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Freedom of Satire? Oskar Panizza's Play *Das Liebeskonzil* in a Series of Trials in Germany and Austria

Claudia Lieb

When in 1895 Oskar Panizza was sentenced in Munich to prison because of his satirical play *Das Liebeskonzil* (The Love Council), he triggered a debate: did the play violate the right to protection of religious sentiments as the court had ruled? Or should the play be protected by the freedom of expression? This debate continued well into the 1990s, because, on the grounds of blasphemy, in 1985 a filmed version of the play was seized and banned by a regional court in Austria. In the second instance, the 1985 trial was taken to the European Court of Human Rights (ECHR) in Strasbourg. Although in the contemporary worlds of art, the play and the film were not seen as extraordinarily provocative, both trials ended up with harsh and strongly disputed judgements: while Panizza was sentenced to a severe punishment of one year in prison, the ECHR ruled that the banning of the film was justified. The rulings form a sharp contrast to western society's liberal circles where people are usually regarded as witty and intellectual when they mock the church.

It is true that from a religious perspective, blasphemy is regarded as a sin, as a culpable action. However, this must not be true from other perspectives such as art and jurisprudence. The secular state has problems when it comes to protecting religious sentiments. The evaluation of blasphemy is ambivalent, for the right to protection of religious sentiments is typically contrasted with the rights to freedom of expression and freedom of the press (cf. Keller and Cirigliano 2010). This conflict between fundamental rights hints at the fact that blasphemy itself is ambiguous. But it is also entertaining, which is why blasphemy is not at all seldom in western literary fiction. Throughout the history of literary fiction, discourses of blasphemy have been all the rage: examples range from Greek and

Roman myths to contemporary authors such as Elfriede Jelinek; they include Madonna's music videos and concerts, Terrence McNally's drama *Corpus Christi* (1997) and the animation series *Popetown* (2003), to name but a few.

For artists and writers, blasphemy is a way to attract a great deal of attention, all the more so if it is legally proven. The juristic condemnation of Panizza's play had a strong impact on the audience's response to the play as also to the film. The legal context even influenced the play's initial printing. Right from the start, Panizza was smart enough to work with a foreign publisher who had already published one of his earlier works: the first editions of *Das Liebeskonzil* were launched by Jakob Schabelitz' *Verlags-Magazin*, a Swiss printing and publishing house based in Zurich. Dated 1895, the first edition actually came out in 1894. Right after the trial, Schabelitz prepared the second edition which came out in 1896 and only one year later, he published the third. Nobody took offence in Switzerland, but in Munich the authorities did. This is all the more remarkable as Panizza's play is rooted in a turn-of-the-century movement known as 'Münchner Moderne'.

Munich-based authors like Panizza, Thomas Mann, Alfred Kubin, Alexander Moritz Frey and Gustav Meyrink created an imaginary fiction that refers to paradigms such as eroticism, crime and the grotesque. They depicted literary worlds of unbridled fantasies, of exoticism and of perversion. As they did so by citing medical and psychological disciplines, we can loosely describe their fiction as science fiction. Panizza, who gave up his early career as a psychiatrist to be a writer, fused medical discourses and criticism of the Catholic Church and of papacy in his play. In his literary works, Panizza repeatedly voices criticism of the Pope, for example, in his satirical pamphlets *Die unbefleckte Empfängnis der Päpste* (The Immaculate Conception of the Popes, 1893) and in *Der deutsche Michel und der römische Papst* (The German Michel and the Roman Pope, 1894). Although these texts were confiscated and banned shortly after publication (cf. Bauer 1984: 139), they did not provoke a trial as *Das Liebeskonzil* did: 'No author within the realm of emperor Wilhelm II was approximately as severely punished as Oskar Panizza for his publication' (Bauer 1984: 185).¹ As the play fulfils a common literary standard, it is strange that it prompted the greatest literary scandal of its time (cf. Bauer 1984: 16). The reason is possibly that Panizza appeared to be a repeat offender; *Das Liebeskonzil* was perhaps regarded as a calculated offence.

