

EQUAL VOICES

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The Right to offend and the right not to be offended

Interview with EU Commission Vice President Frattini

A free society needs free speech - Ursula Owen

Freedom of speech and hate speech - Amina Baghajati

How the cartoons row is a challenge to free expression - Aidan White

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European Monitoring Centre on Racism and Xenophobia (EUMC)
A-1060 Vienna, Rahlgasse 3
Tel.: +43 (1) 580 30 - 0
Fax: +43 (1) 580 30 - 93
Email: media@eumc.europa.eu
Web: <http://eumc.europa.eu>

Editors:

Beate Winkler, Waltraud Etz
John Kellock, Andreas Accardo

Art work: Luc Schwartz

European Monitoring Centre on Racism and Xenophobia
Observatoire Européen des Phénomènes Racistes et Xénophobes
Europäische Stelle zur Beobachtung von Rassismus und Fremdenfeindlichkeit



Welcome to Equal Voices

The team of the EUMC is pleased to welcome all readers to issue 18 of the magazine Equal Voices. Equal Voices content consists of in-depth articles and features with analysis, new research, surveys, expert input, concepts for successful integration and comments. The opinions expressed in this publication do not necessarily reflect those of the EUMC.

To develop the magazine further we would very much welcome your comments, your suggestions or proposals for issues to be covered in the magazine. You can contact us on e-mail: media@eumc.europa.eu

All major articles of the Equal Voices will be available in English, French and German on the EUMC-website: <http://eumc.europa.eu>

The EUMC team



Bienvenue dans notre magazine Equal Voices

L'équipe de l'EUMC est heureuse d'accueillir tous les lecteurs d'Equal Voices dans les pages du dix-huitième numéro de ce magazine. Equal Voices contient des articles et des éléments de fond ainsi que des analyses, des nouvelles recherches, des enquêtes, des contributions de spécialistes et des idées pour une intégration réussie et des commentaires. Les opinions exprimées dans cette publication ne représentent pas nécessairement celles de l'EUMC.

Pour nous permettre d'améliorer ce magazine, nous serions heureux de recevoir vos commentaires, vos suggestions ou propositions concernant les sujets que vous souhaiteriez y voir traiter.

Vous pouvez nous contacter par courrier électronique, à l'adresse: media@eumc.europa.eu

Les principaux articles d'Equal Voices sont publiés en anglais, français et allemand sur le site web de l'Observatoire: <http://eumc.europa.eu>

L'équipe de l'EUMC



Willkommen bei Equal Voices

Das EUMC-Team begrüßt alle Leser und Leserinnen zu dieser achtzehnten Ausgabe des Magazins Equal Voices. Der Inhalt von Equal Voices besteht aus Artikeln und Dokumentarberichten mit Analysen, neuen Untersuchungen, Erhebungen, Beiträgen von Experten, Konzepten für eine erfolgreiche Integration und Kommentaren. Die in diesem Magazin veröffentlichten Meinungen müssen nicht unbedingt mit denen des EUMC übereinstimmen.

Um das Magazin weiter zu entwickeln, nehmen wir gerne Ihre Kommentare, Anregungen und Vorschläge zu Fragen entgegen, die in dem Magazin behandelt werden sollen. Sie können uns per E-Mail erreichen: media@eumc.europa.eu

Alle wichtigen Artikel aus Equal Voices werden in englischer, französischer und deutscher Sprache auf der EUMC-Website veröffentlicht: <http://eumc.europa.eu>

Das EUMC-Team



Editorial

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The recent months have seen a heated debate on freedom of speech and hate speech, particularly with regard to what constitutes racist speech and Islamophobic expression. However, this topic is not only linked to current events such as the so-called “cartoon crisis”, but also to the wider issue of racist and antisemitic discourse. We therefore have to address key questions such as: “What does freedom of speech mean, and where are its limits? What does, in particular, qualify as hate speech – and how can the limits be drawn between the two?”

From an EUMC perspective, protecting people from racist and xenophobic discourse is a basic principle of any democratic society. Hate speech even undermines free expression: hate speech and incitement are deliberately intended to cause harm to people or groups of people. That is why the EUMC strongly supports the planned EU Framework Decision on Racism and Xenophobia, which has been proposed by the European Commission. This edition of the Equal Voices coincides with a conference on the planned EU Framework Decision on Racism and Xenophobia, so this magazine shall

serve as food for thought for the discussions around the EU’s plans in this field.

The protection from hate speech has to go hand in hand with the enjoyment of the right to freedom of expression – only together, they make democracy meaningful. In fact, freedom of expression is a core value in all the 25 Member states but has never been defined as an absolute right in European societies: All EU Member States maintain certain limits to freedom of expression, and the right to freedom of expression, under international law, may be restricted in order to protect, amongst others, the rights of others, or public order. These restrictions are defined and enforced by national law and the Council of Europe’s Human Rights Convention. The proposed EU Framework Decision would now ask Member States to ensure that public incitement to hatred or public insults of individuals or groups for a racist or xenophobic purpose are punishable.

But beyond legal action against racist discourse we should address the media to look at the opportunities to improve its reporting and editorial standards, and implement its own codes of conduct. There is much to be gained by the media through working more closely with civil society and faith-based organisations, for example, to counter deliberate or inadvertent stereotyping and present a more complete and contextualised picture of the various communities living together. There is also the long standing argument that tomorrow’s

journalists need to be better informed about societies that they live in and report on.

This issue of the EUMC’s Magazine Equal Voices brings together different views on the issue: NGOs, representatives of different religious communities, and media experts explain how they think hate speech can be tackled, and how freedom of speech should be applied in our societies. The EUMC has collected a diverse range of views and opinions, some of the views are strongly expressed, some of the views may not be to everyone’s taste or liking, but all the views require considered debate and are part of the oil that drives the machinery of democracy. The editors have therefore decided to leave the articles basically unedited. We would therefore like to underline that the views expressed in the articles are those of the respective authors and do not necessarily reflect the opinion of the EUMC. We hope that this Magazine can give a substantial and multifaceted input into the discussions on freedom of speech and its limits. To conclude, from an EUMC point of view, freedom of speech must be guaranteed and should be applied as broadly as possible for a democratic functioning of our societies, but at the same time it must be also be ensured that people are protected from hate speech and abuse. Freedom of speech is not an end in itself, but a means to a free society. So is respect for diversity – on the basis of human rights.

Beate Winkler
EUMC Director

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Interview with Commission Vice President Franco Frattini - “We must not allow the minority of extremists to win”.

Mr. Vice-president, the past months have seen a heated debate about publishing or not publishing the “Mohammed cartoons” that initially appeared in a Danish newspaper in September 2005. What is your personal conclusion from this debate?

The so-called “cartoons debate” has indeed been a heated one. I would like to believe that its most tense phase is now behind us, and that we can concentrate on the future.

As President Barroso explained before the European Parliament, the debate has raised several wider issues. I think that for each of them, we have drawn some lessons that will hopefully guide us towards deepening mutual understanding and respect.

During the debate, we have recognised that the publication of the cartoons aggrieved many Muslims all over the world, and that it is important to respect sensitivities. We have also been very firm in our condemnation and rejection of violent reactions, and we have noted that they have been the reaction of a minority, disowned by many Muslims. Equally, we have reaffirmed that our European society is based on the respect for the individual person’s life and freedom, equality of rights between men and women, freedom of speech, and a clear distinction between politics and religion. We



Vice President Franco Frattini, European Commissioner responsible for Justice, Freedom and Security

have said clearly and loudly that freedom of expression and freedom of religion are part of Europe's values and traditions, and that they are not negotiable.

My conclusion is that the debate has reminded us again that all these principles must be safeguarded. They should constitute a commonly shared basis for further dialogue between various communities ensuring they do not drift apart. Dialogue, including an interfaith and intercultural dialogue, based on tolerance, not prejudice, is the way forward. We must not allow the minority of extremists to win.

Does the right to free expression need limits in order to protect people in a diverse, multicultural society from offence and insult on the ground of race, ethnic origin, religion or belief?

Let me be clear: even if European societies become multicultural, freedom of speech, as an essential part of Europe's values and traditions, is simply not negotiable. Governments or other public authorities do not prescribe or authorise the opinions expressed by individuals. Conversely, the opinions expressed by individuals engage these individuals, and only them. They do not engage a country, a people, a religion. And we should not allow others to pretend that they do. At the same time, freedom of speech cuts both ways: Freedom of speech is the basis not only of the possibility to publish an opinion, but also to criticise it. All this is an inherent trait of our contemporary democratic European societies, and we have a duty to preserve it.

