
Statement from the Gustav Stresemann Foundation e.V.

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Freedom of Opinion & Expression – Human Rights or Crimes against Humanity?

As one could gather from the press recently, the Turkish Prime Minister Recep Tayyip Erdogan demanded that »Islamophobia [be regarded] as a crime against humanity«. He managed »to include Islamophobia as a hate crime in the final statement of an international meeting in Warsaw« (whereby only this OSCE Human Dimension Implementation Meeting may be meant) and he wanted to submit the same at the United Nations as well. Furthermore, he is quoted as saying: »Freedom of thought and belief ends where the freedom of thought and belief of others start. You can say anything about your thoughts and beliefs, but you will have to stop when you are at the border of others' freedoms.«ⁱ

With astonishment and horror, we apprehend these statements, which of course contradict the fundamental idea behind general human rights; only with this contradiction is the definition of a »crime against humanity« even possible. Additionally, the following OSCE principles and commitments are violated:

- The participating States »will ensure that individuals can freely choose their sources of information. In this context they will [...] allow individuals, institutions and organizations, while respecting intellectual property rights, including copyright, to obtain, possess, reproduce and distribute information material of all kinds«. (Vienna 1989)
- »The participating States reaffirm that everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers«. (Copenhagen 1990)
- »The participating States reaffirm that freedom of expression is a fundamental human right and a basic component of a democratic society«. (Budapest 1994, Decisions: VIII. The Human Dimension)

Recommendations

The Stresemann Foundation recommends that the participating States adhere to the OSCE principles and commitments mentioned above. Additionally, we remind the respective parties of the following:

- the term »hate crime« is only used for crimes in accordance with the 2003/2009 OSCE Ministerial Council Meetings and »crime against humanity« is only used according to Article 7 of the Rome Statute of the International Criminal Court (1998);
- human rights are for people and do not apply to gods/religions, whose honor is also not a legally protected right;
- freedom of opinion and expression may only be curtailed by an independent tribunal and only where it explicitly infringes upon the freedom of third parties, particularly in cases of incitement to violence (violation of the social-peace decree and of the state monopoly on legitimate use of force), deliberate and direct defamation of others and infringement upon personal rights.

Justification

1) An Inappropriate International Legal Term

The term »crimes against humanity« comes from the time of the Nuremberg trials and is used to describe unimaginable crimes that do not only refer to a nation/ethnicity and therefore go beyond genocide. In order to avoid relativization of Nazi crimes, such a term should be chosen only with the utmost caution. Additionally, it can only be legally determined by the International Criminal Court (ICC) in The Hague.

The »London Charter« of 1945 (Article 6, Paragraph c) defines »crimes against humanity« as follows:

»namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.«ⁱⁱ

A »persecution on political, racial or religious grounds« by Muslims cannot be determined in the European Union because such a persecution would mean »the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.«ⁱⁱⁱ

2) Human rights do not apply to gods

The rights ensured in the UN Human Rights Charter apply to people, but by no means to a »god«, a religion or a »prophet«. A »god« or »prophet« cannot be a holder of fundamental rights, and his honor is therefore not a legally protected right as the area of transcendence eludes the rule of law.

Even if Muslims feel offended by the »insult« of their god/prophet/religion itself, these hurt feelings cannot be measured and are thus not a legally protected right. An insult of Muslims would therefore only exist if it were made with the intent to insult and in the presence of or in connection with actual Muslims.

3) Freedom of opinion and expression may only be curtailed by courts and only in extreme circumstances

The EGMR clearly ruled in 1977 that the right to freedom of opinion and expression applies not only to generally accepted opinions, »but also for those who offend, shock or disturb the state or any segment of the population. Pluralism, tolerance and broadmindedness, without which there would not be a democratic society, want it so«.^{iv}

Article 10 of the European Convention on Human Rights (ECHR) and Article 5, Paragraph 1 GG also provides that every citizen has the right to inform him/herself »without the interference of public authorities« and to hear every opinion. Curtailing the freedom of opinion and expression, which contributes to a public debate, also contradicts OSCE Copenhagen 1990.

Of course the freedom of opinion and expression – like any freedom – is linked to responsibility. Whoever insults or threatens the public safety of others with his expressed opinion must be held accountable for it, but only in an independent court, which must examine the legally protected rights.

A nation cannot prohibit the expression of opinions a priori by censorship, since it cannot determine which is the greater (legal) good, as this determination would always be dependent on the respective system or culture, such as in national socialism (»ethnic community«, »Aryan race«) and in the USSR (»socialism«) or today in nations dominated by Islam (»Sharia«). The freedom of opinion and expression especially means being allowed to call the »greater good« into question.

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ⁱ <http://www.turkishweekly.net/news/142051/pm-erdogan-islamophobia-should-be-recognized-as-crime-against-humanity.html>

ⁱⁱ »London Charta« (Charter of the International Military Tribunal), available online at: <http://avalon.law.yale.edu/imt/imtconst.asp>. Comparably formulated Article 7 of the Rome Statute of the International Criminal Court from 1998.

ⁱⁱⁱ Article 7, Paragraph 2, of the Rome Statute of the International Criminal Court. Emphasized by the author.

^{iv} EGMR in: EuGRZ 1977, 38ff. (42), Nr. 49.