Panizza used the scandal to promote himself and his play. In 1895, he published a pamphlet commenting his own case: *Meine Verteidigung in Sachen*

'*Das Liebeskonzil*'. *Nebst dem Sachverständigen-Gutachten des Herrn Dr. M. G. Conrad und dem Urteil des k. Landgerichts München I* (My Defence in the Matter of 'Das Liebeskonzil', including the expert report by Dr. M. G. Conrad and the Judgement of the regional Court of Munich I). In the play's second edition, Panizza added a lengthy introductory part that alludes to his case and condemns censorship, while the third edition contains an extra preface about the trial. As it stresses the freedom of literary art, poor Panizza appears as a victim of the law. Right from the beginning, the story was reported in the press, too; the 1896/7 editions of the play actually quote a wide range of articles covering Panizza's case.

In 1930, it was Walter Benjamin who said that Panizza was remembered for his trial (Benjamin 1989: 645), and ever since, it has raised scholarly attention (Breuer 1982; Bauer 1984; Boeser 1989; Brown 2001, 2010; Mitterbauer 2007). In contrast to the trial itself, the surrounding legal history has not yet been appraised. To explore the importance of legal history for Panizza's case, I will compare several cases, taking into account the contemporary legislation. In the deluge of legal actions against turn-of-the-century writers, literary trials resulting in sentences seemed to occur less frequently than censorship cases – which is why Panizza's imprisonment was met with harsh protest. This might also explain why scholarly research cared about the history of censorship in Germany (cf. Houben 1965; Breuer 1982) but paid little attention to that of courtroom trials (cf. Seiler 1983: 233–59). With regard to France, historical studies on literary trials have been made (cf. Sapiro 2011), but the German history of literary trials has yet to be written.

A few examples may illustrate how literature was at the focus of criminal prosecutions before and after Panizza's case. Plays on stage, rather than books, were seen to pose a special threat to the authorities and to the audience. Hence writers and theatre directors had to take far-reaching legal action to gain official permission for stage performances. In this context, Gerhard Hauptmann's play *Die Weber* (The Weavers, 1892) paved the way for one of the most prominent trials in Wilhelmine Germany. In 1892 and 1893, the Berlin-based *Deutsches Theater* (German Theatre) asked for the permission to perform *Die Weber*. The police, however, prohibited this because it feared riots caused by the play. At the *Berliner Bezirksausschuss* (Berlin Administrative Court), Hauptmann appealed against the ban, but he failed as the court confirmed the police's decision. It was the *Oberverwaltungsgericht* (Higher Administrative Court) where Hauptmann appealed next. In the meantime, *Die Weber* premiered in February 1893 when the *Freie Bühne* (Free Stage) organized a private performance. It was only in

October 1893 that the Higher Administrative Court lifted the ban and gave permission for performance. In its judgement, the court held that *Die Weber* did not pose an imminent danger for public order and security, as people who could afford to visit the German Theatre did not tend to be violent. After the play had been presented to the public in September 1894, it was Emperor Wilhelm himself who counteracted it: because of the play's demoralizing effect, he terminated his own royal box at the German Theatre, the president of the Higher Administrative Court was rebuked while the police were praised for having banned the play. As a consequence, *Die Weber* scored a smashing success on the stage – since the play was in all the newspapers and magazines, everybody wanted to see it. However, this did not stop major German cities such as Hamburg, Munich, Frankfurt and Hannover from banning Hauptmann's socio-critical play (cf. Breuer 1982: 192).

As far as religious and biblical subjects were concerned, prohibitions seemed completely arbitrary. This goes especially for Prussia, where biblical topics were forbidden on the stage (Houben 1965 vol. I: 430–1). Nonetheless, in Berlin-based theatres such as the *Königliches Schauspielhaus* (Royal Theatre) and *Hofoper* (Royal Opera), biblical plays were all the rage: Franz Grillparzer's *Esther*, Friedrich Hebbel's *Judith* and Paul Heyse's *Die Weisheit Salomos* (The Wisdom of Salomon) were celebrated works (Houben 1965 vol. I: 590). Other plays such as Hermann Sudermann's *Johannes* were banned. A forbidden drama that became famous was Heyse's *Maria von Magdala* (1899) which was prohibited in 1901. The Ministry of the Interior (*Ministerium des Inneren*) declared: 'The content of the play appears liable to injure the religious sentiments of the Christian population in several ways because the method of presenting the personality and the Passion of Christ cause offence' (Houben 1965 vol. I: 432). *Maria von Magdala* was then revised to get the ban lifted, but, in 1902, the police renewed it. Heyse appealed against this prohibition at the Berlin Administrative Court, and in October 1902, the court did in fact revoke the ban. It ruled that Heyse's drama posed no danger for the public order; what is more, the play glorified the Passion of Christ, it said. While the court took a favourable view of the play, the police did not accept it. Hence, the police appealed against the judgement, and the case was taken to the Higher Administrative Court which viewed the play as an 'attack on the Christian religion'. In the meantime, the play was performed in the United States, while the trial was being discussed in the press. When in 1903 *Maria von Magdala* was finally released for performance in Berlin by nobody less than Theobald von Bethmann-Hollweg, the prime minister of the Federal State of Brandenburg, the play turned out to be a clear flop. The media