Coming now to the specific issue of racism, there are limits to freedom of expression that are defined and enforced by the law and

“There is no contradiction in simultaneously protecting people against racist speech and making sure that freedom of expression remains one of the key pillars upon which our societies, and the EU, are founded.”

the legal systems of the Council of Europe and the Member States of the European Union. These limits are set to protect other fundamental rights. In particular, Member States' domestic legislation already prohibits – albeit to a more or less far-reaching extent –

racist and xenophobic behaviour and speech.

Let's dispel a myth: there is no contradiction in simultaneously protecting people against racist speech and making sure that freedom of expression is and remains one of the key pillars upon which our societies, and the EU, are founded. How to do it precisely may not be an easy task, and I am the first one to admit that it requires careful consideration and in-depth discussion. But I cannot agree that protecting people from racist and xenophobic behaviour is incompatible with the basic principles of a democratic society. Rather, it should be one of its natural consequences!

Does the European Union need new normative rules to outlaw incitement to racial hatred?

Definitely yes. As a matter of fact, the EU already has legislation dealing with incitement to violence and hatred for a racist or xenophobic purpose, namely the 1996 Joint Action on combating racism and xenophobia. This instrument gives Member States the possibility to choose between punishing racist and xenophobic behaviour or derogating to the principle of dual criminality.

Nevertheless, as the European Parliament stressed several times, this Joint Action needs to be revised. When Europe is striving to become a common justice area, we need EU legislation establishing that the same racist and xenophobic behaviour is punished everywhere in the European Union. We should give perpetrators a strong signal that there will be no hiding

place within the EU for their activities. To date, Member States have not been able to reach an agreement on the proposal, and negotiations are unfortunately blocked. I remain very committed to re-launching discussions on the proposed Framework Decision, and I will personally take part in the seminar on the criminal aspects of racism and xenophobia that the Commission is organising together with the Austrian Presidency and the EUMC in Vienna at the end of June 2006.

What would such a law do for people in the European Union? Could you give a practical example of its benefits?

The main result would be that there will be no place in the European Union where perpetrators are free to behave in a racist and xenophobic manner. This means that whoever publicly incites to violence or hatred for a racist or xenophobic purpose, included through public dissemination or distribution of tracts, pictures or other material containing expressions of racism and xenophobia, would be punished.

Some people argue that the proposed Framework Decision would unduly restrict freedom of expression. Is the Framework Decision sacrificing this key European value? Would it nor restrict media freedom for instance?

I am convinced that the Commission proposal for a Framework Decision does not unduly restrict freedom of expression. As I have just indicated, I believe that it is perfectly possible to ban racist and xenophobic speech and at the

same time, bearing in mind that freedom of expression is a hard-won conquest that should undoubtedly remain one of the basic defining traits of European societies, both in law and in practice. The terms of the Commission proposal are carefully and precisely drafted in order to comply with the principle of proportionality, and thus with the freedom of expression. For instance, the Commission proposal lays down that several parameters have to be met for a given conduct to qualify as a penal offence under its terms: the act must be intentional and it must constitute an incitement to violence or hatred. I frankly do not see how this can be considered as an undue restriction to freedom of speech.

What else can the media do to curb racist discourse and to promote integration? Must the media do a better job at reflecting the diversity of society in programming and also human resources?

First, I think that we should not see the problems of racism and xenophobia in the media in isolation from the general problem of racism in the society. Racist and xenophobic content in the media, both reflects and fuels existing racism in the public. Therefore it is crucial to develop a general policy against racism and xenophobia. This is what the Commission is doing: putting in place a policy based on various instruments. These include legislative actions when appropriate, for instance, legislation proscribing racist and xenophobic speech altogether, in the terms that I just referred to. We also endeavour to mainstream anti-discrimination principles

across a wide range of EU policies. And last but certainly not least, the European Union has created the EUMC, whose work on racism and xenophobia will not be negatively affected by its transformation into a Fundamental Rights Agency. Quite the contrary, the fight against racism, xenophobia, anti-Semitism and Islamophobia will remain at the very heart of this new Agency.

As regards the media, I personally think that they have a very important role to play in promoting both freedom of expression and respect for each individual's deepest convictions. I would like to take this opportunity to clarify again that there have never been, nor will there be, any plans to have some sort of EU regulation on this, nor is there any legal basis for doing so. Here again, dialogue between all actors concerned (journalists, NGOs fighting racism and promoting integration, faith leaders) is the way forward. If the Commission is asked to provide some sort of support, I would certainly be willing to do so.

What are the next steps for the Framework Decision on Racism and Xenophobia?

The next step will be the holding of a seminar in Vienna at the end of June, which is organised jointly by the Austrian Presidency, the Commission and the EUMC, whom I take the opportunity to thank for their support. The Conference will examine the crucial issues of this dossier, and I hope that it will substantially contribute to its un-blocking. I will do my best so that discussions are thereafter taken up in Council.

Freedom of speech and offence: why blasphemy laws are not the appropriate response.

By Agnes Callamard

*"Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and **the advent of a world in which human beings shall enjoy freedom of speech and belief** and freedom from fear and want has been proclaimed as the highest aspiration of the common people, ...*

...

Now, therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction".

The views expressed in this article are those of the author and do not necessarily reflect the opinion of the EUMC.

Human rights are the foundation of human dignity, freedom, justice and peace. Behind each right, there is more often than not a history (and too often a present) of oppression. As such, they each play a role in the construction of our common humanity. But it is their togetherness that makes us all human. The 1948 Universal Declaration on Human Rights (UDHR) laid out equal rights for all people and three fundamental principles governing human rights: rights are universal, meaning that rights apply to everyone whoever or wherever that person is; inalienable, in that they precede state authority and are based on peoples' humanity; and indivisible in that all rights are of equal importance. The UDHR was also in-

tended to provide a common framework and understanding across nations for preventing the religious, racial, political and sectarian strife which plagued humanity throughout its history, culminating in the Second World War. This idea is forcefully expressed in the preamble of the UDHR, cited above, which aspires to the advent of a world in which human beings shall enjoy freedom of speech and belief.

The first few months of 2006 have reminded us that few rights generate as much controversy or make for greater angst than does freedom of expression: the cartoons depicting the Prophet Mohammed, the prosecution of David Irving, the controversy surrounding the Abu Ghraib and Basra photos: each does present very different legal, ethical and historical issues. But at the heart of the debates and attendant violence of the

last months are core questions: What are this right's boundaries? What should be the breaking point? Where is the threshold whose crossing means the space occupied is no longer that of individual freedoms but that of criminal behaviour? Is so-called blasphemy such a breaking point, as many have argued in the wake of the cartoons' publication? Or is the boundary crossed only once – as ARTICLE 19 advocates – words and pictures can be deemed to incite their beholder to hatred?

1. The aspiration

ARTICLE 19 considers freedom of expression as a cornerstone right – one that enables other rights to be protected and exercised. The full enjoyment of the right to freedom of expression is central to achieving individual freedoms and developing

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The full enjoyment of the right to freedom of expression is central to achieving individual freedoms and developing democracy.

democracy and plays a critical role in tackling the underlying causes of poverty¹. It makes electoral democracy meaningful and builds public trust in administration. Access to information strengthens mechanisms to hold governments accountable for their promises, obligations and actions. It not only increases the knowledge base and participation within a society but can also secure external checks on state accountability, and thus prevent corruption that thrives on secrecy and closed environments. Freedom of expression is also essential to the exercise of freedom of religion. And conversely, if people are not free to manifest their religion, there is no right to freedom of expression.

2. The restrictions

Yet, the right to freedom of expression, under international human rights law, may be restricted in order to protect, amongst others, **the rights of others, and public order, if it is "necessary in a democratic society" to do so and it is done by law.** This formulation is found in both the UN Covenant on Civil and Political Rights and in the European Convention on Human Rights. The protection of religious rights may fall under the 'rights of others' that may be protected. As far as freedom of religion is concerned, international human rights law imposes restrictions whose wording is also quite similar to freedom of expres-

sion language: *Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.*

The European Court establishes a strict three-part test for the restriction of freedom of expression, and for a restriction to be legitimate, all three parts of the test must be met:

- (i) a restriction must indeed pursue the legitimate aim that it claims to pursue;
- (ii) the restriction must be imposed in a democratic framework (so, either by parliament or pursuant

to powers granted by parliament); and
 (iii) the restriction must be “necessary in a democratic society”. The word “necessary” must be taken quite literally and means that a restriction must not be merely “useful” or “reasonable”.

Exactly what measures States impose to restrict freedom of expression is up to them, but the main parameter is that whatever they do has to be **“necessary in a democratic society”**. This really is crucial.

International law does impose, however, one clear positive duty upon states: as stated in Article 20(2) of the UN Covenant on Civil and Political Rights: *“Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”* This is the only duty that States are under in the context of restricting freedom of expression.

