Ireland was decreasing. The article was accompanied by a cartoon depicting three Government Ministers refusing the host and chalice being offered to them by a priest. The cartoon was accompanied by the heading ‘Hello Progress-Bye-bye Father?’. The applicant applied to the High Court to commence an action of blasphemous libel under the [Defamation Act 1961](#). He claimed that he had suffered offence and outrage by reason of insult, ridicule and that contempt was shown towards the sacrament of the Eucharist as a result of the publication. Although the Constitution criminalises blasphemy, **there was neither a constitutional nor a legislative definition of blasphemy at that time**. The 1961 Act only provided for penalties and seizure of material.⁸⁷

The High Court found that the applicant **must establish, *prima facie*, that the libel was so serious that the criminal law needed to be invoked and it was necessary in the public interest**. It was not necessary that the publication was likely to provoke a breach of the peace. Secondly, **it must be shown that the words or pictures complained of were an attack on some tenet of Christian religion**. The High Court found that the picture complained of was an isolated cartoon and there was no evidence to support that the newspaper had an agenda to offend Christian beliefs. They also found that commencing proceedings would not be in the public interest.

⁸³ (1855) 7 Cox 79.

⁸⁴ Cox, N., “[Sacrilege and Sensibility: The Value of Irish Blasphemy Law](#)” (1997) 19(1) *Dublin University Law Journal* 87.

⁸⁵ See below discussion of [Corway v Independent Newspaper \[1999\] 4 IR 484](#).

⁸⁶ [1999] 4 IR 484.

⁸⁷ *Defamation Act 1961*, [section 13](#).

The case was appealed to the Supreme Court in which four main findings were discussed:

1. Firstly, the common law offence of blasphemy related to an established Church which predated the enactment of the Constitution and could not survive that enactment; because the common law offence was solely concerned with Christianity, it was incompatible with [Article 44.2.3](#) of the Constitution which prohibits discrimination on grounds of religion and [Article 40.1](#) which guarantees general equality;
2. Secondly, due to the absence of any legislative definition of the offence of blasphemy it was not possible to say what the offence of blasphemy consisted of;
3. Thirdly, because of the Constitutional rights of freedom of conscience, freedom of religion and freedom of expression, the mere publication of an opinion on a religious matter did not constitute a criminal offence unless the publication would undermine the public morality or order of the State;
4. Fourthly, the publication of blasphemous matter, without proof of any intention to blaspheme, could not support a conviction of blasphemy.

The decision of the Supreme Court meant that a prosecution of blasphemy was not possible under the 1961 Act until the legislature provided a statutory definition.

However, in a 2017 paper, Justice Charleton contends that, from a constitutional perspective, laws on blasphemy are not a necessity despite being specifically mentioned in the constitution. He compares it to the constitutional references to felony crimes, which, although mentioned in the constitution, no longer exist in Ireland.⁸⁸

Blasphemy and the European Convention on Human Rights

European rulings indicate a tolerance towards blasphemy provisions, provided they are not incompatible with the European Convention on Human Rights and are proportionate in order to protect the rights of others, as set out under Article 10.

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Source: [European Convention on Human Rights](#), p.10.

⁸⁸ Charleton & Pratt-O'Brien, supra note 72, pp.22-23.

[Article 9 of the European Convention on Human Rights](#) (ECHR) provides individuals with freedom of thought, conscience and religion:

[Article 10](#) of the ECHR provides individuals with the right to freedom of expression, subject to limitations which can be prescribed by law in order to protect against disorder in a democratic society:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Source: [European Convention on Human Rights](#), p.11.

The Convention therefore expressly requires that any restrictions on freedom of expression are necessary and the European Courts have held that restrictions will be necessary only if they are proportionate. That is⁸⁹:

- i. The restriction must be rationally connected to, and carefully designed to give effect to, the reason for the restriction;
- ii. The restriction must impair the right as little as possible;
- iii. There must be proportionality between the effects of the restriction and the reason being relied on to justify it.

This requirement for proportionality is illustrated in the case-law discussed below.

