I. Introduction

Freedom of expression is one of the fundamental rights that has established and developed an open and tolerant democratic society in Europe. It provides and protects the right of each individual to participate in public debate. Thus, artists, journalists, and intellectuals have the right to criticize, argue, and express their opinions upon society, the government, and others. Religious leaders and politicians have the right to enjoy their freedom of expression but they tend to do it more carefully, regarding their positions and responsibilities. A society without freedom of speech would not be a democracy, and resistance to injustice or oppression would be impossible. However, there are certain limits to the freedom of expression, which must be respected. One of these limits concerns the religion of others, which is protected by the freedom of religion. Since the European Convention on Human Rights was signed on November 4, 1950, entered into force on September 3, 1953, and has been ratified by all of the states of the Council of Europe, freedom of expression and freedom of religion has been protected under Article 10 and Article 9. Regarding their scope and limitations, the two fundamental freedoms are interrelated. However, recently different events have shown a clash between those two freedoms. One clash concerned the cartoons controversy over the prophet Mohammed. On September 30, 2005, the Danish daily newspaper, “Jyllands Posten” published twelve cartoons depicting the prophet Mohammed. According to Islam it is blasphemous to recreate an image of the prophet. In Yemen and Jordan, editors of independent newspapers who reprinted the cartoons were imprisoned. Furthermore, the Danish newspaper had to be protected against threats and the cartoonist was threatened and forced to go into hiding. Another example of the clash between the freedom of expression and freedom of religion occurred in the Netherlands, with the Muslim community’s reaction concerning the film of Theo Van Gogh, “Submission.” This film addressed the abuse of women in Muslim societies and showed some verses of the Koran painted on women's bodies. First, the director, Theo Van Gogh was threatened and on November 2, 2004 he was assassinated. Islam is not the only religion that has raised a conflict between the freedom of expression and the freedom of religion. Ten years earlier, in the Otto-Preminger-institute case, Austrian authorities seized a film because it offended the Catholic religion. These cases touch upon political and social aspects related to religion and will be discussed further in this paper. Freedom of expression has a fundamental place in a secular society and it has to be interpreted in the least restrictive way. The focus of this paper is to analyze, from a human rights perspective, freedom of expression and its limits regarding freedom of religion. First, this paper will discuss the vital role of freedom of expression and freedom of religion in a modern society through the European Convention on Human Rights. Next, this paper will discuss the clash between freedom of expression and freedom of religion.

The conclusion of this paper outlines the importance of protecting freedom of expression from any type of radical religious movement and the difficult but necessary need to find a proportional balance between freedom of expression and freedom of religion in a secular and multicultural society.

II. The necessity of freedom of expression and freedom of religion in a multi-cultural democratic society under the European Convention on Human Rights
A. Freedom of Expression and Religion in the Modern Democracy

Freedom of expression and freedom of religion play a special role in a modern democracy and through their relationship; raise the question of what are the scope, limits and common points of freedom of expression and religion in a European society. First, it is important to discuss the perception of secularism in Europe that has historically influenced the conception of fundamental human rights. The analysis continues with a decision of the scope and limits of freedom of expression and religion under Article 10 and Article 9 of the European Convention on Human Rights.

The end of religious wars in the seventeenth century in Europe created an opposition of intellectual writers and artist inspired by the ideas of the Enlightenment throughout the eighteenth and nineteenth centuries. From this period forward, the conception of secularism has been the separation of the state and the church, and the neutrality of the state. Specifically, France has been extremely rigid in its application of secularism and the separation of church and state. In France, the principle is the absolute absence of religious elements in the public domain. Moreover, all religions can be protected because religious institutions do not have any influence over societal spheres.

There are also different conceptions of secularism throughout Europe that illustrate the principle of secularism. From the historical evolution, the rights of freedom of expression and freedom of religion have been protected as fundamental right in different states across Europe, and are now codified under the European Convention on Human Rights. Consequently, the freedom of the press and of the artist to express their views are crucial since they can provide a critical opinion upon society and the State. Freedom of the Press carries a great weight in a democratic society. An example of the importance of this freedom was when, in 1984, the French Constitutional Council recognized the constitutional value of freedom of the press. In the Netherlands, a national study showed that of all the human rights and civil liberties, the Dutch are most attached to the freedom of speech. Although there is a clash between the freedom of expression and freedom of religion, this paper will discuss further, how Article 10 and Article 9 of the European Convention on Human Rights are related in recognizing the “rights of the others”. For this purpose I will first discuss the scope and limits to freedom of expression and then freedom of religion.