3. Blasphemy laws

Fundamental to the protection of human rights are the principles of the inherent dignity and equality of all human beings and the obligation of all Member States of the United Nations to take measures to promote “universal respect for, and observance of, human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion.”²² There is no denial that certain forms of expression can threaten the dignity of targeted individuals and create an environment in which the enjoyment of equality is not possible. For ARTICLE 19, such a risk may be provoked by expres-

sions that are hateful – but not by those that are blasphemous or offensive.

ARTICLE 19 recognises that reasonable restrictions on freedom of expression may be necessary or legitimate to prevent advocacy of hatred based on nationality, race, religion that constitutes incitement to discrimination, hostility or violence. The organisation does not extend such legitimate restrictions to offensive and blasphemous expressions. States may, but are not required to, introduce legislation on blasphemy. Several established democracies still have blasphemy provisions on

“Under international human rights law, the right to freedom of expression may be restricted in order to protect, amongst others, the rights of others, and public order.”

the books, although most of these are rarely, if ever, used. In the

United Kingdom, for example, there have been only two prosecutions for blasphemy since 1923; Norway saw its last case in 1936 and Denmark in 1938. Other countries, including Sweden and Spain, have repealed their blasphemy laws. In the United States, the Supreme Court steadfastly strikes down any legislation prohibiting blasphemy, on the fear that even well-meaning censors would be tempted to favour one religion over another, as well as because it “is not the business of government ... to suppress real or imagined attacks upon a particular religious doctrine ...”²³ In contrast, the European Court has found blasphemy laws to be within the parameters of what is “necessary in a democratic society”. The main reason for such ruling is one that calls into question the normative courage of the court, at least as far as this question is concerned: it considers State authorities to be in a better position than the international judge to give an opinion on the “necessity” of a “restriction” intended to protect from such material those whose deepest feelings and convictions would be seriously offended.

This is where ARTICLE 19 differs with the European Court of Human Rights and indeed with many laws and practices around the world. Our position is grounded on human rights, and in particular on the indivisibility of human rights – there cannot be a human rights justification to the existence and implementation of blasphemy laws.

First, ARTICLE 19 twenty years experience the world over has shown that the public good is better served by all-encompassing debate, even in harsh and offensive terms. From this standpoint, there is no evidence

that these laws are indeed “necessary”, but plenty demonstrating the opposite. Indeed, lessons from human history should dictate opposition to any attempts to stifle offensive or blasphemous speeches and discoveries. Freedom of expression is an “empowerment” right: It allows people to demand other rights - the right to health, to food, to a clean environment, to religion, etc. Curtailing this right on the basis of the possible offensive or blasphemous nature of an expression creates too great a risk to all freedoms for human rights gains that remain to be appropriately defined and justified. Indeed, as international human rights courts have stressed, the right to freedom of expression is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no ‘democratic society’.”⁴

Second, there is no actual evidence that the right to freedom of religion as understood under international standard is better served, or protected with or through blasphemy laws. Under international human rights law, freedom of religion, for instance, is not about respecting religion but about respecting people’s right to *practice* the religion of their choice. Do offensive statements threaten the ability of adherents to religions to exercise and express their own beliefs? This is highly doubtful. In a world where certain beliefs are recognised as more valid than others, what may befall their religion? The European Court of Human Rights has clearly ruled for

instance that the right to freedom of religion does not impose a duty of States to enact laws that protect believers from insult or offence (*Choudhury v UK*)⁵. In *Dubowska & Skup v Poland*,⁶ which concerned the publication in a newspaper of a

“The appropriate answer to hate speech is not just more speech – but also policies and actions to tackle the causes of inequality in all its forms and colours.”

picture of Jesus and Mary with a gas mask over their faces, the authorities had opened an investigation and examined all sorts of evidence, but decided not to take any further action. The Commission found that the publication in question had not prevented anyone from exercising their freedom of religion, and that the decision not to prosecute anyone did not, in itself, amount to a failure to protect the applicants’ rights.⁷

Third, we are also very concerned about abuse of blasphemy laws

throughout the world. In those situations that ARTICLE 19 monitors, blasphemy laws, even when they in theory at least extend to all beliefs and not just to state religion, are used to violate peoples right to freedom of religion – religious minorities are particularly targeted.

Blasphemy laws are the anti-thesis of human rights. At a normative level, they establish a hierarchy of beliefs that betrays the common understanding and intentions of the international human rights framework. Blasphemy laws are the Servants of Power and the means for religious persecution; they censor, they create a climate of fears, and they stifle artistic creativity, academic research, scholarship and freedom. They may also lead to imprisonment and death – thus violating the most potent human rights of all - the right to mental and physical integrity, and the right to life.

4. Freedom of expression and the right to equality

Unlike blasphemy laws, hate speech laws, at least in theory, seek to meet an essential human rights objective: protecting the right to equality, the right to mental and physical integrity, the right to be free from discrimination, and ultimately the right to life, as hate speeches have too often been associated with ethnic cleansing, wars, and genocide. From this standpoint, hate speech regulations may constitute a legitimate and potentially necessary restriction to freedom of expression. Yet, they cannot constitute the sole or indeed central response to prejudices, racism, and discrimination. The appropriate answer to hate speech is not just more speech – but

also policies and actions to tackle the causes of inequality in all its forms and colours.

(i) Carefully designed hate speech regulations

ARTICLE 19 insists that any so-called hate speech restriction on freedom of expression should be carefully designed to promote equality and protect against discrimination and, as with all such restrictions, should meet the three-part test set out in Article 19 of the ICCPR, according to which an interference with freedom of expression is only legitimate if:

- (a) it is provided by law;
- (b) it pursues a legitimate aim; and
- (c) it is “necessary in a democratic society”.

Specifically, any restriction should conform to the following:

- it should be clearly and narrowly defined;
- it should be applied by a body which is independent of political, commercial or other unwarranted influences, and in a manner which is neither arbitrary nor discriminatory, and which is subject to adequate safeguards against abuse, including the right of access to an independent court or tribunal;
- no one should be penalised for statements which are true;
- no one should be criminally penalised for the dissemination of hate speech unless it has been shown that they did so with the intention of inciting discrimination, hostility or violence;
- the right of journalists to decide how best to communicate infor-

mation and ideas to the public should be respected, particularly when they are reporting on racism and intolerance;

- care should therefore be taken to apply the least intrusive and restrictive measures, in recognition of the fact that there are various available measures some of which exert less of a chilling effect on freedom of expression than others; and
- any imposition of sanctions should be in strict conformity with the principle of proportionality, and criminal sanctions, in particular imprisonment, should be applied only as a last resort.⁸
- Restrictions must be formulated in a way that makes clear that its sole purpose is to protect individuals holding specific beliefs or opinions, whether of a religious nature or not,⁹ from hostility, discrimination or violence, rather than to protect belief systems, religions, or institutions as such from criticism. The right to freedom of expression implies that it should be possible to scrutinise, openly debate, and criticise, even harshly and unreasonably,¹⁰ belief systems, opinions, and institutions, including religious ones,¹¹ as long as this does not advocate hatred which incites to hostility, discrimination or violence against an individual.

(ii) Media self-regulation

ARTICLE 19 believes that independent media organisations, media enterprises and media workers have a moral and social obligation to make a positive contribution to the fight against racism, discrimination,

xenophobia and intolerance, to combat intolerance and to ensure open public debate about matters of public concern. As far as Public Service Broadcasting is concerned, ARTICLE 19 is of the view that they have a legal obligation to play such a function.

There are many ways in which media can make a contribution to the fight against intolerance, including by:

- designing and delivering media training programmes which promote a better understanding of issues relating to racism and discrimination, and which foster a sense of the moral and social obligations of the media to promote tolerance and knowledge of the practical means by which this may be done;
- ensuring that effective ethical and self-regulatory codes of conduct prohibit the use of prejudicial or derogatory stereotypes, and unnecessary references to race, religion and related attributes;
- taking measures to ensure that their workforce is diverse and reasonably representative of society as a whole;
- taking care to report factually and in a sensitive manner on acts of racism or discrimination, while at the same time ensuring that they are brought to the attention of the public;
- ensuring that reporting in relation to specific communities promotes a better understanding of difference and at the same time reflects the perspectives of those communities and gives members of those communities a chance to be heard;
- ensuring that a number of

voices within communities are heard rather than representing communities as a monolithic bloc – communities themselves may practice censorship;

- promoting a culture of tolerance and a better understanding of the evils of racism and discrimination.¹²

(iii) Equality and anti-discrimination policies

ARTICLE 19 further believes that an effective response to vilifying expression requires a sustained commitment on the part of governments to promote equality of opportunity, to protect and promote linguistic, ethnic, cultural and religious rights, and to implement public education programmes about tolerance and pluralism. Restrictions on freedom of expression, in the

first place blasphemy laws, constitutes a blunt instrument that too often amounts to political expediency rather than well thought-through strategies to tackle discrimination, prevent violence and protect the right to life and the right to equality.

