

**Report on Freedom of Thought and Belief in Brazil: The pressure to criminalize
blasphemy and the risk of lawfare**

Input for the Report on Respecting, Protecting and
Fulfilling the Right to Freedom of Thought

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1. Introduction

Contrary to what occurs in the Universal Declaration of Human Rights, Freedom of thought in the Brazilian legal system is not found alongside *freedom of conscience* and *freedom of belief* but is linked to *free speech*. In article 5, clause IV, of the Brazilian Constitution, freedom of thought is assured through *freedom to manifest thought*.

We understand that this link is not fortuitous. Freedom of thought becomes innocuous if it is not linked to the possibility of acting in accordance with one's views or to manifest them in a way that is not harmful to others. A proposition that guarantees thought, but not its externalization, would be of no use.

Furthermore, freedom of thought is related to free speech in the sense that, to build a truly free thought, citizens must have access to the widest and most unrestricted variety of ideas. In this sense, the manifestation of one's thought becomes an essential element for the constitution of freedom of thought for all other citizens. It is not for nothing that all

¹ All information and opinions in this report are the sole responsibility of the researchers and do not represent the institutional views of the Federal University of Minas Gerais (UFMG).

totalitarian regimes, knowing the impossibility of forbidding individuals to think for themselves, have limited the people's access to information and opinions considered divergent in order to seek to achieve homogeneity of thought.

Based on this perception, this Report will address some attempts to limit the manifestation of thought, especially regarding criticism of religious doctrines. The choice of theme derives from the researchers' perception of the significant increase pressure for the criminalization of conducts that criticize religions more vehemently.

We need to mention that, currently, there is no formal legislation in Brazil that criminalizes *blasphemy* – understood as the satire or criticism of religious dogmas or religions per se. According to art. 208 of the Brazilian Criminal Code, it is a crime to publicly mock someone because of his or her religious belief or function; to prevent or disturb a ceremony or the practice of religious worship; to publicly vilify an act or object of religious worship. Similarly, according to art. 20 of Act 7.716/89, it is a crime to practice, induce or incite discrimination or prejudice based on race, color, ethnicity, religion, or national origin.

Although this issue is present in virtually every country around the globe, we realize that in Brazil the pressure for criminalization of religious criticism is implemented by the majority religions – especially Christian Churches. In this sense, the eventual criminalization of religious criticism in the country, according to these standards, does not seek the protection of minority doctrines against discrimination, but precisely the legal protection of religious doctrines shared by the vast majority of the population.

Thus, we believe that the attempt to criminalize blasphemous conduct will lead to the possibility of punishing the manifestation of criticism of religious precepts, limiting the access of the population to opinions that diverge from the majority belief. In this sense, one should remember that since Stuart Mill² it is known that the use of law cannot aim to impose the will of the majority over a minority. For this reason, the authors identify in criminalization an additional risk of using the law as a weapon to limit the free speech and the freedom of thought.

² MILL, John Stuart. **On liberty and other essays**. Oxford University Press, USA, 1998.

2. The popular pressure against *blasphemy*

To demonstrate the popular pressure to limit the freedom of religious criticism – often endorsed by the Brazilian judiciary – we will present some examples that have occurred in recent years in Brazil.

First, an important case of Brazilian Courts unjustifiably limiting the right of free manifestation of thought and freedom of criticism is seen in the conviction of the musicians, members of the Band *UDR*, for crimes against religious sentiment in 2017.³

Despite the inelegant lyrics of their songs that contain satires about Jesus, the Cross and the Koran, the musicians did not incite or instigate any violent or offensive acts against any church or its members. Likewise, they did not mock any person because of their religious practice. Even so, the three band members were convicted for offending religious people. Freedom of thought, and in this case religious criticism, were limited only because it was offensive to the feelings of one group of the population.

A second example of the limitation of freedom of thought, which in this case affects the free artistic manifestation, can be seen in the decision of a first instance judge in Goiás, to prohibit the commercialization of sculptures in the shape of saints with references to characters from pop culture – such as Lottie Dottie Chicken, Batman and Wonder Woman⁴. According to the decision, the sculptures “offend the collectivity, violating religious sentiment, by employing mockery, satire and irony”.

After a request from the Archdiocese, the 9th Civil Court of Goiania determined a fine of 50 thousand reais in case of noncompliance with the measure.

The decision covers the exclusion of the profiles promoting the work on *Facebook* and *Instagram* and the removal of products from a store in Brasilia (DF). Although the decision was overruled by the Court of Appeal, it was valid for almost two years, between 2016 and 2018.

