

THE CRIME OF INSULTING RELIGIOUS VALUES IN THE TURKISH PENAL CODE (TPC 216/3)

Celal Hakan KAN * 

ABSTRACT

Hate speech is a type of expression that results from people's inability to tolerate and tolerate certain characteristics of each other in society, such as religion, belief, and race. Such statements are one of the obstacles to the growth of a democratic society that dynamites the society's peace and serenity over time, if not in a short time. When it comes to expressions that can be classified as hate speech, the state's positive obligations in terms of protecting the beliefs and convictions of other individuals of the impacted society will come into play. The Turkish Penal Code (TPC) has laws on the punishment of hate speech expressions in this regard (TPC). One of them is TPC 216/3 on the crime of insulting religious values. Based on this context, the expression of insulting religious values within the scope of hate speech in this study is to examine the elements of the crime of insulting religious values, which is also subject to the decisions of international supervisory bodies, within the scope of TPC 216/3, of the crime of insulting the religious values of a section of the population.

Keywords: *Hate Speech, Insulting Religious Values, Insulting Religion.*

Jel Codes: *K1, K10, K14.*

1. INTRODUCTION

Although freedom of expression is a widely used human right, it is not without constraints. While international and national texts mention freedom of expression, they also specify limitations and sanctions¹. These limitations, which are at the Constitutional level as a national legal document, can find their counterparts in different legislation. In fact, while the freedom of thought and opinion is unrestricted, it is subject to restrictions when it is shared with the outside world for a number of reasons. Turkish law, on the other hand, contains regulations that limit one's right to freedom of expression if one uses expressions that involve hate speech. The fifth part of the third part of second book titled "Special Provisions" of the Turkish Penal Code (TPC) No. 5237 includes "Crime of Insulting Religious Values," which is a type of hate speech within the scope of the research and the subject of the research.

* Ph.D. Student, İstanbul Medipol University, Institute of Social Sciences, Department of Public Law, İstanbul/ Turkey. E-mail: hakankan_31@msn.com

¹ According to the European Convention on Human Rights, freedom of expression includes some obligations and responsibilities. In the case of non-compliance with these responsibilities and obligations, the expression used may be limited.

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292

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In the last paragraph of Article 216, "openly insulting the religious values adopted by a section of the public" is regulated as a crime. Expressions that insult religious values are one of the reasons for limiting freedom of expression.

"A person who publicly insults the religious principles adopted by a section of the public is sentenced to imprisonment from six months to one year if the act is suitable for disturbing the public peace," according to TPC paragraph 216/3. The aforementioned regulation, i.e., public humiliation of religious values held by a section of the population, has been constituted a crime by Law No. 5237.

The form of the crime that requires a heavier penalty is included in Article 218; "If the crimes defined in the above articles are committed through the media and broadcasting, the penalty to be imposed is increased by half. On the other hand, statements of opinion that do not exceed the limits of reporting and that are made for the purpose of criticism do not constitute a crime.

The ECtHR has addressed this restriction, which is regulated in the TPC as one of the reasons for restricting freedom of expression, in terms of the practice of freedom of expression, which is a right that imposes obligations and responsibilities, with Article 10/2 of the ECtHR. According to the ECtHR, responsibility within the context of religious thoughts and beliefs "will also include the duty to avoid, as far as possible, expressions that unnecessarily attack others and thus violate their rights, and thus do not contribute to any public debate conducive to improving human relations." (Altıparmak, 2007: 106). It can be said that this limitation imposed by the ECtHR in a way that can be described as "task" was imposed with the aim of limiting the expressions that would not have any effect on the public debate, that would be considered rude or offensive to believers, and that would harm social peace. In other words, although the expression used has no contribution to the public debate, it might not be within the scope of the expression that should be protected by the ECtHR when used as a "cheap attack" against religious feelings (Doğru and Nalbant, 2013: 19).