Conclusion

The events of the last months, in particular with regard to the so-called Danish cartoons, have placed freedom of expression at the heart of a global controversy and accompanying violence or threat of violence. What these events particularly highlighted is the grave shortcoming of leadership at all levels – global, national, community, sectoral – and its propensity to either escalate tensions and highlight divisions, or adopt politically expedient

measures. Freedom of expression *and* freedom of belief have been the hostages, scapegoat, and victims of these developments – *together*. The world has witnessed increased intolerance to both what is wrongly perceived as a Western (secular and anti-Islam) value and to Islam itself. Appropriate and legitimate responses must be grounded on the common framework and understanding of human rights laid down by the UDHR and other international instruments – it requires to move away – more than ever – from any attempts to protect certain sets of rights without due consideration of others and their impact on others. More than ever, the search must be to strike the right balance.

Dr. Agnes Callamard is Executive Director of Article 19.
<http://www.article19.org>

1 Catherine Pitt, Bridging the Human Rights and Development discourses: Is the Right to Freedom of Expression of use to Development?, dissertation, MSc in the faculty of Economics, LSE, London, 2005.
2 Article 55(c) of the Charter of the United Nations. See also Article 55 of the Charter.
3 Joseph Burstyn, Inc v. Wilson, 343 U.S. 495, 504-05 (1952).
4 Handyside v. United Kingdom, 7 December 1976, Application No. 5493/72 (European Court of Human Rights), para 49.
5 The applicant had unsuccessfully urged the prosecution of Salman Rushdie and his publisher for The Satanic Verses, which he considered offensive against Islam.

6 Dubowska & Skup v Poland, 18 April 1997, Application No. 33490/96 (European Commission of Human Rights).
7 Id., para. 2.
8 This list draws on the 2001 Joint Statement of the specialised mandates on freedom of expression.
9 Religion as used here is to be understood broadly and does not depend on formal State recognition.
10 The right to freedom of expression includes the right to make statements that 'offend, shock or disturb'. See Handyside v. United Kingdom, 7 December 1976, Application No. 5493/72, 1 EHRR 737, para. 49 (European Court of Human Rights).

11 ARTICLE 19 believes that blasphemy as a criminal offence should be abolished. Tolerance, understanding, acceptance and respect for the diversity of faiths and beliefs cannot be secured by the threat of criminal prosecution and punishment. This is becoming ever more relevant as our societies become more and more diverse.
12 This list is based on the 2001 Joint Statement on Racism and Media by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression.

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Journalism and Combating Intolerance: How the Cartoons Row is a Challenge to Free Expression and Quality Media

By Aidan White

The views expressed in this article are those of the author and do not necessarily reflect the opinion of the EUMC.

In a world of increasing anxiety where problems of religious intolerance, terrorism and ethnic conflict feature strongly on the news agenda, the role and responsibility of news media came into sharp focus early this year when the publication of a handful of cartoons sparked street protests, mob violence and the deaths of a number of people.

The global firestorm over the publication of cartoons of the Prophet Mohammed revealed a chasm of misunderstanding and ignorance in relations between Muslim and western communities and underlined why journalists need to be more conscious than ever about the dangers of media manipulation by unscrupulous politicians and racists.

Suddenly, and quite unexpectedly, media standards came under scrutiny as angry Muslims, many of them not particularly religious, protested at the perceived casual disregard of cultural sensibilities over the publication of images of the Prophet, which, through custom rather than doctrine, is traditionally frowned upon in Muslim societies.

It confirmed the feeling among many that, for all the talk of liberty, pluralism, and human rights, west-

ern media are narrowly-focused and inconsistent in their interpretation of what constitutes freedom of expression. Media were also accused of displaying shocking ignorance about other cultures, even when they form substantial minority communities within the local population.

When this controversy exploded across the globe, migrating from Denmark to Norway and then to mainstream media in Europe, it touched off a political storm about attachment to democratic values, about relations between media and

“Media are used to criticism and wary of where it comes from.”

government and the role of media in moderating the so-called “clash of civilisations.”

A wake up call for media

Within media and journalism, the controversy has served as something of a wake up call, initiating a round of debate and analysis among

journalists about how they do their job and what they need to do, if anything, to improve their performance.

The reaction of many journalists to this controversy was, at first, defensive. Media are used to criticism and wary of where it comes from. They have good reason to be suspicious. Journalists know that when media are taken out of the hands of professionals they can become destructive weapons.

In the 1990s, conflict in the Balkans and genocide in Rwanda provided brutal reminders that human rights law, journalistic codes and international goodwill count for little when unscrupulous politicians, exploiting public ignorance and insecurity, use compliant media to encourage violence and hatred.

In the 2000s, a new war in the Middle East, the manufacture of a clash of civilisations between Christianity and Islam, and a resurgence of community conflict in Europe, dramatically exposed by violence in the urban centres of France, the UK, the Netherlands and elsewhere, have all stirred centuries-old resentments about foreigners in our midst.

The problem of intolerance is a constant threat to good journalism everywhere. Urban violence in North America and Europe, the rise in influence of extremist right-wing political parties, the re-emergence of anti-Semitism, widespread reli-

gious intolerance in parts of Africa, Asia and the Middle East, and prejudice and discrimination against national minorities on the basis of language and social status, are all part of the global landscape of daily news reporting.

In this complex news environment, journalists can become casual victims of prejudice and political ma-

to media stereotypes that reinforce racist attitudes and strengthen the appeal of political extremists. Certainly that's how many people in the Muslim world saw the row over cartoons of the Prophet Mohammed.

They point to European media stereotypes of the Arab world that seem to be greater and more dangerous than they have been for

pear to regard engagement with religious communities as compromising progressive values rather than an opportunity for dialogue in order to win people over.

It is indisputable that the emphasis on terrorism and fanaticism in the Arab world has been made worse by the war on terrorism launched by the United States after the Septem-



Photo: EUMC, Luc Schwartz

Journalist meeting to discuss the media's role in intercultural dialogue and the fight against racism in Vienna in May 2006
(meeting organised by the Austrian presidency, the EU Commission and the EUMC)

nipulation. Too often, ignorance and a lack of appreciation of different cultures, traditions and beliefs lead

decades. They say that media fail to distinguish between fundamentalism and mainstream Islam and ap-

ber 11 attack on New York and Washington.

It is an obsession, fed by sensationalist and superficial reporting of conflict in the Middle East and nurtured by extremist politicians, and it has contributed to an increasingly fearful climate within previously stable metropolitan communities in Europe.

Today in countries with a history of tolerance in past decades like Belgium, France, Austria and the Netherlands, and in the Nordic region, a toxic cocktail of prejudice and ignorance about Arab culture is leading to a resurgence of extremist politics not seen for 50 years.

The cartoons controversy as a test case

The cartoons controversy provides something of a case study on the positive and negative role media can play in turbulent times. What began as a legitimate journalistic exercise (dubious judgement, perhaps, but the original commission of the cartoons was entirely legitimate) got out of control when it became politicised. Some journalists and media became engaged in editorial activity which provided nourishment for some deeply unpleasant politics.

The argument of editorial legitimacy and relevance for publishing the cartoons, not for reporting the argument, became more difficult the further the story travelled from its point of origin. It became for many in journalism a test case for basic democratic values and free expression. If it was, I think that, all in all, journalism generally passed the test.

No story in recent history has been discussed in so many newsrooms. In almost every daily newspaper, tele-

vision and online news business, not just in Europe, but around the world, the discussion raged – whether or not to publish these cartoons. Arguments flowed back and forth about how to cover the story, with or without the cartoons?

There's no doubt about the majority verdict. In the end hardly one per

“European media stereotypes of the Arab world seem to be greater and more dangerous than they have been for decades.”

cent of publications in Europe and many fewer across the world decided to publish. On television the numbers were even less.

The vast majority of journalists considered the issue and decided against publication. These were judgement calls freely made, in Europe at least. It was a demonstration that freedom of expression is not just about the right to publish, it is equally about the right not to publish, and that journalists can and do balance carefully the three cardinal principles of their trade – to respect

the truth, to be impartial and to minimise harm.

Regrettably, those who decided to publish in many parts of the Muslim world suffered most, illustrating what we all know about the distance yet to be travelled by some countries along the road to democracy.

What journalists can do

This controversy raised a number of serious questions about how media work. How do news media defend themselves from outside pressure? What can journalists do to improve ethical standards, particularly when they are in the crossfire of social conflict? What standards do media professionals need to set to bring balance and equality into the way media work that will, in the process, improve the quality of reporting?