³<http://www8.tjmg.jus.br/themis/verificaAssinatura.do?tipo=1&numVerificador=1002412266703300120171041923>

⁴<https://politica.estadao.com.br/blogs/fausto-macedo/justica-proibe-santa-galinha-pintadinha-nossa-senhora-do-perpetuo-de-batman/>



Another important case that should be mentioned is a decision of the Brazilian Supreme Court (ADI 4439⁵) in which it was decided that religious education offered in public institutions can have a confessional nature – i.e., teaching the pupils not about the history or sociology of religions, but only the tenets of a particular religion.

In this sense, the Supreme Court ruled, in September 2017, that it would be permitted to allocate public funds to hire members of religious denominations to teach dogmas in public schools, provided that children who wanted to leave the classroom were allowed to do so.

In this court case, the first author of this Report worked as *amicus curiae* and tried to demonstrate that confessional religious instruction would violate the republican principle that distinguishes the public and private spheres of government.⁶ It was also clarified that the decision would violate freedom of thought because, although it intends to grant the children who do not agree with the religion the right to leave the classroom, it is known that at school age leaving the classroom can lead to the separation of groups and *bullying*, harming these children because of their belief. Moreover, with this decision, the State lost an opportunity to demonstrate that people of different faiths can live together harmoniously

⁵ <http://portal.stf.jus.br/processos/detalhe.asp?incidente=3926392>

⁶ <https://youtu.be/Hx-hLynaLOs>

in the same environment and instead, conveyed an image of separation and intolerance, incompatible with a secular and democratic state.

Cases relating religious criticism to gender issues should also be mentioned. First, we shall indicate the event with the Brazilian transgender actress Viviany Beleboni. She enacted her crucifixion during the 19th Pride Parade of São Paulo in 2015, to compare the life of transgender people in the country with the life of Christ. It should be noted that the life expectancy of a transgender person in Brazil is 35 years⁷, very close to the age at which Christians believe Jesus' death occurred.



Because of the comparison, the actress was summoned to the 78th Police District of São Paulo to provide clarifications about her performance. The measure was the result of a complaint filed with the Attorney District (MP-SP) by the Association of Evangelical Churches of São Paulo.

⁷ <https://glo.bo/3uWT7BU>

In addition, a year after the demonstration, the actress was a victim of a severe assault while leaving her home to go to a supermarket.⁸ According to her, five people followed her on the street and subsequently stopped and beat her while reciting biblical passages and shouting religious slogans.

Still on this matter, a case of violation of free speech occurred against the group of actors "Porta dos Fundos" (*Backdoor*) in 2020. Owners of a YouTube channel with almost 17 million subscribers, Porta dos Fundos is one of the most famous comedy groups in the country.

Near Christmas time, the group produced a movie in which they played Jesus Christ as a homosexual character. The film, which presented a biblical satire with contemporary elements, was the target of several critics.



After the request of the Catholic Association Dom Bosco Center for Faith and Culture, the Court of Justice of Rio de Janeiro granted an injunction to take the Christmas movie off the air. Although the decision was soon reversed in a collegiate decision, the first decision legitimized the social movement that seeks to censor practices that they consider disrespectful to religion (*blasphemy*).

⁸ <https://noticias.uol.com.br/cotidiano/ultimas-noticias/2016/07/11/transsexual-crucificada-na-parada-gay-denuncia-nova-agressao-em-sp.htm>

After the decision to render the show available again, the headquarters of the producers were the target of a terrorist attack. Two explosives were set off against the building's façade, which was damaged.

Finally, it is important to mention how the pressure to criminalize religious criticism sometimes manifests itself in subtle ways and under various pretexts. In this sense, it is important to remember the case of the *Queermuseu* exhibition in 2017.

The exhibition featured artwork depicting religious and gender issues. Some of the works were for adult audiences, which was duly indicated at the entrance of the galleries with graphic signs and explanation of the content.



After some of the works were shared on the Internet by social movement groups such as the Movimento Brasil Livre (*Free Brazil Movement*), there were several manifestations against the exhibition of the works. According to this group, the works were intended to entice children and encourage homosexual behavior and religious intolerance.

Due to all these manifestations, the exhibition's sponsors decided to cancel it.

3. Bills to criminalize *blasphemy* in Brazil

There are currently three bills on the Congress floor that intend to criminalize blasphemy.