The aforementioned provision in the TPC, which restricts freedom of expression, can only be implemented if the action is suitable for disturbing the public peace.

The comparison of the relevant old and new laws is made below:

The provision for the crime of insulting religious values, regulated in article 216/3 of the Law No.5237, is not available in the Law No.765 (Gökçen, 2001: 1). The regulation "Crimes Against Religious Freedom" (a.175-178) was found in the previous TPC numbered 765, in the second chapter of the "Crimes Committed Against Freedom." The said regulations, on the other hand, cover a wide range of crimes connected to religious freedom, including insulting religious principles. It should be noticed that the third paragraph of Article 175 of the TPC No. 765 contains a regulation comparable to the crime of insulting religious values, which is the subject of the thesis and is a restriction on freedom of expression.

According to the said regulation; “Anyone who insults God or one of the religions or their prophets or holy books or sects, or who condemns or vilifies or insults or mocks a person because of his/her religious beliefs or following the orders of the religion to which he/she belongs or avoiding the prohibitions, shall be sentenced from six months to one year and shall be heavily fined from five thousand Turkish Lira to twenty five thousand Turkish Liras.” In the Turkish Penal Code No. 5237, the aforementioned regulation took place as "religious values" and was arranged in a shorter way.

In the article, first of all, the crime of insulting religion is discussed, and it is aimed to evaluate the subject in general terms by examining the elements of the crime of insulting the religious values of a section of the public within the scope of TPC 216/3.

2. THE CONCEPT OF INSULTING RELIGION AND THE CRIME OF INSULTING RELIGION

2.1. The Concept of Insulting Religion

The concept of insulting religion, which is a natural limit of freedom of expression, constitutes an important national and international regulation area, although there is no common definition and usage of it. This concept aims to preserve religion and conscience, both of which are products of people's interior worlds (Dinçer, n.d.: 1-2). Blasphemy, which means "injurious word" or "infidel word," is a serious insult and humiliation directed at religion or god. The severity of the penalty imposed is determined by the nature of the expression used. The sanction is aimed at an act of cheap attack and insult, that is, an attack on religious principles, rather than simple criticism or a meaningful statement that contributes to public debate (Cheyronnaud, 2006: 99; Dinçer, n.d.: 2). As can be understood from the definition, it is understood that freedom of expression has a specific place in a democratic society and is not an unlimited right. In this regard, some expressions benefiting from the protection afforded to the right to freedom of expression are protected at a higher level than other expressions (Zwaak, Karagöz, Şahin ve Tümay, 2013: 48). For example, racism, harsh insults, obscene expressions are expressions with high negative effects on individuals. These expressions, including blasphemy, generally constitute low value categories of expression. On the other hand, the factor that determines whether an expression is high value or low value is whether it has social value or not. If an expression has social value, it is admitted as a valuable expression (Zarplı, 2008: 9).

Despite the fact that blasphemy is punishable in the scholastic world, it is remarkable that it is now also illegal in most secular countries. From the time of religious teachings to the present secular period, insulting religion has been controlled as a crime and sanctioned by many authorities. However, in current penal systems, the protected legal interest is not to protect the religious person's sanctity, but to respect the religious feelings and views of individuals, communities, and groups, and to avoid hate crimes in general (Dinçer, n.d.: 5-6). It is hoped that by doing so, an environment of tolerance, peace, and respect for those who are different in society will be established.

2.2. The Crime of Insulting Religion

In all monotheistic religions, blasphemy is considered a crime. In states, the prohibition of blasphemy is traditionally adopted and enforced to protect a particular religion, especially the dominant religion, to which the majority of the population adheres. There are clear differences between the crime of blasphemy in countries where the official religion is Islam and the crime of blasphemy in countries where Christianity is dominant. In Christian states, where prohibitions on blasphemy have historically evolved into fundamental legal provisions (usually criminal laws), the prohibition of blasphemy, which had become a general law centuries ago, was only applied in response to deliberately defamatory speech or publication against God, major doctrinal figures (mainly Holy Jesus), or the established religion itself (Temperman, 2008: 518). In other words, throughout Europe, insults to the Christian religion were punished by penal codes. Despite the fact that the crime of insulting religion is rare, it nonetheless exists in some European countries. While some of these regulations provided religious and doctrine-based protection, others were designed to protect religious feelings (Doe, 2011: 140).