In [Gay News and Lemon v UK](#) a blasphemy prosecution case was brought against Gay News Magazine and its editor Mr Denis Lemon.⁹⁰ The prosecution was in relation to a poem the magazine published which described homosexual acts being performed on the body of the crucified Jesus by a centurion at the foot of the cross.⁹¹ A criminal prosecution was commenced under [section 8 of the Law of Libel Amendment Act 1888](#). The charge was that the applicants had 'unlawfully and wickedly published or caused to be published a blasphemous libel concerning the Christian religion'.⁹² The defendants were found guilty of blasphemy by both the Court of Appeal and the House of Lords. The case was appealed to the European Commission of Human Rights

⁸⁹ O'Dell, E., "Implications/options for change and a comparative study", Expert presentation for [Sixth Report of the Convention on the Constitution](#) (January 2014).

⁹⁰ (1983) 5 EHRR 123.

⁹¹ A centurion was a commander in the ancient Roman army.

⁹² O'Dell, *supra* note 89.

on the grounds that the defendants' fundamental right to freedom of expression under Articles 9 and 10 of the Convention had been contravened. The Commission did not examine the appeal under Article 9 because it was not demonstrated that the publication of the poem constituted the exercise of a religious, or other belief, as set out within the provision. Under Article 10, freedom of expression may be curtailed provided that the restriction is prescribed by law, serves a legitimate purpose and is necessary in a democratic society. The defence rebutted the first two of these criteria, alleging that they were not fulfilled by UK blasphemy law. In response the Commission held that⁹³:

"The offence of blasphemous libel, as it is construed under the applicable common law in fact has the main purpose to protect the right of citizens not to be offended in their religious feelings by publications. This was the thrust of the arguments put before the jury by the trial judge, arguments which were subsequently confirmed by the higher courts in this case. The Commission therefore concludes that the restriction was indeed covered by a legitimate purpose recognised in the Convention, namely the protection of the rights of others."

In addition, the Commission rejected the argument that the extent of the restriction on freedom of expression imposed by a blasphemy law was disproportionate in a democratic society⁹⁴:

"If it is accepted that the religious feelings of the citizen may deserve protection against indecent attacks on the matters held sacred by him, then it can also be considered as necessary in a democratic society to stipulate that such attacks, if they attain a certain level of severity, shall constitute a criminal offence triable at the request of the offended person. It is in principle left to the legislation of the State concerned how it wishes to define the offence, provided that the principle of proportionality, which is inherent in the exception clause of Article 10 (2), is being respected. The Commission considers that the offence of blasphemous libel as laid down in the common law of England in fact satisfies these criteria. In particular it does not seem disproportionate to the aim pursued that the offence is one of strict liability incurred irrespective of the intention to blaspheme and irrespective of the intended audience and of the possible avoidability of the publication by a certain member of the public."

In 1994, the case of [Otto-Preminger Institute v Austria](#) came before the ECHR. The institute intended to screen an allegedly blasphemous film 'Council of Heaven'.⁹⁵ The Catholic Church complained that the film was disparaging against religious doctrine and as a result the Austrian courts ordered its seizure and forfeiture. The European Commission on Human Rights upheld the institute's claim that the seizure constituted a violation of its rights under Article 10. However, the European Court of Human Rights overruled this decision by holding that the restriction on freedom

⁹³ [Gay News and Lemon v UK](#) (1983) 5 EHRR 123.

⁹⁴ *Ibid.*

⁹⁵ (1995) 19 E.H.R.R. 34.

of expression was valid in the interest of protecting others from gratuitous insult to their religious feelings and so the restriction in question was necessary in a democratic society. The Court even referred to a 'right' not to be offended in respect of religious feelings.⁹⁶