B. Article 10 of the European Convention

In Europe, under Article 10 of the European Convention on Human Rights, each member state of the Council of Europe must assure that these freedoms are respected at the national level. The reason behind the protection by the convention is that freedom of expression must be protected to preserve a democratic society. Article 10 (1) of the European Convention on Human rights established that “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 from public authority and regardless of frontiers.” Consequently, the first paragraph of Article 10 provides broad protection and leaves the possibility to express ideas and opinions that sometimes can offend, shock, or disturb others.

The European Court of Human Rights’ case law shows that if a member state interferes with freedom of expression, it must be “necessary in a democratic society,” and this necessity refers directly to “a pressing social need.” The role of the media and the press is important because of the right of people to receive information about social and political issues, and others subjects, of domestic or international interest.

The court in Lingens v. Austria clarified the scope of freedom of expression relating to the freedom of the press. The court found that:

“Whilst the press must not overstep the bounds set, inter alia, for the protection of the reputation of others, it is nevertheless incumbent on it to impart information and ideas on political issues just as on those in other areas of public interest. Not only does the press have the task of imparting such information and ideas, the public also has a right to receive them.”

Although Article 10 does not explicitly mention freedom of the press, this decision illustrated the necessity of a free press in a modern society and the right for people to receive information and ideas.

Artistic expression is also fundamental to a democratic society. When artists can express their point of view through their art, either on political, societal or religious topics, it proves that freedom of expression is respected. Freedom of expression for the artist is not expressly mentioned in article 10 of the Convention on Human Rights. However, the court in the Muller case recognized that it is covered by Article 10 of the convention. Despite the regrettable court decision not to recognize the violation of Article 10 through the censure of the paintings, the court found that the painter’s freedom of expression is covered by Article 10 of the convention. Thus, journalists and artist can invoke the right to express their opinions and art. On the other hand, article 10 (2) states that, freedom of expression carries “duties” and “responsibilities” that can limit the freedoms of the first paragraph.

The limits under Article 10 (2) are formulated in a broadly way. Consequently the court has applied a broad interpretation of limitations in some cases and on the other hand a more restrictive interpretation of Article 10 (2). An example of the difference in interpretation can be observed in both the Handyside and the Lingens cases. In the Handyside case the court decided that the obscene publication intended for children in the “Little Red School Book” justified the
individuals are free to think, and believe any state interference and freedom of others”. Therefore, in a democratic society, until the individual expresses it in a way that hurts the “rights concerning religious thought or moral beliefs of an individual, think and believe. Moreover, there is no possible sanction The right to freedom of conscience is an internalized right to freedom of conscience that is known as the forum internum. Regarding Article 9, it is important to emphasize the right to individual to have personal beliefs and religious creeds. Rights, freedom of religion is protected under Article 9, which of religion protection. However, each State is required to religion. Under the European Convention on Human Rights, freedom of religion is protected under Article 9, which in its first paragraph, establishes: “Everyone has the right to freedom of thought, conscience and religion; either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.” The first paragraph of Article 9 gives the right to each individual to have personal beliefs and religious creeds. Regarding Article 9, it is important to emphasize the right to freedom of conscience that is known as the forum internum. The right to freedom of conscience is an internalized right to think and believe. Moreover, there is no possible sanction concerning religious thought or moral beliefs of an individual, until the individual expresses it in a way that hurts the “rights and freedom of others”. Therefore, in a democratic society, individuals are free to think, and believe any state interference to change their conscience or thought is prohibited. Consequently, like freedom of expression, only external manifestations of religion can be subject to limitations or conditions. In liberal democracies, great importance is attached to the fact that an individual is free to do whatever he or she wants to do, as long as the others are not harmed. Regarding Article 9 (1) everyone is free to manifest his “religion or belief”.