Above all, the row has challenged media professional groups – in both Europe and the Arab world – to establish a dialogue on how best to balance cultural and religious sensitivity and the right to free expression.

To kick-start this process the International Federation of Journalists brought together some leading professional groups, journalists and others, including the European Commission, Unesco and the Council of Europe, to talk through some of the arguments in Brussels in February.

We emerged, predictably, with no magical or simple set of solutions, but at least with agreement on a rejection of violence, a call for dialogue, a restatement of democratic values, and for journalists to be al-

lowed to work freely without interference. A joint declaration was signed by all professional groups present except newspaper publishers.

Another professional meeting was held at the end of March in Oslo bringing together journalists and experts from the Arab world, Norway and Denmark. The conclusions were much the same – that the cartoons dispute should set editorial alarm bells ringing, that media need to improve their performance and that journalists need to rebuild confidence in the notion that media speak for everyone, not just for the settled majority.

These initial discussions also reveal that freedom of expression is not some inflexible, one-size-fits-all concept. It differs from country to country. We all grow up with taboos, which vary from culture to culture, but when they are applied with widespread and common consent, they do not compromise principles set out in Article 19 of the Universal Declaration of Human Rights which states that everyone has the right to receive and impart information.

How to apply freedom of expression?

But there is much inconsistency in how we apply this principle. In Europe many countries still have punitive laws on blasphemy and there are places where you can be prosecuted for wearing Nazi insignia. As the historian David Irving discovered in Vienna earlier this year, there are also countries where you can go to prison for denying the Holocaust. While freedom of ex-

pression fundamentalists have no problem in confronting all taboos, without fear, mainstream media in the West do take account of national customs, traditions and cultural thinking in making their news judgements. No wonder some Muslims are confused when their complaints over the cartoons are dismissed as an attack on European ideals of freedom of expression.

At the same time in the Arab world, where organised and violent demonstrators laid siege to western embassies amidst calls for trade boycotts and reprisals against Danish and European media, there were no blushes, apparently, over the fact that Arab newspapers have for years carried vicious caricatures portraying Jews and Israelis in a manner that any civilised person would find shocking and unacceptable. How

“Freedom of expression is not just about the right to publish, it is equally about the right not to publish.”

does this grotesque contradiction sit with complaints about cultural sensitivity?

In reality, there is a mix of approaches that generally work well

together. Differences and distortions only come to the surface when issues become instruments of political in-fighting.

Agreeing on media standards

The meetings in Brussels and Oslo dealt with all of this in restrained, professional and balanced discussion. There is agreement all round, at national and international level, that discrimination within media should be wiped out and that journalism should put populist and dangerous ideas under proper scrutiny. We need standards for reporting which ensure people get the information they need, without lashings of bias and prejudice.

But how? As a modest start, the meeting in Oslo called for a new umbrella group within media to be established to co-ordinate actions at national level to bridge the gulf of misunderstanding between cultures that led to the cartoons controversy in the first place. In Brussels the IFJ (International Federation of Journalists) was asked to continue to bring groups together.

The starting point for this work must be to raise awareness within media about the issues and to promote changes that will strengthen journalism by putting the focus on ethics and quality. Ethical codes will not solve all the problems of intolerance in media, but they help journalists to take responsibility and they encourage journalists to act according to their conscience.

Regulating ethics is the collective business of journalists, not principally of the corporations which commission and carry their journal-

ism, and especially not of governments. Governments have a legitimate role in regulating media structures to try to ensure the diversity necessary for freedom of expression to flourish, but journalists' ethics are a matter of content, and when it comes to what news media write or broadcast, governments have no role to play, beyond the application of general law. If the cartoons issue achieved nothing else, it united journalists – from both Europe and around the Muslim world – in their opposition to new codes and supranational rules imposed by governments.

The controversy was proof positive that editorial judgement, exercised freely, is what works best. Ethics, therefore, have to be actively supported, and particularly the prohibition of discrimination on the basis of religion, race or nationality, which is one of the most general features of professional codes agreed at national and international level. But like all the other skills of journalism: it takes training, time and effort to become good at apply-

ing ethical codes which direct thinking and permit conscious decision-making.

“To be effective, journalism must be inclusive, accountable and a reflection of the whole community.”

The Oslo meeting went further and adopted a range of objectives for work at national and international level, in particular to campaign vigorously to recruit more people from different ethnic and cultural groups into journalism. To be effective, journalism must be inclusive, ac-

countable and a reflection of the whole community.

Take the example of Norway, which is one of the world's leading democracies and renowned for its traditions of decency: only a handful of journalists from different social, ethnic or cultural backgrounds work in media. Editors and journalists pledged to do something about this. The argument for internal diversity is not about “do-gooder” journalism, but aims to improve efficiency, professionalism and performance.

If these new initiatives gain support, they will provide some lasting benefits. In this sense the cartoons row is not all bad news. It has, at least, opened the eyes of many in western media to their own poor performance and it should reinforce the efforts of journalists and others to support the movement for progressive change throughout the Middle East.

Aidan White is General Secretary of the International Federation of Journalists <http://www.ifj.org>

A free society needs free speech

Ursula Owen

The views expressed in this article are those of the author and do not necessarily reflect the opinion of the EUMC.

In today's climate, it is perhaps important to reiterate why free expression matters: We are living in a world where people with widely different cultural habits and beliefs, re-

ligious or otherwise, are living in close proximity. Communication across continents can be achieved by the touch of a button; news travels thousands of miles in minutes.

In this world, where misunderstandings happen easily and people are prone to take offence, the power of words (and images) is coming under

the closest scrutiny. And the issue of offence, of religious and other sensitivities has become paramount and is challenging the right to free expression. Indeed, I would go so far as to say that this issue is making free expression a fairly unpopular cause.

No one ever said that free expression was uncomplicated. But those

of us who believe passionately that free expression matters, that it is the basis of all other human rights, feel some alarm at the tendencies in the world today. The story of the Danish cartoons, where some 50 people died in confrontations at demonstrations worldwide; the jailing of the British Holocaust denier David Irving in Austria; the violence of sections of the Sikh community in Britain that forced the closure of a play written by one of their own; these are just three recent examples of how the issue of offence threatens free speech.

These are complex issues with different historical, legal and ethical roots. One of the great defenders of free speech, Ronald Dworkin, has recently stated that there are three main reasons why free expression matters. First, we cannot accept collective control of the culture. This means, as George Orwell so eloquently stated, that we must have the right to tell people what they do not want to hear. Then there is the essential issue of democratic transparency, where a free press – the fourth estate, the watchdog – has a duty and responsibility to hold government and other powerful groups accountable. And last, and perhaps most difficult, there is democratic fairness; if we want people to accept democratic procedures and laws that express the will of the majority, then everyone must have not just a vote but a voice, however much we may dislike what they are saying. This of course puts the censoring of ridicule out of bounds.

So what are the responsibilities of the media in all this, and how has it performed? Is it part of the problem or part of the solution? The answer is a mixed one. As far as free ex-

pression is concerned, the media does not always probe enough, or reveal what has been left unsaid or campaign for what it believes in. What happened to the play *Behzti* (Dishonour) was one of the worst blows to free expression in the UK for years. Gurpreet Kaur Bhatti, a young devout Sikh woman, wrote a

“If we want people to accept democratic procedures and laws that express the will of the majority, then everyone must have not just a vote but a voice, however much we may dislike what they are saying.”

play which raised the possibility that principles of equality, compassion and modesty are sometimes discarded in favour of outward ap-

pearance, wealth and quest for power.

The play was put on in Birmingham, but had to be taken off because of violence from a section of the Sikh community. Bricks were thrown in the theatre foyer, and neither the theatre nor the police could vouch for the audience's safety. The playwright was forced into hiding, needing police protection. The British government made a weak statement to the effect that the protestors also had a right to free speech – something that no one would deny. But they did not have the right to violence, and no one was prosecuted for it.

A wide range of voices was heard in the media over this event, in my view a real turning point, a symbolic moment which will have given other groups the idea that violence is legitimate in trying to silence people they do not want to hear. But only one newspaper published any part of the play, and then only a very small extract.

I saw no interviews with any Sikhs who committed the violence, or with those who had been consulted over the play, or with the actors. And I believe the event was so important that the media should have campaigned for this play to be put on, in safety, with police protection. Campaigning is an honorable tradition for the media, and this case needed it.

As for the media and the Danish cartoons, a lot has already been said about this and I do not plan to repeat it. Certainly both sides had their own agenda. Some argued that repeating the publication four months after the cartoons first appeared was

provocative, that the media has a responsibility to consider the likely results of publication.

Some argued that though there must be a right to publish it is not necessarily always the right thing to do (this was the position of the British media). Others felt that free expression must be asserted against threats of violence, regardless of results. It is also generally accepted that the wave of rioting four months after the cartoons' publication was politically orchestrated.

