LEGAL FRAMEWORK FOR CONTEMNING RELIGIOUS VALUES IN TURKISH PENAL LAW

Dr. Ömer Metehan AYNURAL

Insult

Article 125

(1) Any person who attributes an act, or fact, to a person in a manner that may impugn that person's honour, dignity or prestige, or attacks someone's honour, dignity or prestige by swearing shall be sentenced to a penalty of imprisonment for a term of three months to two years or a judicial fine.

.....

(3) Where the insult is committed:

.....

c) where the subject matter is deemed sacred to the religion the person belongs to the penalty to be imposed shall not be less than one year.

Provoking the Public to Hatred, Hostility or Contemning
Article 216

....

(2) A person who publicly contemns a section of the public on grounds of social class, race, religion, sect, gender or regional differences shall be sentenced to a penalty of imprisonment for a term of six months to one year.

(3) A person who publicly contemns the religious values of a section of the public shall be sentenced to a penalty of imprisonment for a term of six months to one year, where the act is capable of disturbing public peace.

CONTEMNING RELIGIOUS VALUES
TPC 216/3

The Protected Legal Interest

Public peace.

The tolerance and respect that people who adopt different religious values should show to each other in social life, social harmony and public safety, as well as the feeling that the rules of law prevail in social relations.

Act

Contemning religious values.

Preamble TPC 301: "Acts that impair the public respect for the values constituting the object of the offense."

Degrading, disworthing, trivializing, insulting, dishonoring

"Contempt is defined as engaging in degrading behavior or disparagement. Expressions such as 'scoundrel,' 'vile,' 'gossipy,' 'thief,' and 'clown,' when directed at an individual alone, constitute the offense of insult. The defendant, by stating 'wherever there is a scoundrel, vile gossipy thief clown, they are all God-worshippers,' insults and degrades believers with these derogatory words. Furthermore, by likening heaven to a tavern and a brothel, the fundamental religious belief in the afterlife is mocked. The concept of God is disparaged by describing God as a notion not worthy of living or dying for. The insinuation that the prayer caller (muezzin) hastily recites the evening call to prayer because of a waiting rakı table, implying a romantic relationship, mocks religious values through a religious official."

Yargıtay 8. CD., E. 2014/35434 K. 2015/22535 T. 12.10.2015 Opposing Vote

Act

Contempt has to be expressed publicly.

“Accessibility of information or conduct to an indeterminate number of people.“

"Publicity is deemed to occur when the act is committed in a place where it is possible and likely for everyone or many people to read or see it."

Act

Contempt must be capable of disturbing the public peace.

"What is meant by being capable of disturbing public peace is that the act of contempt either impairs, or concretely demonstrates the potential to impair, the individuals' sense of living in a legal order based on peace." Yargıtay 8. CD., E. 2023/3514 K. 2023/9872 T. 12.12.2023

Act

Concrete endangerment offence?

Abstract endangerment offence?

"Indeed, these offenses are not characterized as harm offences, but rather as endangerment offenses. Therefore, the mere possibility of a disturbance to public peace is sufficient for the offense to be deemed committed. For this element to be fulfilled, it is not necessary for there to be a clear and imminent danger to public peace.“ Yargıtay 8. CD., E. 2019/10194 K. 2019/11813 T. 3.10.2019

"This offense constitutes a concrete endangerment offence. Being capable of disturbing public peace is defined as the act impairing, or concretely demonstrating the potential to impair, individuals' sense of living in a legal society founded on peace. Although some public outrage has arisen among segments of society due to the act, no riot or any concrete fact disturbing public peace has occurred. It is not possible to accept that the social and written media debates in response to the defendant's actions constitute a disturbance of public peace. To consider any media discussion as disturbing public peace would criminalize every discourse that informs and advances society. Therefore, the condition of conduciveness to disturbing public peace, which is required by law for the defendant's punishment, has not been fulfilled in the defendant's act."

Yargıtay 8. CD., E. 2019/10194 K. 2019/11813 T. 3.10.2019 Opposing Vote

"As stated above, considering the defendant's social status and the fact that the statements have only been the subject of a single complaint, it is clear that the words uttered do not possess the quality to create a significant impact on society and are not capable of disturbing public peace. Therefore, we believe that the defendant should be acquitted, and we do not concur with the majority's decision affirming the conviction."

Yargıtay 8. CD., E. 2021/18470 K. 2024/7637 T. 14.10.2024 Opposing Vote

The Object of the Offence

Religious Values

Anything that is valued or held sacred within the relevant religion.

A place, a person, a prayer etc.

The religious values must be adopted by a section of the public.

The Offender and the Victim

Everyone can commit this crime.

The victim is the section of the public whose religious values are contemned.

Indeterminate number of people.

The Moral Element

Intent

Specific intent?

"Accepting that the shared content was created with the purpose of contemning the religious beliefs held by a portion of the population necessitates a forced interpretation.

....

The case file does not indicate that the defendant possessed such intent." Yargıtay 8. CD., E. 2014/35434 K. 2015/22535 T. 12.10.2015

"...The notion that the concept of 'Sharia' is not exclusive to Islam, and just as there is reference to Islamic Sharia, there can also be reference to Jewish and Christian Sharia, supports the view that the defendant did not intend to contempt religious values, but rather made the said post as a critique of state authority..." Yargıtay 8. CD., E. 2019/10194 K. 2019/11813 T. 3.10.2019

Unlawfulness

Freedom of Expression

Constitution Art. 26/1: Everyone has the right to express and disseminate his/her thoughts and opinions by speech, in writing or in pictures or through other media, individually or collectively.

TPC Art. 218: ... the expression of thought in the form of criticism and the expression of thoughts which do not go beyond news reporting do not constitute an offence.

Constitution Art. 26/2: The exercise of these freedoms may be restricted for the purposes of national security, public order, public safety, safeguarding the basic characteristics of the Republic....

Criteria of Yargıtay

a) The existence of a legal regulation,
b) That the restriction is imposed for a legitimate aim,
c) That the restriction is necessary in a democratic society,
d) That the penalty imposed in accordance with the principle of legality is proportionate to the legitimate aim pursued.

"In the present case, the statements on the defendant's website do not contribute to public debate, unjustifiably offend others, exceed the limits of criticism, disparage or mock religious values or beliefs, are not of a scientific nature, and the defendant has failed to provide any explanation during the trial as to the purpose or reason for publicly expressing these personal opinions. The statements include terms such as "scoundrel," "vile," "gossipy," "thief," and "clown," which, if directed at a specific individual, could constitute insult. Furthermore, the expressions completely deny the respectability of religious values. These statements do not fall within the scope of freedom of expression and, considering societal sensitivities regarding religious values, are not entitled to protection. For these reasons, the defendant's tweets cannot be considered within the scope of freedom of expression."

Yarg. 8. C.D., 2014/35434 E., 2015/22535 K., 12.10.2015 Opposing Vote

İstanbul Üniversitesi



Thank You!