In the Manoussakis case, Jehovah’s witnesses operated a place to practice their rites and cults. The Minister of Education and Religious Affairs of the Greek government at the time did not give its accord because of requirements limiting the use of buildings for particular purpose. In reality, the Greek government was trying to prohibit non-orthodox religions through this requirement. The European Court of Human Rights found that the freedom of religion “Excludes any discretion on the part of the state to determine whether religious beliefs or the means used to express such beliefs are legitimate”. However, just as freedom of expression is limited under Article 10 (2), freedom of religion can also be limited under Article 9 (2) which established “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 the public order, health or morals, or for the protection of the rights and freedoms of others.”

In Europe, different communities have different ways of practicing their religions and it is interesting to see the relationship that those cultural and religious particularities have with the European standard of freedom of religion under Article 9 of the convention. Many religions have a specific point of view or approach toward the world and their believers follow certain actions and adopt specific behavior or ways of life. These activities, which are protected under Article 9, are diverse and include ideals in worship, rituals, circumcision, baptism, sacrifices or preaching. Religion can also include the establishment of institutions, governed by religious principles and rules, and can have some repercussions concerning the hierarchy between men and women in religious communities and families.

These examples about free religious practice show that in Europe, freedom of religion like freedom of expression, is recognized under the European Convention on Human Rights as a fundamental right, and that both of them play a crucial role in a democratic society. However, certain beliefs are not protected by the convention. To explain why certain religions or beliefs are less protected, John Locke argued that Roman Catholics were excluded in the 17th century because they were not loyal citizens. Today, a comparison with John Locke’s theory can be found in some European Court of Human Rights case law that demonstrates a different interpretation of the convention for a religion that does not meet the requirements of protection. The court in the Refah
and its limits regarding freedom of religion. Some people raised different points of view over the freedom of expression and even over religions.

Press the liberty to express their opinions over societal topics, expressions that may shock, offend or disturb, and gives the they were presented did not contribute to public debate. It could be argued that the caricatures and the manner in which critics of Islam.

The caricature was a test to debate self-censorship regarding the arrival of additional religious sects, such as Muslims, has raised the debate on how to deal with different religions, cultures and fundamental rights in our secular society. The cartoons of the prophet Mohammed have shown how difficult it is to deal with multicultural and religious societies in Europe and all over the world. On September 30, 2005, the Danish newspaper Jyllands published twelve caricatures of the prophet Mohammed. The newspaper declared that the publication of the caricature was a test to debate self-censorship regarding critics of Islam.

Regarding the repercussion around the Danish cartoons, it could be argued that the caricatures and the manner in which they were presented did not contribute to public debate.

However, Article 10 of the convention covers the right of expressions that may shock, offend or disturb, and gives the press the liberty to express their opinions over societal topics, and even over religions.

This crisis over the prophet Mohammad cartoons has raised different points of view over the freedom of expression and its limits regarding freedom of religion. Some people saw the cartoons as highly offensive and intolerant towards those who follow Islam. Other people have been shocked by the fury the cartoons provoked. With the objective of further understanding why it is so difficult to balance freedom of expression and freedom of religion, it is important to discuss the two reactions that the cartoons have created in the population, both in western countries and Arab nations.

### III. The Clash between Freedom of Expression and Freedom of Religion

#### A. The Cartoons

Religious pluralism in contemporary Europe and the arrival of additional religious sects, such as Muslims, has raised the debate on how to deal with different religions, cultures and fundamental rights in our secular society. The cartoons of the prophet Mohammed have shown how difficult it is to deal with multicultural and religious societies in Europe and all over the world. On September 30, 2005, the Danish newspaper Jyllands published twelve caricatures of the prophet Mohammed. The newspaper declared that the publication of the caricature was a test to debate self-censorship regarding critics of Islam.

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### B. The Reaction of Arab Countries

All over the world the caricatures of the prophet prompted Muslims protests. Some of these reactions were pacifist, while others were violent; such as the setting on fire of the Danish Embassies in Syria, Lebanon and Iran. European buildings were destroyed and the Danish, Dutch, Norwegian and German national flags were burned on the street. Moreover, the original cartoonist was threatened and forced to go into hiding. The cartoons also caused some diplomatic repercussions between Arab nations and European States, and Danish products have been boycotted across the Middle East. Specifically, in Pakistan, President Musharraf expressed his outrage over the Danish cartoons.