Blasphemy crimes have changed over time and now have vastly different contents. Historically, many Christian societies have taken precautions to minimize the crime of blasphemy. Some of the states that now have blasphemy laws have recently removed or are considering removing them (Doe, 2011: 140-141). It is crucial to note in this context that the crime of insulting religion has evolved over time. Although not in terms of content, the crime in question has been founded on social peace rather than religious protection due to the limitations set within the framework of the violence of the expression used (Ahdar and Ian, 2013: 436).

On the other hand, the prohibition of blasphemy remains in many Islamic societies. State practices show that this prohibition is enforced. The Constitution of Pakistan provides that "Every citizen has the freedom of speech and expression", however, freedom which is subject to reasonable restrictions imposed by law in the interests of Almighty Islam. On this legal basis, the restriction of the basic freedom of expression incomprehensibly facilitated, leading to the collection of the prohibitions of the penal code, which covers a wide range of different forms of blasphemy, dealing with "crimes related to religion". Even though there is no provision in the Qur'an stating that death or any other punishment is mandatory in case of insulting religious values and blasphemy, sanctions may be set forth by the state (Baderin, 2005: 128) and judicial organs to punish those who use such expressions and the Prophet. Those who disrespect Muhammad and other holy Islamic elders can be punished with life imprisonment, death or imprisonment, respectively (Temperman, 2008: 522).

The topic is still being debated in the historical process. Especially in today's world, where information and news are more readily available, a film or advertisement that offends religion can be instantly accessed from anywhere in the globe, prompting protests from believers. These reactions can sometimes gel out of control, causing social upheaval.

3. THE CRIME OF PUBLICLY HUMILIATING THE RELIGIOUS VALUES ADOPTED BY A SECTION OF THE PEOPLE IN THE TURKISH CRIMINAL LAW

3.1. Protected Legal Interest

There is a legal subject to every crime. The subject of the crime is the legal subject of the crime, the person or thing to whom the action is directed. The subject of the crime, on the other hand, is the legal entity or interest that is directly violated by the crime (Artuk, Gökçen and Yenidünya, 2013: 280). When a legal issue or a legal interest is discussed, it should not be understood as a tangible or visible material interest, but rather as the moral ideals of the social order based on security, peace, and the dignity of existence in society. Criminal law protection entails that behaviors that are prohibited by law are appropriate in order to injure society's interests (Koca and Üzülmez, 2012: 107). The legal value protected in the crime of insulting religious values is "public peace". In the crime of insulting religious values, which is a danger crime, only the emergence of danger is sufficient in terms of the protected interest. In other words, the risk of harm is not required in violation of the protected legal interest (Aksoy İpekçioğlu, 2009: 183).

3.2. Public Peace

The concept of public peace, which is mentioned in TPC 216/3, is also mentioned in the title "Crimes Against Public Peace" in the third part of the second book, Special Provisions of the TPC No. 5237, which regulates "Crimes Against Society." The order in which the law rules supreme in the interactions of individuals is known as public peace. The concept of public peace encompasses both a broader and a narrower definition than that of public security (Yurtcan, 2020: 28). The crime of insulting religious values includes the element of "suitable to disrupt public peace," which restricts the scope of the article. For this reason, if the act in question is related to the person himself/herself, the relevant provision of the law will not be applicable, as it cannot be claimed that the public peace will be disturbed (Malkoç, 2007: 3610).