coverage had raised false expectations (cf. Houben 1965 vol. I: 437–52). This leads back to Panizza who used the media coverage of his own trial to promote *Das Liebeskonzil*.

Artistic liberties, artistic prosecutions: Panizza's drama and Schroeter's film

Das Liebeskonzil is based on a myth saying syphilis was God's punishing gift for mankind's sinfulness and fornication. It was the humanist Ulrich von Hutten who addressed this myth in his work *Von der wunderbarlichen artzney des holtz Guaiacum genant, und wie man die Frantzosen oder blatteren heilen sol* (On the wonderful medicine called wood Guaiacum, and how to cure the French disease) dating from 1519. Panizza's play is dedicated to Hutten and his work is cited at the beginning of the play. Set in heaven and in Pope Alexander VI's Renaissance court of 1495, the play displays a fictional version of the myth. While the Borgia Pope plays sinful erotic games with the members of his court, we learn that a heavenly council – God the Father, Virgin Mary, Jesus Christ, the Holy Spirit, and others – plans to punish sexual intercourse. Mary charges the devil with inventing something that counteracts sex: she needs 'a thing, an influence, a force, a person, a poison, a something... which would stem the bestiality of men and women in those relations and apparently necessary contacts and comminglings intended exclusively for the purpose of procreation' (Brown 2010: 47; cf. Panizza 2005: 41). Reluctantly, the devil starts to work for Mary. In a lurid and hallucinatory scene, he revives a number of mythological sinners. With Salome, the worst sinner of all, he procreates a beautiful and seductive daughter who at last transmits syphilis – after having infected the Pope, she also infects bishops, cardinals, ministers and the rest of mankind ('das übrige Menschenpack', Panizza 2005: 78), too. One, and only one girl is enough to erase mankind, and the Virgin Mary commanded it – Panizza's narration of heavenly blessed evil is, of course, ironic.

The play's first edition stresses the power of female eroticism by displaying a representation of syphilis on the front page: it shows a female figure, large and naked. Her abdomen is embraced by a black beast whose mouth is wide open and points at the figure's bare breast. Looking over her shoulder, the figure sees a group of clergymen and lords. She holds a pan flute in her hand, thus hinting at the mythological god Pan who is well known for his lasciviousness:

Figure 5.1 Max Hagen: Cover illustration (n.d.), cf. Panizza (2005). N. pag.

In addition to the threats of eroticism and a fatal disease, the play raises matters such as madness, conditions of fear and suffering, cruelty, violence, crime and murder. The first scene in heaven displays a dead young girl who has turned into an angel. The girl died on earth because her mother made her work as a prostitute and she was fatally raped by a punter. Using the effects of the grotesque, Panizza

had no inhibitions about talking about all sorts of horrors on the stage, but he did so in a satirical and comic way. Take, for instance, the devil's description of a man suffering from syphilis:

[H]is hair falls out, his eye-lashes fall out, his teeth fall out; ... after three months, his entire skin is perforated like a sieve ...; despair not only constricts his heart but also drips out of his stinking nose; ... after one year, his nose drops into his soup bowl, and he goes out to try and buy a rubber one; ... after two, three years, his liver and other large organs are like rocks in his body, and his mind turns to lighter foods; then an eye begins acting up, in another three months it's closed shut; after five, six years, convulsions shoot through his body like fireworks; ... one day, after about eight years, he picks up a bone from his own edifice, sniffs it, and tosses it aside in horror ... (Brown 2010: 60, cf. Panizza 2005: 70–1)