In Pakistan, insulting the prophet Mohammad is an act punishable by death. At the time of the Muslim protests, the Danish Prime Minister, Anders Rasmussen, hosted a meeting with more than 70 ambassadors, including those from predominately Muslim nations. The Prime Minister said in a declaration; “The Danish Government is taking the protests and the treated very seriously”, and added “We are working with our friends and partners in the Muslim world and beyond to calm the situation”. In Europe, this delicate situation created different reactions. Reporters Without Borders stated that the reaction in the Arab world “betrays a lack of understanding” of freedom as “an essential accomplishment of democracy.”

### C. The European Reaction

First, I will discuss the European press and some politicians who supported the Danish cartoons and have seen the protests against the caricatures of the prophet Muhammad as an attack against freedom of expression. In France, newspapers have reprinted the caricatures of the prophet Muhammad to support the Danish newspaper and to defend freedom of the press and freedom of expression. Furthermore, the newspaper “Charlie Hebdo” was sued by two influential Muslims organizations, the Paris Mosque and the Union of Islamic Organization of France. For these two Muslims organizations, “Charlie Hebdo” offended the Muslim community in re-printing the Danish Cartoons. The charge against the newspaper and its director, Philippe Val, could have resulted in a six months prison term and a fine of 22,500 Euros.

The reason for the claim brought against the weekly “Charlie Hebdo”, was that on February 8, 2006, the French newspaper printed three of the twelve Danish caricatures of the prophet Mohammad and included an original cartoon
of the prophet drowned by the French caricaturist, “Cabu”. The caricature of the French cartoonist depicted the prophet crying and saying, “It’s hard to be loved by idiots.” The director of “Charlie Hebdo”, Mr. Philippe Val declared, “If we can no longer laugh at the terrorist, what weapon is left to the citizens.” Further, in one of his declarations, he said, “these drawings are about ideas, not men, about ideas defended by men who commit violent acts.”

The controversy surrounding the cartoons in France was a national debate, and French politicians from diverse political backgrounds showed their support of the satirical French weekly. One of these marks of supports happened during the trial, when a lawyer for the French newspaper read a letter written by Nicolas Sarkozy, in which he declared that “he prefers an excess of caricature to a lack of caricature.” Moreover, the socialist leader, Francois Hollande, and the centrist UDF leader, Francois Bayrou, also voiced their support to the weekly. Eventually the French court ruled in favor of the weekly Charlie Hebdo while recognizing that one of the caricatures with the prophet Mohammad wearing a turban shaped like a bomb might offends some Muslims. Nonetheless, the Court held that it found no deliberate intention to directly and gratuitously offends the Muslim community. Throughout the trial of the weekly Charlie Hebdo, and consequently the trial of free speech, we saw how important it was for the French press and politicians to defend this fundamental right of the freedom of expression. Moreover, the controversy around the cartoons of the prophet Muhammad, and the clash between the freedom of expression and freedom of religion became one of the major topics of debate in the presidential campaign in France.

The cartoons, thus, raised many different reactions and questions. All over Europe, through the caricature of the prophet Muhammad, Muslims felt like they had been relegated to second-class citizenship. However, the French Muslim community is the largest in Europe with an estimated 5 million people. In France, after the publication of the cartoons, the French Muslim Council was offended and its president Mr. Dalil Boubakeur said, “It’s odious and we totally disapprove of it” and “it’s a real provocation towards the millions of Muslims in France.” Furthermore, the president of the French Council said that he intended to complain to Denmark’s ambassador. In Germany, Mr. Muhammad Pfaff, of the German Muslim League, said that “press freedom should not be used to insult people. We Germans need to know our history.” His declaration about the cartoons referred directly to the caricatures of Jews published in the Nazi newspaper “Der Sturmer” which was a significant part of the Nazi propaganda from 1923 to the end of the war in 1945. Taking for example, the caricatures of Jews, many Muslim think that the Danish newspaper, as well as other weekly in France, Germany and some other European states that reprinted the caricatures of the prophet, would not consider publishing cartoons about Christians or Jews. All over Europe there is legislation specifically limiting speech denying the holocaust, which is the case in France, Germany and Austria. From the different sentiments regarding the Danish cartoons, some Muslim have this wrongful sense that they are not considered, as full European citizens, and that they are not protected under the European Convention on Human rights against hate speech. In Europe, while freedom of speech and freedom of religion are protected under the European Convention on Human Rights, there are always limits to free speech and to the practice of a religion. These limits might be justified by the need to protect public order, security and to protect certain religious values and the reputation of others. In the past, the European court has shown in that it approves of some anti religious speech regulations, for example through the seizure of films based on offensiveness or other censures of artistic expression.