3.3. Perpetrator of the Crime

A human characteristic is the ability to use willpower and behave properly, that is, to act deliberately and with willpower. A dead person or object, like animals, does not have the ability to move willingly. As a result, the perpetrator of a crime must be human (Artuk, Gökçen and Yenidünya, 2013: 23). Although there is no distinction between being a woman or a male when it comes to committing crime, our legal system does make some "positive discrimination" in favor of children, women, and the elderly when it comes to punishment and execution (Hafizoğulları and Özen, 2014: 373). Another issue regarding the perpetrator is that there is no difference between a normal person and a "freak". The points explained above are also valid in the crime of insulting religious values, that is, no special situation is foreseen in terms of the institution of perpetrator in this crime, and any person can be the perpetrator of the crime. As a matter of fact, in the law, it is claimed that the perpetrator can be any person who has

the capacity to commit a crime, with the provision that "a person who openly incites a segment of the public with different characteristics in terms of social class, race, religion, sect or region to hatred and enmity against another segment" (Artuk, Gökçen and Yenidünya, 2013: 208).

3.4. Victim of Crime

Every crime protects a value, and as a result, there is a violation of a legal interest, necessitating the search for the person who has been harmed by the crime (Hafizoğulları and Özen, 2014: 208). The victim is the person who is the subject of the crime in this context, and only real people can be victims (Artuk, Gökçen and Yenidünya, 2013: 24-25). The legislator accepts the concept of insulting religious values, which is organized as a crime, as disrupting public order. The victims of the crime in question are the people and the religious values they have. As a matter of fact, the article of the law includes the public as a protected value with the expression "religious values adopted by a part of the public". What the legislator meant by the public should be understood as an indeterminate human community (Yaşar, Gökçen and Artuç, 2014: 6544). As a matter of fact, if the addressee of the expression used can be determined, the sanction regulated in TPC 125/c paragraph will be applied, not TPC 216/3, but insulting people by mentioning things considered sacred according to their religion.

3.4.1. People and Religious Values Adopted by the People

In the context of Criminal Law, society is a whole that composes the people. Regardless of their religion, ideology, ethnic origin, race or creed, a group of people who are brought together by common common denominator, feelings, ideology and spiritual values or who share the same values is called the people (Artuk, Gökçen and Yenidünya, 2013: 733). In paragraph 216/3 of the TPC, it is stated that the victim is the people.

On the other hand, there are different viewpoints on how acceptable religious values, which are a legal value protected by the law, are embodied in the law in the form of religious values adopted by the people. When it comes to legal review, especially when it comes to the protection of religious values, the idea of religion, which can be described as a dictionary term, is more difficult to fill in. While the former TPC numbered 765 limited what should be understood by religious values to "God, religions, prophets of religions, and holy books," the phrase "religious values" was preferred instead of the abovementioned rule in TPC 216/3. It is stated that what is meant by religious values is the belief system, religious elders, places of worship and practices attributed to religion (Yaşar, Gökçen and Artuç, 2014: 6075).

3.5. Elements of Crime

3.5.1. Material Elements

The material element of the crime of "insulting religious values" in paragraph 216/3 of the TPC is to openly humiliate a part of the public's religious values in a way that is likely to cause public disorder.

The article's key action element is the humiliation of religious values, as stated in the text. Simultaneously, the act of humiliation must be committed in public for the crime to be committed. Finally, if the stated act is committed through the press or broadcasting, the punishment imposed under Article 218 of the TPC may be increased by half.

3.5.1.1. Humiliation Action

Since there is no limitation in the text of the law regarding the form of humiliation and the means to be used, it can be processed as verbal expression, artistic expression, picture or caricature. The significant thing is that the forms revealed in these ways have the intention of insulting the religious values protected in the article.