In the case of [Wingrove v United Kingdom](#) the British Board of Film Classification (BBFC) refused to grant a certificate of release to Mr. Wingrove for his film 'Visions of Ecstasy'.⁹⁷ The film depicts the erotic fantasies of a sixteenth century Carmelite nun, St Teresa of Avila, which are focused on the figure of the crucified Christ. The Board argued that Wingrove would have committed an offence under the [Video Recordings Act 1984](#) if he were to supply the video in any manner. The director's appeal was rejected by the Video Appeals Committee. Wingrove applied to the European Commission of Human Rights, relying on Article 10 of the European Convention for the protection of human rights and fundamental freedoms. The Commission opined that the BBFC had acted in violation of the Convention by denying Mr. Wingrove a certificate of release. The case was then referred to the ECtHR where it was held that, although his right to freedom of expression had been violated, the restriction was prescribed by law and served a legitimate purpose (the protection of Christians against serious offence in their beliefs) and was necessary in a democratic society. The court was influenced by the fact that the UK blasphemy law did not prohibit the expression of views hostile to the Christian religion but merely sought to control the manner in which they were expressed.⁹⁸

In consideration of the above case-law, the ECtHR is prepared to allow Member States a considerable margin of appreciation in the construction and operation of domestic blasphemy law.⁹⁹ The existence and operation of such laws is therefore not incompatible with the Convention, provided that any restrictions they impose are not disproportionate to the aim sought to be achieved. O'Dell observes that the European courts have held that "if the publication is a contribution to a wide-ranging and on-going debate, then any restriction is likely to be a disproportionate restriction on the right to freedom of expression. On the other hand, if the publication is gratuitously offensive, or insulting, or is likely to incite hatred or disorder, then any restriction is likely to be proportionate".¹⁰⁰

⁹⁶ Cox, [Sacrilège and Sensibility](#), note 84.

⁹⁷ (1997) 24 E.H.R.R. 1.

⁹⁸ Cox, [Sacrilège and Sensibility](#), note 84.

⁹⁹ *Ibid.*

¹⁰⁰ O'Dell, E., "Implications/options for change and a comparative study", Expert presentation for [Sixth Report of the Convention on the Constitution](#) (January 2014).

Comparative Analysis

Comparatively, only a small number of European countries have blasphemy laws (see Table 4, p.33), some of which have recently repealed the offence. However, blasphemy prosecutions are rare across any of those States. Internationally 71 countries have blasphemy laws, of which Ireland is categorised as being the least restrictive and most in line with international principles.

European study comparative on blasphemy laws and findings

The Council of Europe's 'European Commission for Democracy through Law' (also known as the Venice Commission) examined the regulation and prosecution of blasphemy, religious insult and incitement to hatred. It produced a [report on freedom of expression, blasphemy laws and hate speech](#) in 2010.¹⁰¹ The report contained an overview of laws in 12 countries and a discussion of the tensions between freedom of expression, freedom of thought, conscience and religion. It made a number of findings¹⁰²:

- That incitement to hatred, including religious hatred, should be the object of criminal sanction. The Commission recommended that such a sanction should include an explicit requirement of intention or recklessness;
- An offence of religious insult (insult to religious feelings) should not exist unless the element of incitement to hatred is a component part;
- The offence of blasphemy should be abolished;
- In addressing the question 'to what extent is criminal legislation adequate and/or effective for the purpose of bringing about appropriate balance between the right to freedom of expression and the right to respect for one's beliefs, the Commission reiterates that criminal sanctions are only appropriate in respect of incitement to hatred (unless public order offences are appropriate);
- The application of legislation against incitement to hatred must be done in a non-discriminatory manner. The Commission considered that such legislation needs to send a strong signal to all parts of society that an effective democracy will not bear behaviours and acts that undermine its core values of pluralism, tolerance, respect for human rights and non-discrimination, but criminal sanctions are inappropriate in respect of insult to religious feelings and even more so in respect of blasphemy;
- The Commission is of the view that it is not primarily for the courts to find the right balance between freedom of religion and freedom of expression, but rather for society at large, through rational discussions between all parts of society, including believers and non-believers; and,
- Finally, the Commission promotes the recommendations of the Parliamentary Assembly of the Council of Europe, the ECRI (European Commission against Racism and Intolerance - an aspect of the Council of Europe) and many others, as to the need to promote dialogue and encourage a communication ethic for both the media and religious groups. Education leading to better understanding of the convictions of others and to tolerance should also be seen as an essential tool in this respect.