In the media, many voices were absent. The editors who chose to publish cartoons were not interviewed at any length. Only the Danish media, of course, and the French daily

Le Monde seriously interviewed the cartoonists, some of whom had some interesting things to say ('I always knew this was a provocative act by our newspaper' said one).

Le Monde also quoted the Arab press based in London, papers such as al-Quds al-Arabi, Asharq al-Awsat, some of them Saudi backed, which all repudiated the violent threats accompanying some of the protests. Otherwise there were few voices from moderate Muslims in the media at all, who when they could speak, on the one hand repudiated the fuss but also expressed their sense of not being heard.

Democracy is a messy business, but it's what we must fight for, and for

the freedom of speech that goes with it.

Hans Magnus Enzensburger once said "with democracy all the dirt comes out". The fact is that it is an occupational hazard of living in a democracy that one might be offended. It is not a democracy if, in passing laws, a government has prevented anyone from stating his convictions about what those laws should be. Democracy is a messy business, but it is what we must fight for, and for the freedom of speech that goes with it.

Ursula Owen is the editor-in-chief of Index on Censorship.
<http://www.indexonline.org>

Dangerous diversions: balancing rights requires an even scale

By European Network against Racism (ENAR)

The views expressed in this article are those of the author and do not necessarily reflect the opinion of the EUMC.

Freedom of speech is a crucial element of European democracies, however there is a danger that recently it has been used to distract attention from the imperative of fighting racism and promoting integration and diversity. While the right to freedom of speech must be constantly debated, it faces no immediate threat of being dramatically undermined, however everyday millions of ethnic and religious minorities across Europe face the consequences of racial hatred and incitement.

Hate speech or incitement directed against members of ethnic minority

"You (Gypsies) are the scum of all societies. Damned be the people who brought you to Europe and those who didn't kill you in time", correspondence received by Valeriu Nicolae (European Roma Information Office), September 2005."

communities is one of the most overt and abusive forms of racism in Europe today. Arguing that this manifestation is somehow linked to

rational debate fundamentally fails to recognise the nature of 21st century racism.

ENAR welcomes the contribution that this edition of *Equal Voices* can make to an important debate but we would need many more volumes to philosophise about the implications of freedom of speech in contemporary European societies. However interesting this debate may be, it draws attention away from the real challenges facing European societies, not least the racism and hate experienced by religious and ethnic minority communities every day. In the words of Roma activist Valeriu Nicolae: "Whether the majority of the population denies, ignores, ac-

cepts or supports them, such materials have the power to incite, and... to justify violence” (Index on Censorship, December 2005, p. 9).

Freedom of speech has never been defined as an absolute right and in European societies it has often been restricted for much lesser reasons than hate speech. The logic of freedom of speech is based on everyone having a ‘voice’, but when it comes to hate speech the voice of vulnerable communities is silenced. Hate speech undermines free expression: not only are ethnic minority communities often in vulnerable situations and unable to ‘respond’, but hate speech and incitement is deliberately intended to cause harm to these communities. Hate speech does not occur in a vacuum, it is ei-

ther directly targeted at ethnic minority communities or contributes to a context in which their rights are undermined. Most racists are not interested in climbing to the top of a solidarity hill in order to get their abusive opinions off their chest.

International law permits limited restrictions on the right to freedom of

*“Deliver to your municipality the head of a n****r and receive a voucher for the value of 20 Euros”, Graffiti documented by an ENAR member, ENAR EU Shadow Report 2004.*

expression in order to protect various interests, including the rights of

others. Article 19 of the International Covenant on Civil and Political Rights (ICCPR) provides a three-part test to ensure that restrictions, when they are introduced, do not undermine the general right. According to this test restrictions should be: provided by law; safeguard a legitimate interest; and necessary to secure this interest (proportionality).

It is clear that prohibiting hate speech easily passes the tests of protecting a legitimate interest and proportionality. There is no greater legitimate interest than the human rights of an individual, in this case members of ethnic minority communities. This issue is specifically addressed in Article 4 of the International Convention on the Elimina-



Photo: Copyright: European Community, 2006

International law permits limited restrictions on the right to freedom of expression in order to protect various interests, including the rights of others.

tion of All forms of Racial Discrimination (ICERD). However, despite a long-standing commitment to ICERD, in some European countries combating hate crime is not provided for in law. Consequently the right to freedom from racial hatred is unevenly protected across the European Union. Similar to the three-part test in the ICCPR, Article 10(2) of the European Convention on Human Rights recognises that freedom of expression may be limited, in particular for the protection of the rights of others.

Freedom of speech is not an end in itself, but a means to a free society. It is a tool to which everyone should have access in order to promote understanding and dialogue in an inclusive and diverse Europe. As such any debate on the right to freedom of speech must be placed in a wider context, and should not divert attention away from efforts to protect other human rights, such as the right to live free from fear.

So, what does the recent controversy concerning the publication of cartoons of Mohammed in Denmark tell us about the state of freedom of speech in the European Union? In reality, very little. In 2005 when the cartoons were first published many of ENAR's members across Europe were shocked by such a blatantly provocative action. Others recognised this incident as one more in a series of worrying developments in which a number of EU member States have moved away from commitments to diversity and equality.

The controversy does draw attention to the fact that social boundaries are constantly evolving as power relations and what is acceptable and unacceptable change. While Europe

must now respond to increasing levels of diversity in the twenty-first century, the fact that social bound-

“Freedom of speech is not an end in itself, but a means to a free society.”

aries are constantly re-negotiated is not a new phenomenon and it should not come as a surprise to anyone.

Given Europe's particular historical and social context, holocaust denial has provided a context for this ongoing discussion during recent decades. Holocaust denial is illegal in a number of European countries, as their governments hold that it is motivated by an anti-Semitic and anti-democratic agenda.

Responding to the cartoons controversy, Commission President Barroso acknowledged that: “Freedom of speech has limits, as well. These must be respected. They are *defined and enforced by the law* and legal systems of the Member States of the European Union. It is self evidently unacceptable to go outside the law” (15 February 2006, emphasis added).

However his analysis is more of an optimistic forecast than a reality. Since 2001 the European Union has failed to agree an instrument that would provide for criminal harmonisation of hate speech across the Eu-

ropean Union. The failure of the European Union to adopt the Framework Decision on Racism and Xenophobia raises serious questions about the commitment of European governments to fight racism and protect the rights of ethnic minority communities.

Europe must create the conditions for full and active participation of ethnic minority communities. Anti-discrimination protections are essential, but must be complemented by action that protects minorities against incitement to hatred and racist crimes.

Increasing demographic, cultural, religious and ethnic complexity poses challenges for European societies. As outlined in the Constitutional Treaty, Europe is committed to the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. It was never suggested that this would be easy, but Europe must rise to the challenge it has set itself.

Europe is changing, racism is changing, and we need to recognise that meeting the challenge we have set will require practical action, action that may not always be comfortable. It may seem self evident but defining integration as a two-way process means just that: rights and responsibilities for both the majority and minority populations. This is about much more than words. In practice it will mean change and accommodation at all levels of society.

The challenge for Europe is not to somehow find a delicate balance between lofty liberal ideals and rela-

tivist multiculturalism. The challenge is to realise the values that Europe is based on in everyday practice. Europe has chosen its path, it is not an easy one, and diversions such as the recent debate over the cartoon controversy do not make it any easier.

Freedom of speech is a very serious issue for all democracies. However, it is nonsensical to build a framework for integration and inclusion, while picking away at its foundations by failing to respect, and reasonably accommodate, diversity.

Wherever one stands on the difficult and complicated debate surrounding freedom of speech, there is no doubt that the recent controversy damaged the bigger project: fostering integrated societies.

The real debate is not about limiting rights, but rather how best to protect the rights of everyone living in the European Union. The real danger is not the so-called 'clash of civilisations' but rather failing to address racism and exclusion in Europe.

ENAR is a network of some 600 European NGOs working to combat racism in all EU Member States. Its establishment was a major outcome of the 1997 European Year against Racism. ENAR is determined to fight racism, xenophobia, anti-Semitism and Islamophobia, to promote equality of treatment between EU citizens and third country nationals, and to link local/regional/national initiatives with European initiatives.

*More information on:
<http://www.enar-eu.org>*

Punishing Religious Defamation and Holocaust Denial: Is There a Double Standard?

By Abraham Cooper and Harold Brackman*

"We who live beneath a sky still streaked with the smoke of crematoriums have paid a high price to find out that evil is really evil."

Francois Mauriac

The views expressed in this article are those of the author and do not necessarily reflect the opinion of the EUMC.