Danger crimes are those that have the potential to do harm. In such crimes, the possibility of harm means danger (Aksoy İpekçioğlu, 2009: 183). It is sufficient to say the insulting word, to publish or distribute the article, that is, to make it public, in these crimes where only the possibility of danger is sufficient, because this crime is considered a danger crime, and there is no need for the people to feel that their religious values are humiliated. It is enough that the action is humiliating from an objective standpoint. For these reasons, offending religious values is a danger rather than a harm crime, and it is a real rather than an abstract danger crime. For this reason, the judge who made the decision should discuss how the public order was disturbed with the expression used in his reasoning (Artuk, Gökçen and Yenidünya, 2013: 6558). Public peace must also be disturbed in order to punish the insulting expression that is considered to be a crime.

3.5.1.2. Publicity

The concept of publicity is used as a technical term in the legal literature. The term "publicity" is rather used to mean "in a way that everyone can know" and "in public" (Gülseren, 2014: 33). In the case of statements made using the press or the internet, social media, the element of publicity will come true automatically.

3.5.2. Moral Element

It is not enough in the context of criminal law to have a voluntary act for the development of the crime, that is, for responsibility to arise, but it must also occur in the spiritual element. In this case, the moral aspect of the crime is intent and negligence. In Article 22 of the TPC, it is declared that actions of negligence shall be punished in cases when the law clearly states such. In other words, it should be specified in the law's text that if the crime is committed as "negligence," a penalty will be applied. Since there is no statement in the regulation on the crime of insulting religious values in TPC 216/3 that the type of crime envisaged by law can be committed by negligence, this crime can only be committed intentionally (directly or with possible intent) (Gülseren, 2014: 33-34).

3.5.3. Element of Illegality

The presence of material and moral factors is insufficient for a crime to happen, and it should not be assisted by any legal justification (Hakeri, 2012: 240). It is not enough for the perpetrator to break the law in order to commit a crime. Following the completion of the material and moral elements, it will be researched whether the reasons for following the law are present in the current event (Heinrich, 2014: 197). The act will be illegal if the perpetrator is not benefiting from any illegal purpose. When it comes to illegality, it simply means breaking the law or being in disobedience to it. As an element of crime, illegality means that the act that is committed and that is in accordance with the type in the legislation is not allowed by the legal order, that this act is deemed objectionable, and that it is in conflict and conflict not only with the criminal law, but also with the whole legal order (Artuk, Gökçen and Yenidünya, 2013: 479). In the second part of the TPC numbered 5237, titled “Reasons that abolish or reduce criminal responsibility”, the reasons for compliance with the law and the reasons that eliminate or reduce culpability are arranged together. The reasons for compliance with the law in the TPC are fulfilling the law (Article 24/1 of the TPC), self-defense (Art. 25/1 of the TPC), exercising the right (Art. 26/1 of the TPC) and consent of the person concerned (Article 26/2 of the TPC).

In the case of insulting religious values, Article 218 of the TPC states that if the crime is committed through the press or broadcasting, the penalty would be increased. According to the aforementioned article, however, it is not a crime to make statements of opinion that do not go beyond the scope of reporting and are made for the purpose of criticism. Acts such as freedom of expression, which is guaranteed by the Constitution, and the right to inform, which is a component of freedom of expression regulated by the Press Law, will not be considered crimes within the scope of the article's limitations. When the above explanations are evaluated together, the perpetrator will be able to benefit from the exercise of the right specified in the 26/1 TPC paragraph as a reason for compliance with the law in any investigation or prosecution to be made for the crime of insulting religious values.

