How could anyone have missed the Paris attacks on 7 January 2015 when two Islamist terrorists stormed the offices of French satirical magazine Charlie Hebdo? 12 people were killed with guns while the terrorists shouted ‘Allahu akbar’ (God is great) and ‘The Prophet is avenged’, in reference to the magazine’s publication of satirical cartoons about Mohammed. The attack sparked a series of attacks lasting three days. On 11 January 2015 a mass ‘republican march’ took place in Paris, held in defiance of terror and in defence of free speech. Many participants held placards with the device of the French Republic Liberté, Égalité, Fraternité, and the slogan Je suis Charlie that rapidly spread over the Internet becoming a worldwide symbol in favour of free speech. The Charlie Hebdo affair is the latest in a series of events, including the terrorist attacks in New York, Madrid and London, the assassination of Theo van Gogh, and the affair of the Danish cartoons that continue to fuel the public debate about religion and notably Islam.

For us, scientific researchers in the field of human rights, the affair raises one of the most sensitive issues of freedom of expression and its limitations: religious offence. The right to criticise the convictions, the dogmas, religious figures, and practices of a particular religion forms an integral part of freedom of expression. Such criticism cannot be prohibited merely because it would upset the feelings of religious adherents. A right to respect of religious feelings does not form an integral part of religious freedom and must be distinguished from the right to non-discrimination. Religious toleration may relate to the peaceful co-existence of different thoughts and practices, but not to the peaceful co-existence of opinions on religious matters; these may clash in an open and free debate, provided that participants are respected as equal persons. Religious criticism can concern existing religion-state relationships and the place of religion in the public domain. A person’s conduct may in fact be inspired by his religion and may be criticized on that basis too. But when religious criticism amounts to so-called ‘hate speech’ against religious adherents, it must be prohibited. These are, in sum, the general contours under international law. The Human Rights Committee (HRC) holds, for example, that prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the ICCPR, except in the situation of advocacy of national racial or religious hatred that constitutes incitement to discrimination, hostility or violence (Article 20(2) ICCPR). According to the HRC, it would be impermissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith (General comment No. 34 on art. 19, CCPR/C/GC/34, par.48).

French law complies with the international standards in this field. Already in 1881, a new Press Act abolished the ‘délit d’outrage à la morale publique et religieuse’ that had formed the legal basis for prosecutions against Flaubert, Baudelaire, Proudhon. This marked the end of the criminalization of religious offence in France. The prohibition was considered to constitute a ‘délit d’opinion’, a thought crime. It was argued that men should not claim to be the Avengers of Divinity; it was up to the Gods to avenge themselves. Since then, many anti-religious cartoons were freely published in French anti-authoritarian and anticlerical magazines. Present day satirical magazines such as Charlie Hebdo are part of this tradition; most of its cover images about religion have targeted the Catholic faith rather than Islam. Catholic, and subsequently also Muslim associations, have often initiated legal cases against religious satire on the basis of existing hate speech bans, albeit in vein. One case concerned the publication of a cartoon on the cover of the satirical magazine Fluide glacial depicting a nun standing in front of a Christmas tree, busy inflating one of her Christmas presents with a bicycle pump: an inflatable crucified Christ. The French Supreme Court found that the image

Editorial:
CHARLIE HEBDO, freedom of expression and religious offence

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might have hurt the feelings of Catholics by ridiculing religious figures, but that it did not amount to a manifest incitement to hatred, discrimination, or violence against them as a religious group (French Supreme Court, crim.ch., 7 December 1993, n°92-81.091, Bull. Crim. 1993 n°374, p.935). In another case concerning the republication of the Danish Mohammed cartoons in a special issue of Charlie Hebdo, the Paris District Court acquitted the magazine stipulating that France is a laïc and pluralist society where blasphemy is no offence. This judgment was confirmed in appeal. The Court considered that the cartoons did not constitute an insult to the entire Muslim community, because the cartoons only criticized certain members of the Muslim community and thereby contributed to the debate on terrorists (TGI de Paris, 22 March 2007, Légipresse n°242 - June 2007, p.123; CA Paris, 12 March 2008, Légipresse n°252 - June 2008, p.107).

The law is clear that religious criticism and religious satire must be allowed. There is, however, a question that is little addressed in public debate: just because something can be said, should it be said? After the Paris attacks the Mohammed cartoons in Charlie Hebdo formed part of the news, which needs to be reported. Also, it was necessary to show a worldwide and serious support of free speech and a rejection of violent acts of terrorism. But was this the predominant message of the endless (re-) publication of cartoons on the Internet, an iconoclastic fury that might rather feed the opposite vision of a ‘Western war on Islam’? The Mohammed cartoons did in fact loose the particular context in which they were initially published: in an alternative weekly with a very limited diffusion that indiscriminately mocks all political and religious figures and institutions alike. Furthermore, the outrage of Muslims over the depiction of their religion and the Paris attacks cannot be evaluated separate from the broader historical and present day context in which these took place: the US military intervention in Iraq and Afghanistan and the living conditions of Muslims in Europe and France in particular, most of whom originate from Algeria, a former French colony and for whom the Republican principles ‘freedom, equality and brotherhood’ appear more difficult to access and French laïcité undeniably influences their religious exercise.

For a better understanding of the dramatic events, social research must thus address the question of the extent to which the ideas and acts of the terrorists and religious fundamentalists in general enjoy a social basis in France and beyond, and which socio-political factors became the fertile ground for those ideas to emerge. The French government has reinforced its existing anti-terrorism laws, but without such knowledge this does not offer a solution in the long-term and possibly endangers citizens’ fundamental rights, including free speech. In fact, controversial French comedian Dieudonné was arrested for ‘glorifying terrorism’, criminalised in article 421-2-5 of the French Penal Code since November 2014, on the basis of a circular issued by the French Minister of Justice in response to the Paris attacks. After having participated in the ‘republican march’, Dieudonné had posted a joke on his facebook page stating ‘Je me sens Charlie Coulibaly’ in reference to the terrorist who held hostages in a Parisian Jewish supermarket and killed four persons. However, such a dissenting opinion, whether it aims to expose a certain hypocrisy in the mass event or endorse controversial ideas, must also be allowed as long as it does not incite to hatred or violence, for the concept of the ‘délit d’opinion’ should not depend on a shared sense of humor.

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