The oldest of which is PL 9048/2017, sponsored by Representative Pastor Luciano Braga (PRB/BA). His proposal constitutes the inclusion of a new crime in the legal system, characterized by the practice of publicly disrespecting in a vile way an act or object of religious worship and its symbols. The penalty for this conduct would be 1 to 3 years in prison.

In its justification, the project claims to be concerned with the attacks on Christian values, indicating as an example the aforementioned *Queermuseu* exhibition.

The second bill currently on the Congress floor is PL 1276/2019, sponsored by Congressman Fernando Rodolfo (PR/PE).

Even more explicitly than the previous one, this bill aims to criminalize the conduct of publicly blaspheming deities with words or any kind of manifestation affronting the faith of others. According to the proposal, the penalty imposed on those who carry out the conduct would be 4 to 6 years in prison.

Identically to the first bill, this one is also justified by the need to protect the Christian faith against blasphemous attacks that scandalize religious communities. In this sense, the Representative explicitly indicates that not only does the bill seek to guarantee freedom of worship and religion, but mainly the "respect for the worshipped divinities and the faith of their followers".

The most recent project with this scope on the Congress floor is PL 2265/2019, sponsored by Representative Sergio Vidigal (PDT/ES).

According to this bill, it would become a crime to publicly disrespect religious dogma or belief. The penalty for the offense would be 2 to 4 years of imprisonment.

The justification of this bill points out that there have been offensive and disrespectful public performances against the Christian religion. To exemplify, it points out a case of a performance that occurred in the 2019 Carnival in which a samba school portrayed a fight between Jesus Christ and the Devil, to represent the struggle between good and evil.

4. Lawfare

The right to criticize and satirize dogmas and moral precepts, whether religious or not, is a presupposition of freedom of thought.

The possibility of criminal punishment for such criticisms, as proposed by the mentioned bills, would aim to protect certain doctrines from contrary ideas. Christianity, Judaism or Islamism are doctrines of ideas and, just like Marxism or liberalism, are subject to the widest and most unrestricted criticism.

As we have already stated in another opportunity⁹, in plural and democratic societies everyone is subject to be displeased by manifestations of opinions contrary to their own. Criticism, even if severe or disrespectful, is part of democracy and it is impossible for the Law to prevent people from feeling offended. Therefore, religious criticism, even when made in a harsh and mocking tone, is part of the constitutional and international right to free manifestation of thought and cannot be limited under the argument of reaching the sensibility of a part of the population.

Limiting this right based on rules of etiquette or politeness would create a fear in citizens to manifest their opinions. This fear, known as the *chilling effect*, has the ability to prevent people from expressing their thoughts because of possible legal consequences.

In this way, legislation becomes a weapon for the protection of certain doctrines of critical or divergent thought (*lawfare*). In fact, this tactic has already been used through the filing of reparation lawsuits. In this respect, we can mention the case of the writer J.P Cuenca¹⁰ and the journalist Elvira Lobato¹¹. Both are currently facing more than 100 lawsuits, the former for a tweet criticizing the leader of the Universal Church of the Kingdom of God, and the latter for a series of articles, in the newspaper Folha de São Paulo, about the expansion of companies linked to the same church.

As explained by the website ConJur¹², the Universal Church has a legal team to guide its followers in filing for moral damages against newspapers and journalists who publish news

⁹ VIANNA, Túlio; MIRANDA, Lucas. Crimes contra o sentimento religioso: uma interpretação conforme a Constituição da República de 1988. **Coleção 80 anos do Código Penal**: volume 4: Temas atuais de Direito Penal. São Paulo: Thomson Reuters Brasil, 2020.

¹⁰ <https://brasil.elpais.com/cultura/2020-10-18/a-cruzada-judicial-de-111-pastores-evangelicos-contra-um-escritor-brasileiro-por-um-tuite.html>

¹¹ <https://cultura.uol.com.br/noticias/14935-foi-tao-impactante-que-acabou-precipitando-minha-aposentadoria-diz-elvira-lobato-jornalista-vitima-de-assedio-judicial.html>

¹² <https://www.conjur.com.br/2008-fev-19/equipe-universal-orienta-fieis-processar-imprensa>

contrary to the Church. According to the website El País, these are individual lawsuits filed in courts in various municipalities around the country, most of them being small and very remote villages.

We believe that the criminalization of acts of disrespect or criticism of religious doctrines may worsen this situation, leading many religious people to start judicial crusades against their critics and opponents, which may lead to such people serving prison sentences for simply expressing their thoughts.

In this sense, it is important that the United Nations closely monitor these issues of paramount importance to the country.