3.5.4. Special Appearances of The Crime

3.5.4.1. Attempt

In order for a crime to be completed, all of its elements must be terminated and concluded. The crime will not be completed if one of these factors is lacking. The situation of beginning or not finishing the execution of a crime expresses a material element deficiency (Özgenç, 2013: 206). The act regulated in the text of the law relating the crime may have begun, but it is possible that the execution activities have not yet been completed. However, even if the executive steps were accomplished, the consequence indicated as a separate element in the law's text addressing the crime may not have been realized. In such cases, there should be a provision in the law in this direction to punish the perpetrator for attempting to commit a crime due to the fact that he/she has entered the criminal path (Özgenç, 2013: 454). In other words, if there is a provision in the law that explicitly punishes the attempt related to the crime, the

perpetrator can be punished. Considering that one of the founding elements of the crime of insulting religious values is the element of publicity, this can happen if the perpetrator prevents any word or expression from gaining publicity. An example of the issue is the request for the article to be sent to the related media organ and not to be published after the crime that can be committed through the press and broadcasting (Yaşar, Gökcan and Artuç, 2014: 6567).

3.5.4.2. Participation and Session

More than one perpetrator must be involved in the commission of the crime in order for it to be mentioned. This involvement in crime can be both material and moral. Despite the fact that the contribution to the formation of the crime is minor, there may be acts of different nature. However, the participants' acts must have meaning in terms of the causal relationship (Özbek et al., 2012: 518). In terms of the type of crime, all sorts of participation are available in the crime of insulting religious values. Because the legislator did not seek a special status as a perpetrator in this case (Yaşar, Gökcan and Artuç, 2014: 6567-6568).

Before moving on whether to apply the jurisprudence regarding the type of crime regulated in TPC 216/3, it is necessary to define what the jurisprudence is. In criminal law, a separate sanction has been arranged for each act. The exception to this is the aggregation of crimes. In other words, it is the determination of a single crime for more than one act.

It is feasible to combine multiple crimes in a single perpetrator while still protecting a legal interest in the juxtaposition of crimes. In other words, despite the fact that more than one crime has been committed, it is the violation of a single legal benefit or the same legal benefit by distinct actions (Özbek et al., 2012: 535). If more than one legal benefit is broken by more than one act, there will be more than one crime, and true communion will arise (Özbek et al., 2012: 535-536). However, since the same legal benefit is violated by more than one act in intellectual gathering, different punishments are not applied for each crime when evaluating the perpetrator's responsibility in this case. For example, if a person who writes an article on insulting religious values writes more than one article and commits the crime with these articles, he/she will have committed the said crime in a chain manner and the penalty will be increased for a single act. As the legislator does not foresee any exception or special regulation regarding the combination of crimes in terms of insulting religious values, the general provisions of the TPC regarding the combination of crimes will be applied in this crime.

3.5.4.3. Sanction

Punishment, or sanction, is the penalty imposed on a person who commits a crime in return for the gravity of the act committed, and it causes the perpetrator to lose some of his or her rights (Şafak, 2005: 60). Sanction is a deterrent punishment that is imposed following a judicial decision in order to show that society does not accept such behavior by subjecting the criminal to some deprivations, as well

as the individual to some deprivations in exchange for the damage he/she has caused to society through the act committed (Demirbaş, 2012: 531).

For the crime of insulting religious values, Article 216/3 of the TPC. The sanction stipulated in the article is imprisonment from six months to one year. The penalty will be increased by half when Article 218 of the TPC is applied. No sanction other than imprisonment is predicted for those convicted of committing the crime of insulting religious values. However, because the penalty for insulting religious values is less than 2 years, if the accused consents, the related court may decide to postpone the announcement of the verdict regulated in Article 231/5² of the Criminal Procedure Code No. 5271.

3.5.4.4. Prosecution Procedure and Competent Court

The crime of insulting religious values is a crime that can be investigated ex officio. Pursuant to Article 10 of Law No. 5235, the lower limit of the prison sentence stipulated for the crime is 6 months and the upper limit is 1 year. If the crime is committed through the press and broadcasting, it will be the Criminal Court of First Instance in line with Article 7 of the Press Law No. 5187. The competent judicial authority is the authority in the place where the act of humiliation was committed (Yaşar, Gökcan and Artuç, 2014: 6568).