As the play also gives force to the traditional storyline of the grotesque, it aims at desecrating sacred doctrines and characters. Unsurprisingly, the Pope and his court are depicted as immoral, corrupt, criminal and, of course, horny. The heavenly characters are funnier: God the Father acts as a pitiful senile and sick old man, Jesus is a tubercular and rather stupid fellow who hates to be eaten by Christians ('Mich essen sie', Panizza 2005: 22). As a power-seeking conspirator who wants to rule heaven and earth, the Virgin Mary enters a pact with the devil, while the devil himself is an artist or a writer: His procreation, syphilis, is a work of art ('Kunstwerk', Panizza 2005: 53), and he sees himself as a genius.

The play proved to hold a fascination. Early in the twentieth century, when Panizza was still alive, the *Gesellschaft der Münchner Bibliophilen* (Society of Munich-based Book Lovers) published a new collector's edition of the play which was illustrated by Alfred Kubin. Only fifty copies of this 1913 edition were printed in the Netherlands. To prevent censorship, 'each copy had the name of its future owner printed on the title page' (Brown 2001: 534). In the 1930s, Benjamin regretted that there was no current edition of Panizza's works. This is the case, he says, because Panizza's texts would still attract the public prosecutor, 'just as it happened thirty-five years ago' (Benjamin 1989: 645).

Legal action, as well as liberalization, continued at a later date. After a German edition of the play published by Peter Jes Petersen had been confiscated in 1962 (cf. Brown 2001), Hans Prescher's 1964 edition came out without problems. Since then, the play has been available on the book market. In 1967, *Das Liebeskonzil* was finally performed: it premiered in Vienna (1 June 1967, *Kellertheater Experiment*). The play's first performance in France (2 July 1969, *Théâtre de*

Paris) was met with international attention, and ever since, *Das Liebeskonzil* has been staged more than seventy times. The play's stage performances were perceived as anything but shocking (cf. Mitterbauer 2007).

In 1981, Antonio Salines directed a performance at Rome's small theatre *Theatro Belli*. Supported by the film distribution company Atlas, the Roman performance was filmed under the direction of Werner Schroeter; later on, the producer Peter Berling transformed the stage version into a movie called *Liebeskonzil*. The film differs from the play because it lacks several scenes that take place in the Vatican court. What is more, in his film, Schroeter added a biographical frame: set in court, the first and the last scenes of the film depict Panizza's 1895 Munich trial. Thus, the framing scenes host characters such as a public prosecutor, a lawyer, a judge, a witness and Panizza himself. He is charged, of course, with the crime of blasphemy: 'Swearing religion will be punished, ... I listed 93 acts of swearing in the book "The Love Council". The performance itself is even more incredible!' (Panizza, Schroeter and Salines 1982: 26)² Establishing an analogy between the courtroom and the stage, the movie is suffused with self-referential imagery of art. The courtroom's theatrical status is joined by allusions

Figure 5.2 *Liebeskonzil* (1982), [film] Dir. Werner Schroeter, Germany: Saskia-Film. Cf. Panizza, Schroeter and Salines (1982: 67).

to performances of the devil on the stage, as all heavenly characters appear in the traditional mask of the devil in Goethe's *Faust*: Their faces are covered in white make-up and their eyes have black frames. Heaven, it seems, is hell.

The movie premiered in 1982 at the Berlin Film Festival and was shown in cinemas throughout Germany and Austria. Contemporary reviews say the film was boring and as harmless as a puppet show: 'Today, the intended blasphemy appears to be a students' joke and a naughty puppet show' (Geleng 1982). Nonetheless, it served as a starting point for 'one of the most important, yet little publicized, censorship cases in postwar Europe' (Brown 2001: 536) – just as Panizza's case involved one of the heaviest punishments for a piece of literature imposed on a turn-of-the-century author in Germany (cf. Bauer 1984: 15–28, 151–8; Boeser 1989; Mitterbauer 2007).