¹⁰¹ Venice Commission, [Blasphemy, insult and hatred: finding answers in a democratic society](#) (Council of Europe, 2010).

¹⁰² *Ibid*, pp.32-33.

European Blasphemy Laws

Blasphemy is an offence in only a minority of Member States. Examination of the relevant legislation (drawn predominantly from the [Venice Commission Report](#) on blasphemy, insult and hatred) shows there is no single definition of blasphemy. The penalty incurred is generally a term of imprisonment (mostly up to three, four or six months or up to two years in Greece for malicious blasphemy), or a fine. The offence has rarely been prosecuted in any of the States. Below is a table of the European countries examined and indications of where blasphemy laws exist, however, please note two of these countries have repealed blasphemy since the Venice Commission undertook this study, details are noted in the discussion below:

Table 4: Council of Europe national laws on blasphemy

| Country | Blasphemy Law |
|------------------------|--------------------|
| Albania | |
| Andorra | |
| Armenia | |
| Austria | x |
| Azerbaijan | |
| Belgium | |
| Bosnia and Herzegovina | |
| Bulgaria | |
| Croatia | |
| Cyprus | |
| Czech Republic | |
| Denmark | x (since repealed) |
| Estonia | |
| Finland | x |
| France | |
| Georgia | |
| Germany | |
| Greece | x |
| Hungary | |
| Iceland | |
| Ireland | x |
| Italy | x |
| Latvia | |
| Liechtenstein | x |
| Lithuania | |
| Luxembourg | |
| Malta | |
| Moldova | |
| Monaco | |
| Montenegro | |
| Netherlands | x (since repealed) |
| Norway | |
| Poland | |
| Portugal | |
| Romania | |
| Russian Federation | |
| San Marino | x |

| | |
|----------------|--|
| Serbia | |
| Slovakia | |
| Slovenia | |
| Spain | |
| Sweden | |
| Switzerland | |
| Macedonia | |
| Turkey | |
| Ukraine | |
| United Kingdom | |

Source: Venice Commission, [Blasphemy, insult and hatred: finding answers in a democratic society](#) (Council of Europe, 2010). Appendix 1, pp.149-150.

Austria

Section 188 of the Criminal Code of 1974 prohibits blasphemy and is punishable by 6 months imprisonment or a fine¹⁰³:

“Whoever publicly disparages or mocks a person or a thing, respectively, being an object of worship or a dogma, a legally permitted rite, or a legally permitted institution of a church or religious society located in Austria, in a manner capable of giving rise to justified annoyance, is liable to imprisonment for a term not exceeding six months or to a fine.”

In 1987 Article 188 was used to prevent screening of the film *Das Liebeskonzil* which was found to contain parodies offensive to Christians. The European Court of Human Rights upheld the seizure of the film under this provision having due regard to the promoters’ rights to freedom of expression, the religious sensitivities of their citizens and the need to preserve religious peace.¹⁰⁴

Denmark

Section 140 of the Danish penal code provides that¹⁰⁵:

“Any person who, in public, mocks or scorns the religious doctrines or acts of worship of any lawfully existing religious community in this country shall be liable to imprisonment for any term not exceeding four months”

However, in 2017 the blasphemy law was repealed by a majority vote of the Danish Parliament. That same year a man was charged with blasphemy for burning a copy of the Qu’ran and posting

¹⁰³ Venice Commission, [Blasphemy, insult and hatred: finding answers in a democratic society](#) (Council of Europe, 2010). Appendix 1, p.152.

¹⁰⁴ [Otto Preminger Institut v Austrai](#) [1994] ECHR 26.