The raging global controversy over the Danish cartoons caricaturing the Prophet Mohammed has caused Europeans to consider as a way to defuse future tensions the appropriateness of restrictions on free expression, designed to protect religions from insult and injury. There is a related debate about whether a "double standard" exists where 'Holocaust Denial' is punished but words

or images offensive to religious communities are not. The Simon Wiesenthal Center is a global human rights NGO, dedicated to the legacy of the Nazi Holocaust and to promoting individual freedom and minority rights, that has had to grapple with issues of this kind since its inception in 1977. Based on our experience, we will offer a perspective on the value and limits of "hate speech" laws in the age of the Internet as well as the rationale for preserving existing legislation punishing Holocaust Denial.

Punishing "Religious Defamation"

Can an open democratic society ever rightly punish religious defamation? We believe that rights and responsibilities must be balanced in a democratic polity. International and European human rights laws recognize governments should strike a balance between guaranteeing free expression and protecting minorities against harmful treatment. For example, Article 26 of the UN's International Convention on Civil and Political Rights (1966) de-

clares that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

In the United States, the First Amendment of the Bill of Rights enshrines the right to free speech, yet civil rights laws punish prejudicial verbal or written expression in the context of protecting minority rights to housing and employment opportunities. The U.S. Supreme Court has also articulated the “fighting words” doctrine allowing punishment for words “which by their very utterance inflict injury or tend to incite an immediate breach of the peace.” In addition to lewd, obscene, and libelous speech, “fighting words” include utterances that threaten harm against or instill fear in racial and religious minorities. Spray-painting epithets desecrating mosques, churches, or synagogues are punishable in many jurisdictions, not only as acts of vandalism, but as “hate crimes” with enhanced penalties because of bias motivation.

Laws punishing religious defamation are justifiable, but must be carefully drawn and circumspectly enforced. The UK’s new Racial and Religious Hatred Bill is designed appropriately to protect religious practice against intimidation, threats, and menacing words but not merely against abusive and insulting language. The law should be enforced in a way respectful of common law protections of free speech. For example, it is one thing for a bigot to spout derision of Islam or Christianity from a street corner. He ought to be allowed to speak his

piece unless he disrupts traffic and becomes a public nuisance. It is another thing for him to aggressively harangue citizens enroute to prayer. Under those circumstances, prosecution under an “incitement of religious hatred” statute may be very much in order. Such laws should

“Rights and responsibilities must be balanced in a democratic polity.”

also be enforced to protect the rights of easily identifiable believers whether Orthodox Muslims, Jews, Sikhs, or Hindus to walk freely down the streets, and be part of public life, without being verbally assaulted by bigots. But beware: strongly worded legislation does not automatically provide enhanced protection of individual rights or communities. Witness Article 282 of the Russian Federation’s criminal code. While it provides punishment for inciting ethnic and religious hatred, there are critics who charge that the Putin government is administering it in a politically biased and capricious way.

The Limits of Legislation

Further, advocates of laws punishing “religious defamation” must understand that the legitimate scope of such legislation is limited. Western democracies even those that nomi-

nally retain established churches (such as the Anglican Church) essentially reject a theocratic union of religion and state. Muslims or other religious believers who want to punish insults to their religious symbols will be disappointed by secular laws that are designed to protect free religious practice not punish blasphemy. The Law cannot privilege the symbols of one religion over another, and it must protect freedom not only of believers but also of atheists who do not believe. The freedom to dissent trumps the dictates of religious orthodoxy. Muslim communities in Europe cannot expect democratic governments to punish Muslim dissenters for heresy or apostasy. As U.S. Supreme Court Justice Oliver Wendell Holmes, Jr., put it, there can be no real freedom unless we grant “freedom for the thought that we hate.” European intellectuals since Voltaire have raised the battle cry of “Écrasez l’infâme!” against organized religion. We may disagree, yet we must to continue to defend their right to be wrong.

What about the offensive Danish cartoons? Satirizing religion whether Christianity, Judaism, or Islam is not a “crime” justifying infringement on freedom of the press and freedom to dissent even when that freedom is being abused. The proper remedy is for indignant citizens to avail themselves of all legal means to express their anger including public protest and economic leverage.

Punishing Holocaust Denial

In addition to Israel, eleven European countries Austria, Belgium, the Czech Republic, France, Germany, Lithuania, Poland, Romania,

Slovakia, Spain and Switzerland punish Holocaust Denial. Except for Spain, with its fascist legacy, and Switzerland, with its own-checked history as a World War II neutral, all the countries on the list were absorbed by, occupied by, or allied with Nazi Germany. They also all saw their Jewish minorities devastated or annihilated during the Holocaust.

If one agrees with those in the United States who are called “First Amendment absolutists” who insist restrictions on free expression are never justified, then Holocaust Denial laws are anathema everywhere. However, a different conclusion follows if one believes that within the broad parameters of universal human rights protections countries have the right to make laws regulating speech that reflect their own distinctive traditions and historic obligations.

Holocaust Denial laws are on the books in countries where Nazi, Nazi puppet governments, and allied fascist states, practiced genocide and crimes against humanity against Jews, gypsies, and other minorities as statecraft, often with enthusiastic popular backing. It was understood that post-WWII nations emerging from the grip of Nazi Germany had to demonstrate to their victimized neighbors that they were new democratic societies committed to renouncing the Nazi past. In Germany, this included the prosecution of war criminals, an anti-totalitarian reeducation of the population, and punishment of any renewed public embrace of Nazism. Anti-Nazi statutes punishing Holocaust Denial were part of the price such societies paid to be accepted back into the family of civilized nations. In countries where potent neo-Nazi move-

ments continue to use Holocaust Denial as a code word for justifying new genocides, European governments balk at treating as ‘protected speech’ the toxic label that the Nazi “Final Solution” was a “myth.”

This does not mean that laws punishing Holocaust Denial are justified, everywhere and for all time. Professor Deborah Lipstadt, who convinced a UK court that it was accurate for her to denounce David Irving as a Holocaust Denier, is skeptical about the value of the Austrian law that jailed Irving for denying the Holocaust in a speech he delivered in Vienna. She is right that such laws do not automatically stop Holocaust Denial. The proliferation of Holocaust Denial websites dramatically underscores the limitations of any national laws, or even international conventions, to eliminate or punish any form of hate speech.

Yet the democratically elected governments of Austria and Germany still see the criminalizing of the denial of the Nazi genocide as an appropriate gesture to the millions of innocents mass murdered by the Third Reich and a needed strategy to forestall resurgence of Neo-Nazi movements within their borders. Apparently, they and other Europeans agree with Dr. Judea Pearl, father of slain journalist Daniel Pearl, who said he believes religious and national symbols are best protected by “rules of civility, not law, with the exception of Holocaust-related symbols, whose abuse implies license to repeat, namely incitement to genocide.” There may yet come a time when civil liberties and respect for minority rights are so deeply rooted in the lands where genocidal fascism once ruled that

Holocaust Denial laws will no longer be required for democracies to defend themselves against those whose goal is completing Hitler’s demonic mission. On that day instead of punishing Holocaust Denial it will be sufficient for all to embrace the 1998 Declaration of the Stockholm International Forum on the Holocaust and join with the 20 nations that currently belong to the Task Force for International Cooperation on Holocaust Education, Remembrance, and Research (ITF). What a tragedy that, to date, not a single Arab or Muslim state has joined the ITF!

So, Is There “A Double Standard”?

As recent headlines attest, the Muslim Cartoon Jihad complete with torched diplomatic compounds and Christian churches, beheading of western “infidels,” and jailing of Muslim independent journalists also involves Tehran’s leveraging of Holocaust Denial and Jew-hatred to assert a claim to leadership of the 1.2 billion strong Arab and Muslim world. Tehran is sponsoring a Cartoon Exposition of its own picturing satanic Danish “Zionist agents” with Stars of David on their sleeves as those responsible for mocking the Prophet. It’s inviting a rogue’s gallery of Holocaust Deniers from around the world for an upcoming ‘scientific’ conference on the Holocaust. It wants to send a “Historical Truth Squad” to Auschwitz to prove that the Holocaust never happened.

Why the fixation on Holocaust Denial? Because deconstructing collective memory of the Shoah is the first building block for a new genocide against Israel and the Jews.

Furthermore, in antisemitism extremists know they tap the well-springs of the world's most potent and durable ideology of hate. No other noxious ideology has the protean quality that has made Jews, since their emancipation from medieval ghettos, the all-purpose scapegoat for the world's discontents against capitalism, socialism, democracy, liberalism, secularism, globalization, and every other trend associated with Modernity.