The trials: Surprises and contradictions

Although *Das Liebeskonzil* had been printed and published outside Germany in Switzerland, on 4 January 1895, the Munich prosecutor accused the Munich-based Panizza of blasphemy. Only four days later, investigations started. It was decided to seize all available copies of the play, but the Munich police did not find more than two (cf. Bauer 1984: 151). The trial took place in Munich on 30 April 1895. Panizza was convicted to one year in prison, he had to pay for the criminal proceedings and the enforcement of the punishment, and it was decided to destroy all copies of the 'publication'. Strangely, the court ruled that all printing plates had to be destroyed, too. In the judgement, Panizza's play is referred to as a 'product of the press', a *Druckschrift* (publication), whereas words such as 'literature', 'drama' or 'work of art' are not used at all. The judgement reads:

In the name of His Majesty the King of Bavaria, the Jury Court of the Royal State Court Munich I, in the case against the author Dr. Oskar Panizza of Kissingen, charged with an offense against religion committed in print, judges as follows: 1. For an offense against religion committed in print, Dr. Oskar Panizza of Kissingen is sentenced to a prison term of one year, as well as bearing the costs of the trial and the sentence. 2. The remaining copies of the publication *The Love Council* by Oskar Panizza, as well as the plates and molds for its production, are to be rendered unusable. 3. An arrest warrant for the accused is issued. (Brown 2010: 130; cf. Boeser 1989: 73–4)

Although the judge issued an arrest warrant, Panizza was released on an 80,000 Mark bail until the beginning of his imprisonment on 8 August 1895.

Legally, Panizza's case is rooted in German criminal law. When Bavaria became part of the Deutsche Reich in 1872 the German Penal Code (*Strafgesetzbuch für das Deutsche Reich*) became effective. Article 166 forms the basis for Panizza's trial:

Whoever through insulting utterances publicly blasphemes God, gives offense, or who publicly insults one of the Christian churches or another corporate religious society in the country or their institutions or customs, also whoever commits insulting mischief inside a church or in another place dedicated to religious assemblies, shall be punished with imprisonment of up to three years. (Brown 2010: 126; cf. *Strafgesetzbuch* 1871: Art. 166)

The court ruled that *Das Liebeskonzil* was a blasphemous product of the press by which Panizza hurt the religious sentiments of his readers. This was, of course, a great trivialization of the play, and the penalty for it was extraordinarily high. As Panizza was convicted on the basis of Article 166, his punishment was more severe than that of other authors who were typically convicted on the basis of Article 184. This latter paragraph was in use to punish *unzüchtige Schriften* (lascivious writings), providing a maximum penalty of six months in prison (cf. Hütt 1990). As a consequence, the judgement and the long sentence in Panizza's trial were met with sharp protest from writers and artists. In the courtroom, it was Michael Georg Conrad's expert report on *Das Liebeskonzil* which protested against the criminal prosecution of Panizza and of poets in general. Hinting at the autonomy of literature, Conrad wrote:

In the author's vision, the traditional heaven and what goes on there assumes a form that is thus actually beyond any discussion. The author envisioned it as he had to see it, from the artistic necessity of his creative imagination, period. You can accept or reject his vision, but you cannot legally transform it, you cannot punish it. The sole forum to which writers and artists have to answer is aesthetic criticism. (Brown 2010: 164; cf. Panizza 2005: 31)

This concept of *exceptio artis* can be found in numerous articles of the press, too (cf. Houben 1965: *passim*), but in contemporary German law, it is not relevant. In Panizza's case, the court rejected such a concept, and hence, it branded literature as a mere 'product of the press'. Even if notions of artistic freedom were mentioned in an earlier case (cf. Knies 1967: 148; Grüttemeier 2007: 183), this did not affect Panizza's trial, for Germany was – and is – not part of the common law tradition of arguing through precedent. For German judges and

lawyers, legal reasoning means applying the abstract norms of a codified law to the particular case at hand.