4. CONCLUSION

The crimes of inciting the people to hatred and enmity openly, humiliating a part of the people and publicly insulting religious values, which are regulated in Article 216 of the TPC, prevent the conflicts of communities with different characteristics in social life, and the physical and psychological problems of the members of this community. They are the types of crimes that have been made in order to protect them from being harmed. The legal value protected by the aforementioned crimes is, in the end, public peace. Since actions of incitement to hatred and enmity, as well as humiliation, pave the way for the deepening of the social order by converting into future acts of violence (crime), causing feelings of hatred and hostility between the humiliated public and other segments of the population.

On the other hand, crimes of this nature also violate the human dignity of the community or its members, who are victims of incitement to hatred or humiliation because of some characteristics. This is shaped on the basis of the principle of equality, which is based on both the Constitution and the TPC, and in this sense, race, ethnicity, religion, sect, etc. It constitutes a violation of the principle of the rule of law, which is the duty of ensuring legal security without discrimination.

Although this is the victim's perspective on crime types, it should be noted that the perpetrator suffers a variety of penalties. Because the victim has a fundamental right to be protected from violence and exclusion, while the perpetrator has the right to freedom of expression. As a result, the

² In the 6th paragraph of Article 231 of the aforementioned law, it is claimed that if the accused is not accepted, the decision to postpone the announcement of the verdict will not be made.

disproportionate restriction of freedom of expression, as well as the threat of punishment or destruction, which is the guarantee of an individual's spiritual being, results in a violation of the perpetrator's human dignity and, as a result, the rule of law principle. In this regard, it is possible to claim that these types of crimes have a very sensitive place in terms of protecting the rights of both the victim and the perpetrator within the principle of the rule of law. Our opinion is that the legislator has also taken into account this delicate balance, and therefore, especially in terms of paragraph 1 of Article 216 of the TPC, the punishment of incitement to hatred and enmity is attributed to the emergence of a clear and imminent danger in terms of public safety.

The purpose of the “emergence of a clear and imminent danger in terms of public safety”, as stated in the first paragraph of Article 216 of the TPC, is to protect the life, bodily integrity, freedom, sexual immunity, property, etc. of the said sections of the population as a result of the feelings of enmity between the incited and provoked sections of the population. If there are heated debates in the public, certain groups react by making harsh statements, the democratic process works through the expression or discussion of thoughts, or the public's discomfort, anger, or dislike stemming from these discussions, it does not mean that there is a clear and imminent danger to public safety. The crime is envisaged in Article 218 of the TPC as being perpetrated through the press and broadcasting. In terms of paragraphs 2 and 3 of Article 216, the qualified state in question is also a common qualified state.

It is possible to claim that the characteristics that the people exposed to humiliation should possess in the 2nd paragraph of Article 216 of the TPC rely on a very narrow basis and lag behind today's developments. In our opinion, the victim of the crime should not be limited as a segment of the people who have different characteristics in terms of social class, race, religion, sect or region. The subject of the crime of inciting the people to hatred and enmity is the honor of the segment of the people who have different characteristics in terms of social class, race, religion, sect, gender or region. The crime is a danger crime. Since, in the text of the article, no harm is sought in the form of humiliation injuring the dignity and honor of the public, nonetheless it is considered sufficient to cause the possibility of harming these values.

When the historical development of the crime of publicly insulting religious values is analyzed, it is clear that the Law No. 765 lacks the exact equivalent of Article 216, paragraph 3 of the TPC. However, Article 175 of Law No. 765, paragraph 3, contains provisions that fall within the scope of our discussion. The public peace is the legal value that crime protects. However, it is said that this crime protects religious freedom as well. In our opinion, defamation of a religion or religious value should at least be subject to criminal law sanctions. In this sense, it is necessary/obligatory that it alone should not be capable of hindering or complicating the freedom to have a religious belief, to change religion or belief, or to manifest one's religion or belief, alone or collectively, through public or private worship, teaching, practice and ritual. Thus, it can be said that freedom of religion is not a legal value protected by this crime.

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