D. Cases from the European Court of Human Rights

Regarding some decisions of the European Court of Human Rights about cases limiting freedom of expression because of the religion of others or convictions of believers, a question must be raised about anti-Islamic speech and a potential double standard concerning the limits of the right to freedom of expression in Europe. In 1994, in the case of Otto-Preminger Institut v Austria, the European Court of Human Rights accepted the seizure and forfeiture of a film that was found to be offensive by the Austrian authorities, because it mocked Christian religious beliefs. The decision to punish the filmmaker and to censure the film was due to the percentage of Catholics in the Tyrol region of Austria. However, the decision taken by the court did not show any good reasons to prohibit the projection of the film in Austria. It is interesting to contrast the case above with two other cases: the Muller case in 1991 and the Jersild case in 1995.

In the Muller case, an artist was convicted of obscenity under the Swiss criminal code, and his paintings that depicted a variety of sexual acts were seized by the authorities. In Muller, the interest of the state to interfere was based on the protection of morals. In this case, the European Court of Human Rights found the intervention of the state was a necessity and justified the state intervention. In the Jersild case, a journalist had been convicted of racially offensive speech after he interviewed a racist group called the “Greenjackets” for a documentary about racism. The European Court on Human Rights found a breach of Article 10, because the state’s interference with the freedom of expression to protect the right of others was disproportionate. “The court also considered that the mode presenting the broadcast should be determined by journalist.”

The European Court of Human Rights’ jurisprudence showed us that the court in some cases applied a pressing
social need test, and in other cases applied a proportionality test in its reasoning. The court paid great attention to social needs like in the Muller case. In the Jersild case it looked at both. In Otto-Preminger institut case, no one was expressly mentioned.\textsuperscript{58}

The three cases discussed above, illustrate the contrasting protection of freedom of expression. It is obvious that the European Court of Human Rights applied a hierarchy of values to different classes of freedom of expression.\textsuperscript{59} Moreover, the European Court of Human Rights showed a higher importance to the protection of political expression and to the freedom of the press to participate in the public and democratic debate, rather than the freedom of artistic expression. That was the case, when the court found artistic expression offensive in the Catholic religion, like in the Otto-Preminger Institut case or in the Muller case.

The previous cases discussed above about the European Court of Human Rights’ decisions on the limits to freedom of expression have showed that the line between freedom of expression and the other rights is not always easy to draw. The Danish cartoons of the prophet Muhammad have again raised the issue of the limits to freedom of expression regarding freedom of religion and the respect of secular values in a multicultural European society.

\textbf{IV. Resolving the Conflict}

The right to freedom of expression in Europe, with the controversy over the cartoons of the prophet Muhammad, is facing religious and cultural diversity issues due to increased immigration. This is the reason to maintain a balance between freedom of expression and freedom of religion. It is also important to respect the cultural and religious rights of the others. Consequently, European states cannot ask immigrants to abandon their religions or forget their cultures and traditions because all of these elements form their identity. On the other hand, Muslims should neither be advantaged nor disadvantaged because of their religion. The same rules should apply to Catholics, Orthodox, Jews and to all other believer of recognized religions. It is understandable that the Muslim community has been shocked or offended with the publication of the cartoons of the prophet Muhammad. However, under the right of freedom of expression we cannot suppress and consequently censure speech or artistic expression simply because it offends a particular religion.