As far as the film *Liebeskonzil* is concerned, the case is more complicated. In 1985, a non-profit-making organization called *Otto-Preminger-Institut für audiovisuelle Mediengestaltung* in Austria's Innsbruck announced a series of six evening showings of Schroeter's *Liebeskonzil* in its own cinema. Beginning on 13 May, the showings were scheduled at 10.00 pm. The announcement was made in a newsletter of the *Otto-Preminger-Institut*, and the film was introduced as follows:

Oskar Panizza's satirical tragedy set in Heaven was filmed by Schroeter from a performance by the Teatro Belli in Rome and set in the context of a reconstruction of the writer's trial and conviction in 1895 for blasphemy. Panizza starts from the assumption that syphilis was God's punishment for man's fornication and sinfulness at the time of the Renaissance, especially at the court of the Borgia Pope Alexander VI. In Schroeter's film, God's representatives on Earth carrying the insignia of worldly power closely resemble the heavenly protagonists. Trivial imagery and absurdities of the Christian creed are targeted in a caricatural mode and the relationship between religious beliefs and worldly mechanisms of oppression is investigated. (ECHR 1994: 5; cf. Grabenwarter 1995: 131)

The film was to be shown late at night to a paying audience in an art cinema which addressed a small number of viewers sensitive to experimental films. By means of the newsletter, this audience was warned beforehand about the satirical nature of the film. What is more, the film was forbidden for persons under the age of seventeen. Nonetheless, the Innsbruck diocese of the Roman Catholic Church requested criminal proceedings.

As a consequence, on 10 May 1985, the prosecutor started action and instituted criminal proceedings against *Otto-Preminger-Institut's* manager Dietmar Zingl. The charge was 'disparaging religious precepts' (*Herabwürdigung religiöser Lehren*), which was prohibited by Article 188 of the Austrian Penal Code. After the film had been shown at a private session in the presence of a duty judge (*Journalrichter*), the public prosecutor applied to seize the film on 12 May. This application was granted by Innsbruck's regional court (*Landesgericht*), and hence, the planned public showings of the film could not take place.

At the Innsbruck Court of Appeal (*Oberlandesgericht*), Zingl appealed against the seizure order, but his appeal was dismissed on 20 July 1985. The court said 'that artistic freedom was necessarily limited by the rights of others to freedom of religion and by the duty of the State to safeguard a society based on order and tolerance.... The wholesale derision of religious feelings outweighed any

interest the general public might have in information or the financial interests of persons wishing to show the film' (cf. ECHR 1994: 6).

On 24 October 1985, the trial took place before the Innsbruck regional court (*Landesgericht*). The court ordered the banning of the film as the film was criminally blasphemous; the public projection of it fulfils 'the definition of the criminal offence of disparaging religious precepts as laid down in section 188 of the Penal Code', it said (cf. ECHR 1994: 7). It is true that the court's reasoning considered Article 17a of the Austrian constitution (*Staatsgrundgesetz*) which guarantees the freedom of artistic creation and the publication and teaching of art. However, because of the 'particular gravity in the instant case', the court held that 'the basic right of artistic freedom will in the instant case have to come second' (cf. ECHR 1994: 9). The case's 'gravity' derives from the film's absurd portrayal of Christian icons. In its judgement, the regional court had characterized the film as follows: 'God the Father is presented both in image and in text as a senile, impotent idiot, Christ as a cretin and Mary Mother of God as a wanton lady with a corresponding manner of expression.' What is more, 'the Eucharist is ridiculed' (cf. ECHR 1994: 7).

Zingl appealed against the judgement of the regional court, submitting a declaration signed by some 350 persons who protested they had been denied free access to a work of art by the court's ban of the film. In his appeal, Zingl of course claimed that the freedom of art enforced in Article 17a should be superior to disparaging religious precepts as laid down in Article 188. However, on 25 March 1987, the Court of Appeal declared the appeal inadmissible – since Zingl was not the owner of the film's copyright, he had no standing, it ruled.

On 6 October 1987, the *Otto-Preminger-Institut* applied to the European Commission on Human Rights in Strasbourg, claiming that Austria had violated Article 10 of the European Convention on Human Rights. Article 10 provides the right to freedom of expression. In January 1993, the Commission reported that there had indeed been a violation of Article 10, as regards the seizure and the forfeiture of the film (cf. ECHR 1994: 15). When, in April 1993, the Commission referred the case to the ECHR for a final ruling, this ruling caused great surprise: in contrast to the Commission's report, six of nine judges of the ECHR found 'that there has been no violation of Article 10... of the Convention as regards either the seizure or the forfeiture of the film' (ECHR 1994: 28). Instead, it was 'the respect for the religious feelings of believers as guaranteed in Article 9' that 'can legitimately be thought to have been violated by provocative portrayals of objects of religious veneration' (ECHR 1994: 22).