¹⁰⁵ Venice Commission, [Blasphemy, insult and hatred: finding answers in a democratic society](#) (Council of Europe, 2010). Appendix 1, p.162.

the video on social media. The law was repealed a few days before the case was to go to trial and as a result it was dropped.¹⁰⁶

Finland

Section 10 of the Criminal Code of Finland (as amended by Law 563/1998) provides that¹⁰⁷:

“A person who

1. publicly blasphemes against God or, for the purpose of offending, publicly defames or desecrates what is otherwise held to be sacred by a church or religious community, as referred to in the Act on the Freedom of Religion (267/1998), or

2. by making noise, acting threateningly or otherwise, disturbs worship, ecclesiastical proceedings, other similar religious proceedings or a funeral, shall be sentenced for a breach of the sanctity of religion to a fine or to imprisonment for at most six months.”

In 2012 the Finnish Supreme Court convicted a Finnish member of Parliament under this provision after he published a blog piece in which he called Islam a paedophilic religion.¹⁰⁸ The crime of blasphemy is often prosecuted in connection with hate speech and has reportedly been used to convict persons criticising Islam as recently as January 16, 2017.¹⁰⁹

Greece

The Constitution recognises the Eastern Orthodox Church of Christ as the prevailing religion of Greece. Penal code chapter 17 and section 10 provide that^{110, 111}:

“[o]ne who publicly and maliciously and by any means blasphemes God shall be punished by imprisonment for not more than two years,” that “one who by blasphemy publicly manifests a lack of respect for the divinity shall be punished by imprisonment for not more than three months,” and that “[o]ne who publicly and maliciously and by any means blasphemes the Greek Orthodox Church or any other religion permitted in Greece shall be punished by imprisonment for not more than two years.”

¹⁰⁶ “Denmark scraps 334 year old blasphemy law” *The Guardian* (02 June 2017).

¹⁰⁷ Venice Commission, *Blasphemy, insult and hatred: finding answers in a democratic society* (Council of Europe, 2010). Appendix 1, p.164.

¹⁰⁸ KKO 2012:58 [Finnish Supreme Court Reporter 2012 no. 58], http://www.finlex.fi/fi/oikeus/kko/kko/_2012/20120058 (in Finnish), archived at <https://perma.cc/8VYL-T4UJ>.

¹⁰⁹ District Court Decision from Oulu (Uleåborg) District Court, as reported in Dan Ekholm, *Sebastian Tynkkynen dömd för hets mot folkgrupp*, YLE (Jan. 17, 2017), <https://svenska.yle.fi/artikel/2017/01/16/sebastian-tynkynen-domd-hets-mot-folkgrupp>, archived at <https://perma.cc/KG8W-42LG>.

¹¹⁰ Venice Commission, *Blasphemy, insult and hatred: finding answers in a democratic society* (Council of Europe, 2010). Appendix 1, p.176.

¹¹¹ Greek Penal Code (Nicholas B. Lolis trans. 1973), art. 198, para. 1, available in Hein Online Foreign & International Law Resources Database.

Persons are occasionally prosecuted, and while such cases are usually dismissed by the court of first instance or convictions are overturned on appeal, they are said to have a chilling effect on the freedom of expression.¹¹²

Italy

Article 724 of the Italian Criminal Code provides that^{113, 114}:

“Anyone who blasphemes against the Divinity in public, by means of invective or insults, shall be subject to an administrative fine of 100 000 to 600 000 lira. The same penalty shall apply to anyone who publicly insults the dead.”

Article 724 has been the subject of several court decisions. The most recent case took place in November 2007 in which a local Bologna court approved the public prosecutor’s request for the acquittal of a homosexual organisation that had been denounced for allegedly insulting the Mother of God in a public spectacle performed in Bologna. The court accepted the prosecutor’s reasoning that, in theological terms, the Mother of God is not a divinity, and therefore does not fall into the category established in article 724 of the Criminal Code.¹¹⁵

Liechtenstein

Liechtenstein coordinates its Criminal Code with Austria. The text of section 188 of the Liechtenstein Criminal Code is identical to the Austrian Criminal Code and reads as follows^{116, 117}:

“Anyone who publicly disparages or mocks a person or a thing that is the object of worship of a domestic church or domestic religious society, or a religious doctrine, a legally admissible custom, or a legally admissible institution of such a church or religious society, in a manner that is capable of causing legitimate offense, shall be liable to imprisonment not exceeding six months or a fine of up to 360 daily units.”