The cartoons of the prophet Muhammad have not impeded the Muslim’s to practice their religion in freedom and peace. The publication of the caricatures of the prophet Muhammad was only a satirical critique of Islam, and it was not a discriminatory act against the Muslim community. A democratic society built on values like freedom of expression, make it possible to defend religion or thought against offended or disrespectful speech, through a debate, with objection and explanation. On the other hand, the freedom of religion does not provide the right to impose any religious beliefs on the others. Muslims and believers of all religions have the right to ask for respectful treatment, but this right does not permit them to censure the freedom of expression of others in the name of their religion.

Western governments have resisted the threat from radical Muslim organizations and did not censure the cartoons of the prophet Muhammad. Despite death threats from extremist religious groups, newspaper in Europe, in reprinting the caricatures of the prophet have showed their determination to protect the freedom of the press and the freedom of expression. The cartoons of the prophet Muhammad and other severe incidents like the murders of the filmmaker, Theo Van Gogh, and the politician Pim Fortuyn, have showed that freedom of expression is under attack. What is happening to the freedom of expression? Do we have to fear saying what we think? Fear and terror do not contribute to democracy. Freedom of expression under Article 10 of the Convention on Human Rights permits all European citizens, Muslim or not, to participate in public debate. Consequently, freedom of expression is a fundamental right that must be protected and balanced with other fundamental rights such as freedom of religion in allowing each individual to express their ideas, beliefs and practice their religion, and not impede others to do the same.

\textbf{V. Conclusion}

Today, more than ever, the protection of fundamental rights plays a vital role in modern democracies. Freedom of expression and freedom of religion are two major pillars of multicultural societies that make it possible for Catholics, Muslims, Orthodox, Jews and other believers to practice their religion. The balance between the freedom of expression and religion is necessary to maintain the right of artists, journalists, politicians and all citizens to express their opinions, religions or thoughts within a public debate through objection and explanation. In European secular societies, religions are respected because religious institutions do not have any influence on governments nor on the societal sphere. Religions have different interpretations of the world, and have raised several conflicts between freedom of expression and religion. Consequently, we have seen that even if Article 10 and 9 of the European Convention on Human Rights recognize “the rights of the others”, the coexistence between the two freedoms is sometimes difficult due to the different interpretations of their scope and limits. In Europe, cases like the Otto-Preminger Institute, the seizure of a film because it offended the Austrian Catholic community, or the Manousakis case, and the Greek government’s attempt to prohibit non-orthodox religions by requirements limiting the use of buildings, illustrates the tensions surrounding free speech and religion.\textsuperscript{60} Moreover the
controversy around the cartoons of the prophet Mohammad again raises the question about the scope and limits of the freedom of expression and religion. However, the defense and respect for secular values, such as the freedom of press, is the only way to defend the fundamental rights of all European citizens, whether they are Muslims, Catholics, Orthodox or Jews, in a modern and multicultural society.

2   Id.
7   Van Dijk ET AL.,supra note 3, at 807.
8   Loenen & Goldschmidt, supra note 6, at 98.
10  European Convention on Human Rights, supra note 1, at art. 10.
12  Loenen & Goldschmidt, supra note 6, at 267.
13  European Convention on Human Rights, supra note 1, at art. 10.
14  Van Dijk ET AL., supra note 3, at 774.
15  Id.
19  Id.
21  Id. at 86. See also, Muller ET. AL. v. Switz., 133 Eur. Ct. H.R. (1988).
23  Id.
24  Id.
25  Id.
26  Id.
28  Id.
29  Id.
30  Id.
31  Id.
33  Id.
34  Id.
36  Id.
38  Id.
41  Id.
42  Id.
43  Id.
44  Id.
48  Id.
49  Id.
50  Id.
51  German Propaganda Archive, Caricatures from Der Sturmer,
available at http://www.calvin.edu/academic/cas/gpa/sturmer.htm (last visited Nov. 5, 2009).


53 Loenen & Goldschmidt, supra note 6, at 58.

54 Van Dijk et al., supra note 3, at 807.


56 Id. at 61.

57 Id. at 516.

58 Id. at 94.

59 Van Dijk et al., supra note 2, 807.

60 Van Dijk et al., supra note 3, at 763, 807.