



WORKING SESSION I: FREEDOM OF EXPRESSION, FREE MEDIA AND INFORMATION

As delivered by Roger Kiska  
ODIHR-OSCE: Human Dimensions  
Implementation Meeting  
Warsaw, Poland: 26 Sept. to 7 Oct., 2011

Freedom of expression is not only a fundamental right; it is the right which in many emerging democracies has led to the change from dictatorship and oligarchy to democracy. Freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for each individual's self-fulfillment. The hallmarks of this freedom are broadmindedness, pluralism and tolerance. International case-law has defined tolerance to mean statements which are not only acceptable to all people, but also those statements which shock and offend. Precisely stated, there is absolutely no human right not to be offended. The cure to ignorant or even hateful speech is even more speech, greater debate and intelligent speech.

The OSCE region has been seeing a greater prevalence of "hate" speech laws in recent years. These laws sometime forget that freedom of expression can only be curtailed where it is necessary in a democratic society and only then, where the limitation is proportionate to the legitimate aim being sought with the interference. The classic example of a proper use of "hate" speech laws would be to prevent an objective and imminent threat of violence where the speaker is guilty of incitement. Such a limitation clearly pursues the legitimate aim of public safety while at the same time being necessary in a democratic society and proportionate.

However, while laws which merely seek to protect minority groups based on race, "sexual orientation" or some other defining characteristic do pursue legitimate and indeed moral aims, they cannot be said to be necessary in a democratic and pluralistic society. When courts and legislatures become the arbiters of what is and what is not acceptable speech, a type of inquisition begins to occur. Indeed here in Europe, we have seen that holding the so-called "wrong" belief or opinion can ruin lives, destroy careers and even lead to jail sentences. The examples of Pastor Ake Green of Sweden and Rocco Buttiglione of Italy are known by most and foreshadow where such "hate" speech laws may lead us in the future.

The Alliance Defense Fund, being an organization dedicated to the protection of religious liberties, is greatly concerned about the use of "hate" speech to attack religious speech regarding moral behavior. Biblical views which have been part of Orthodox and mainstream Judeo-Christian belief by the majority of Christians, Jews and Muslims regarding sexual behavior for example, must be exempted from "hate" speech legislation. The fact that it may be offensive to some does not reach the level of necessity required under the black letter of the law to allow for interference with freedom of religion and belief. Furthermore, courts and legislatures must be viewpoint neutral in the assessment of speech and cannot punish one view over another. Similarly, those who for example practice homosexual behavior, must have an equal right to view Christian dogma on sexual practice and incorrect. Such a back and forth presentation of views is a hallmark of democracy and pluralism and should be encouraged rather than stifled. **For this reason, the Alliance Defense Fund calls upon the OSCE to restrict "hate" speech laws to punishing only speech which is inciteful and where an imminent threat of violence occurs. "Hate" speech laws must also exempt religious speech, including that which deals with moral views.**