¹¹² Freedom house, policing belief: the impact of blasphemy laws on human rights – Greece (2010), available at <http://www.refworld.org/docid/4d5a700bc.html>, archived at <https://perma.cc/V7SN-AQUE>.

¹¹³ Venice Commission, *Blasphemy, insult and hatred: finding answers in a democratic society* (Council of Europe, 2010). Appendix 1, p.182.

¹¹⁴ 100,000 lira is the equivalent of approximately €52 and 600,000 lira is the equivalent of approximately €310.

¹¹⁵ Giulia Ziino, *Il caso: “La Madonna non è una divinità, offenderla non è reato [The Case: “The Mother of God Is Not a Divinity, to Offend Her Is Not a Crime”]*, CORRIERE DELLA SERA (July 29, 2007), http://www.corriere.it/Primo_Piano/Cronache/2007/07_Luglio/29/caso_madonna_non_divinita.shtml?refresh_ce-cp, archived at <https://perma.cc/2CZZ-YL5L>.

¹¹⁶ Strafgesetzbuch [StGB] [Criminal Code], June 24, 1987, LANDESGESETZBLATT NUMMER [LGBL.-NR.] [OFFICIAL LAW GAZETTE NO.] 1988.037, as amended, https://www.gesetze.li/lilexprod/lfshowpdf.jsp?lgblid=19880_37000&version=18&signed=n&tablesel=0, archived at <https://perma.cc/Z7RE-NXS2>.

¹¹⁷ A fine of daily units in the Liechtenstein Criminal Code is equivalent to ‘multiples of daily salary or income’. Sourced from International Monetary Fund, *Liechtenstein: Assessment of the Supervision and Regulation of the Financial Sector Volume II-Detailed Assessment of Observance of Standards and Codes* (International Monetary Fund, 2003).

The Netherlands

Article 147 of the Dutch Penal Code penalises¹¹⁸:

- Public offence of religious sensibilities by ‘malign blasphemies’ whether orally in writing or by image;
- Ridiculing a minister or religion in the lawful execution of his duties;
- Making of derogatory statements about objects used for religious celebration at a time and place at which such celebration is lawful.

Article 429b prohibits displaying blasphemous material at places visible from a public road. In November 2008, Justice Minister Ernst Hirsch Ballin expressed the country’s coalition government’s intent to repeal Article 147 but subsequently delayed taking action. A new coalition government was formed after a general election in 2012 and a majority of parliament voted to repeal the blasphemy law in November 2012.¹¹⁹

United Kingdom

In the UK, the crime of blasphemy was originally perceived as a crime against Christianity. By the middle of the 19th century that approach began to change and was more concerned with the protection of religious sensibilities from attack, rather than the mere denial of Christianity.¹²⁰ In the 1917 case of [*Bowman v Secular Society Ltd*](#)¹²¹, the House of Lords decision ensured that mere denials of Christianity would not be subject to criminal prosecution. In this case the Secular Society was registered as a company limited by guarantee under the Companies Acts. The main object of the company, as stated in its memorandum of association, was “to promote ... the principle that human conduct should be based upon natural knowledge, and not upon super-natural belief, and that human welfare in this world is the proper end of all thought and action”. One of the issues was whether this purpose was unlawful, as constituting an offence of blasphemous libel. In rejecting the claim Lord Parker stated¹²²:

“In my opinion to constitute blasphemy at common law there must be such an element of vilification, ridicule, or irreverence as would be likely to exasperate the feelings of others and so lead to a breach of the peace.”

In 1985, the [UK Law Commission](#) recommended that the offence of blasphemy and blasphemous libel should be abolished without replacement.¹²³ In March 2008, the House of Lords abolished both. [Section 79 of the Criminal Justice and Immigration Act 2008](#) abolishes the common law

¹¹⁸ Available at http://www.ejtn.eu/PageFiles/6533/2014%20seminars/Omsenie/WetboekvanStrafrecht_ENG_PV.pdf

¹¹⁹ “Dutch approve move to scrap blasphemy law” BBC News (29 November 2012).