In a nutshell, the ECHR based its ruling on the idea that a state must ‘protect the right of citizens not to be insulted in their religious feelings by the public expression of views of other persons’ (ECHR 1994: 22). The majority of the judges of the ECHR decided that this right was more important than the right to freedom of expression. However, in their dissenting opinion, three judges contradicted this judgement. They argued: ‘The Convention does not, in terms, guarantee a right to protection of religious feelings. More particularly, such a right cannot be derived from the right to freedom of religion, which in effect includes a right to express views critical of the religious opinion of others’ (ECHR 1994: 30). Although they agreed with the majority that there must be certain limitations to the public expression of such views, they found that the ‘repressive action’ of seizing and banning the film was not proportionate to the legitimate aim pursued (ECHR 1994: 31).

Concluding remarks

In its defence before the ECHR, the *Otto-Preminger-Institut* argued that ‘a work of art dealing in a satirical way with persons or objects of religious veneration’ could not be regarded as disparaging or insulting (ECHR 1994: 20). This argument seems to be based on the assumption that *exceptio artis* should be applied to satire: blasphemy might be an offence, but when it occurs in literary satire, it should be judged otherwise. The ECHR did not agree. It confirmed a line of thought that stems from its 1988 case of *Müller v. Switzerland*: the ECHR grants national courts and judges a certain ‘Margin of Appreciation’ when it comes to moral standards and religious beliefs, because an international institution such as the ECHR should respect cultural and social differences in Europe (cf. Keller and Cirigliano 2010: 419–20).

Historically, the ECHR’s 1993 judgement is in line with the 1895 judgement: both argue that when a work of art hurts the religious feelings of its readers or its viewers, it must therefore be forbidden. But there is a contradiction between the ECHR’s ruling in this case and the ECHR’s earlier ruling, according to which the right to freedom of expression applies to information and ideas regardless of their content. In the famous case of *Handyside vs. United Kingdom*, the ECHR ruled as early as 1976 that freedom of expression does in fact apply to information and ideas which shock or offend a group in society or the state itself. In the case of *Otto-Preminger-Institut vs. Austria*, the ECHR came to a radically different

judgement. This is why in jurisprudence this judgement was recognized as false. The German jurist Andreas von Arnould says that seizing and banning the film violates Article 10 of the European Convention on Human Rights (von Arnould 2012: 280–1). What is more, Arnould argues that a state cannot possibly protect the feelings of its citizens. It is true that a constitutional law such as Article 10 of the European Convention on Human Rights can protect the freedom to do or not to do something, he says: it can protect inner faith, it can protect the profession of faith and it can also protect the exercise of faith. None of these actions, however, are restricted by a blasphemous film or book (cf. von Arnould de la Perrière 2007: 75). In addition to this, the ECHR's idea of a right to respect religious feelings cannot be handled in practice, he says:

A right to respect religious sentiments as such, however, as the ECHR appears to take for granted for the above-mentioned jurisdiction, exceeds the standard message of the right of freedom, and it leads, as an immediate point of contact of legal regulations, in addition to practical difficulties. If one intends to consistently realize the protection of feeling, one has to take the subjective feeling seriously because this is radically a subjective assessment. The 'felt justice', however, is no calculable line of reference which might be the basis of a social network. (von Arnould de la Perrière 2007: 76)

From a literary critic's point of view, I can only confirm Arnould's argumentation. It also holds true when applied to the reception of satire or works of art in general: feelings must not be the basis for the evaluation of art or texts. In the end, a taboo-oriented culture of law could lead to a radical loss of freedom, as UK historian Timothy Garton Ash argued: 'in our increasingly mixed-up, multicultural world, there are so many groups that care so strongly about so many different things, from fruitarians to anti-abortionists and from Jehovah's Witnesses to Kurdish nationalists. Aggregate all their taboos and you have a vast herd of sacred cows. Let the frightened nanny state enshrine all those taboos in new laws or bureaucratic prohibitions, and you have a drastic loss of freedom' (Ash 2006).

Notes

- 1 All translations from German are mine, unless indicated otherwise.
- 2 As the film has disappeared, I quote the book based on the film (Panizza, Schroeter and Salines 1982).

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