¹²⁰ Cox, N., “[Sacrilege and Sensibility: The Value of Irish Blasphemy Law](#)” (1997) 19(1) *Dublin University Law Journal* 87. [1917] AC 406.

¹²¹ *Ibid.*

¹²³ The Law Commission, “[Criminal Law Offences against Religion and Public Worship](#)” (Stationary Office, London; June 1985).

offence. It also removed the provision for 'blasphemous libel' from section 1 of the [Criminal Libel Act 1819](#) which read as: "orders for seizure of copies of blasphemous or seditious libel". The word 'blasphemous' was also removed from sections 3 and 4 of the [Law of Libel Amendment Act 1888](#).¹²⁴

France

Blasphemy was first decriminalised in France in 1881 but remained in the Alsace-Moselle region which was part of Germany from 1871-1918. This blasphemy law was repealed in 2016¹²⁵, a year after the [Charlie Hebdo attacks](#).¹²⁶

International Comparative on Blasphemy Laws

A [report](#) was published by the United States Commission on International Religious Freedom¹²⁷ in 2017 which identified 71 countries which punished blasphemy and ranked them according to severity.¹²⁸ The countries were assessed in terms of harshness of their penalties, the vagueness or precision of the offence and the degree to which the blasphemy laws underpinned discrimination against some religious group. Iran and Pakistan came out as practicing the most severe violations of international standards where 'blasphemers' can face the death penalty. Ireland was considered the least extreme of all the countries as it adhered closely to international principles and its laws do not discriminate against different belief groups or protect a state religion through punitive measures. Table 5 below is a ranking of the countries examined from lowest breaches of international principles to highest.

One of the main authors of the report, Joelle Fiss (a human rights activist), called on Ireland to repeal its laws in the interest of safeguarding debate, commenting that "Ireland should repeal its blasphemy law to reaffirm that debating ideas, or even criticising religions, is not equivalent to inciting to hatred,".¹²⁹ Ms Fiss said another reason to repeal the law would be to express solidarity with those who continue to be "persecuted in the name of blasphemy".¹³⁰

¹²⁴ Both section 3 and section 4 are now repealed. [Section 3 of the Law of Libel Amendment Act 1888](#) which related to 'Newspaper reports of proceedings in court privileged' was repealed in 2010 by [Coroners and Justice Act 2009 \(c. 25\), s. 182\(2\)\(e\)\(v\), Sch. 23 Pt. 2](#) (with [s. 180](#)). [Section 4 of the Law of Libel Amendment Act 1888](#) which related to 'Newspaper reports of proceedings of public meetings and of certain bodies and persons privileged' was repealed in 2010 by [Coroners and Justice Act 2009 \(c. 25\), s. 182\(2\)\(e\)\(v\), Sch. 23 Pt. 2](#) (with [s. 180](#)).

¹²⁵ ["Blasphemy: From being burned at the stake in 1328 to a €25,000 fine in 2017"](#) *Irish Examiner* (09 May 2017).

¹²⁶ In a terrorist attack which took place in Paris on 7th January 2015 at offices of the satirical newspaper, Charlie Hebdo, two males fatally shot 12 people and injured 11.

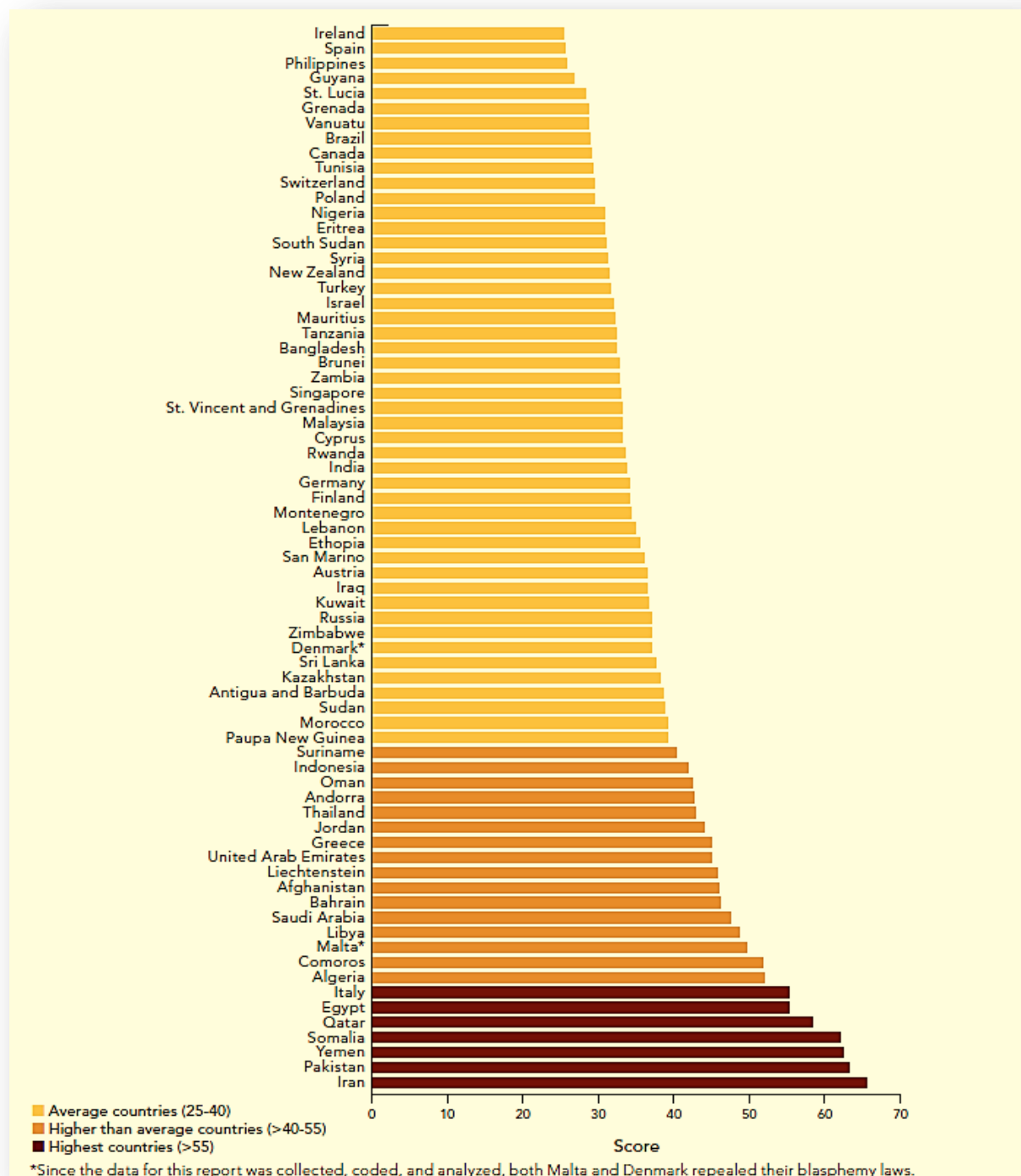
¹²⁷ [USCIRF](#) is an independent, bipartisan U.S. federal government commission dedicated to defending the universal right to freedom of religion or belief abroad. USCIRF reviews the facts and circumstances of religious freedom violations and makes policy recommendations to the President, the Secretary of State, and Congress. USCIRF Commissioners are appointed by the President and the Congressional leadership of both political parties.

¹²⁸ United States Commission on International Religious Freedom, [Respecting Rights? Measuring the Worlds Blasphemy Laws](#) (USCIRF, 2017).

¹²⁹ Phelan, S., ["Ireland's blasphemy laws least restrictive in the world"](#) *Irish Independent* (19 June 2018).

¹³⁰ *Ibid.*

Table 5: Rate at which a country's blasphemy law deviates from international human rights law standards for freedom of expression



Source: United States Commission on International Religious Freedom, [Respecting Rights? Measuring the Worlds Blasphemy Laws](#) (USCIRF, 2017) p.19.



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