So when demonstrators scream against Western double standards for punishing Holocaust Deniers like David Irving while not penalizing Danish cartoonists, they are not defending free speech or religious equality both of which are denied to Christians and Jews almost everywhere in the Arab and Muslim world. Instead, they are demanding that the world accept that they have sole claim to global "victim status," and that the Jews together with Europeans and Americans are the villains responsible for Modernity's sins against them. Just as the appeal of Hitler's antisemitism extended beyond the German heartland to the dislocated, disaffected European masses of an earlier age, Iranian President Ahmadinejad's Holocaust Denial attempts to rally Muslims from London and Paris to Malaysia and Indonesia. Imported from Europe and America, it is re-exported in the form of statecraft, websites, and as ideological "blowback" meant to destabilize the Western world.

Still, the charge emanating from Iran and elsewhere of a western "double standard" that punishes Holocaust Denial but not religious defamation needs to be answered explicitly. First, let it be admitted that there is much in the history of

the Western world for which apologies are in order. Germany has made restitution to Holocaust Survivors, and has apologized to French and Poles for World War II atrocities. The Vatican has apologized for the deicide accusation against Jews as well as for sanctioning the Atlantic slave trade. President Bill Clinton expressed "regret and contrition" for American slavery, while the U.S. has made restitution payments to in-

“The road to
Tolerance is a
two way
street. ”

digenous peoples as well as to the victims of Japanese-American Internment. The government of the UK has apologized to Sikhs and Maoris, though not yet to the Irish. And the list goes on.

But there is no "double standard" regarding the punishment of Holocaust Denial for which apology is needed. Firstly, the charge of inconsistency misstates the legal situation in much of Europe. Denmark, where the cartoons caricaturing the Prophet originally appeared, has no laws against either Holocaust Denial or religious defamation. Great Britain, on the other hand, has recently approved legislation punishing "incitement to religious hatred" which is being enforced against those who use "threatening words" against Muslims or Islam; but it rejected some time ago legislation punishing Holocaust Denial, choosing instead educational ap-

proaches including the commemoration of an official Holocaust Remembrance Day.

Second, laws criminalizing Holocaust Denial are an attempt to protect both Jewish minorities and the wider democratic order from the threat of resurgent movements with a history of practicing genocide. They do not protect Jews or Judaism or Israel against criticism, satire, ridicule, or even defamation. To confirm this, all one needs to do is to look at recent cartoons, from one end of Europe to the other, depicting Ariel Sharon as a monster devouring Palestinian children or inscribing a swastika within the Star of David to criticize Israel. The Jewish community has quite rightly protested against such cartoons as a violation of decency and civility, but it has not called for criminally prosecuting the cartoonists.

By the same token, Muslims in Europe, the U.S., and the Middle East have every right to exercise their rights to protest the Danish cartoons and to peacefully pressure for redress. But their neighbors have the right to challenge them to live up to standards of moral consistency and universal human rights. The Afghan Court that threatened a Muslim with death for converting to Christianity violated these standards. So did the Muslim newspaper in Belgium that responded to the Danish cartoons with its own cartoon showing Anne Frank in bed with Adolph Hitler. The road to Tolerance is a two way street.

Rabbi Abraham Cooper is associate dean of the Simon Wiesenthal Center. Dr. Harold Brackman, a historian is a consultant to the Wiesenthal Center.

Freedom of speech and hate speech: Should there be limits to freedom of speech or not – and, if so, which?

By Carla Amina Baghaji

*“Truly, good and evil are not the same.
Requite evil with good and he who was your enemy will become your dearest friend.”
(Koran 41:34)*

The views expressed in this article are those of the author and do not necessarily reflect the opinion of the EUMC.

Freedom of speech is undisputed as a fundamental value in Europe. Without it, democracy would be unthinkable, and any state-imposed restrictions from above would tend to incline towards dictatorial structures. At the same time, there are few phrases recently which have such negative connotations as ‘preacher of hate’. Hate speech can by no means automatically expect to be simply noted down under the heading of ‘freedom of speech’. Just as freedom of speech is valued positively, so is hate speech valued negatively.

Legislation and ethical code

Legislation in European countries has responded to this apparent contradiction in different ways, because social peace and the bonds that hold society together should be protected. In this respect clauses have been adopted, with differing emphases, which represent a safeguard against influences that are dangerous to the public, for instance inflammatory or derogatory expressions of opinion. Germany and Austria have rightfully taken special precautions intended to prevent the revival of, or move towards, the ideas of the Hitler period.

Blasphemy clauses are applicable to religion. Every faith is not automatically protected in every land. The concept of a ‘state church’ can still be found in legal texts which exclusively confer special protection to the majority religion.

In many places, journalists have adopted their own ethical code of conduct. This does not mean that self-censorship should be imposed on press freedom, but it does mean that self-control in the sense of a fair and well-balanced journalism should be remembered.

Responsibility is therefore a key concept in the exercise of freedom of speech. Concepts like ‘according to good manners’ or ‘not offending against decency’, which have also been inserted into legal texts, show that ultimately we are venturing into a field which cannot be grasped juridically in every last detail. Social consensus has undergone a change, as we can observe in the case of blasphemy clauses. As far as Christianity is concerned, the ‘pain threshold’ here has become significantly higher in recent decades.

United in diversity – Muslims in Europe

A new situation has come about, however, due to the increasing plu-

ralism of European societies. This relates to inner social diversity as well as to diversity resulting from migration. A collective feeling that such or such a thing is, in a manner of speaking, ‘out of the question’ seems more compatible with homogeneity than with diversity. The motto of the European Union, ‘United in diversity’, gives positive expression to the underlying challenge here, because it assumes that there is a consensus to be reached in essential points regarding living together. A readiness for dialogue is a precondition for this.

Muslims in Europe have expressed their position repeatedly and clearly. The concluding statement of the first European Conference of Imams in Graz in 2003 declared that Muslim identity is compatible with values of democracy, the rule of law, pluralism, and human rights. This naturally includes freedom of speech, a topic which the first Austrian Conference of Imams in April 2005 dealt with decisively. With the murder of Theo van Gogh still fresh in people’s minds, freedom was described as mankind’s most important possession apart from life itself, and violence as a reaction to unpopular opinions was condemned. The declaration reads as follows: “No one should fear for their life because of their own opinion, and no one should be discriminated against or

be hindered in the practice of their religion or world view. Differences in point of view and opinion are to be respected by Muslims as being willed by God. All forms of compulsion in religion shall therefore be rejected.”

Both declarations met with a very positive response and were greatly approved. They were however felt to be in contrast to the reality of countries in the Muslim world. Muslims in Europe are painfully aware of this fact and feel continually exposed to pressure to justify themselves. It is therefore important to stress that the absence of free speech in this or that country of Muslim character (by no means in all!) is not the result of Islam, but is due to the lack of democracy in the prevailing systems of those countries. It would be a false conclusion

to analyse this as a symptom of Islam. At the same time it is extremely important to engage in a dialogue that incorporates theology, in order to emphasise the ethical guidelines of Islam both inwardly and outwardly. In this way there could be an increased incentive among Muslims to participate, in the sense of a common good. In addition, this could create an outward-looking relationship of trust that is essential for living and prospering together.

Powerful arguments can be found in Islam for the significance of free speech in connection with the responsibility to get along well with one another. As with every action, intention is the deciding factor, and it should encourage self-reflection. “Wisdom and good speech” form a pair. Moral courage is required, for it says in the Hadith that injustice

can be found in the course of one’s own actions or speech, but is likely to be found at least in the heart (freedom of opinion). “The greatest Jihad* is a true word spoken against a tyrant.” There are many instances which point out the far-reaching consequences of thoughtless speech, perhaps that born of emotion, and which therefore advise keeping silent, if nothing constructive can be said. The description of Paradise includes the message that in Paradise there is no “empty chatter”. The Koran warns against insulting that which could be holy to others, since this could, in consequence, lead to an attack on one’s own values. God is described as letting every community regard its own way as beautiful, and “competition in good works” is advised. “A good word is like a good tree, whose roots are firm and whose



Photo: Copyright: European Community, 2006

Responsibility is key in applying freedom of speech.

branches reach up to heaven”, states the Sura Ibrahim, verse 24.

The most recent statement of opinion on this topic, which was made at the second European Conference of Imams in Vienna in 2006, refers in-

“Muslims in Europe are continually exposed to pressure to justify themselves.”

directly to the discussion about the caricatures of the Prophet Muhammad, which were commissioned as a deliberate provocation. The statement of opinion affirms free speech and press freedom as a “general and indispensable good” and does not demand additional legal provisions in order to protect the religious feelings of Muslims. However, the necessity of dialogue is also stressed, in order to achieve a social consciousness that recognises and respects these feelings.

Some considerations for the future and for further discussion:

- Freedom of speech and freedom of religion should not be played off against each other. They are closely connected as pillars of our understanding of human rights.
- Since, regarded historically, freedom of speech had to be gained in Europe by a struggle

from below against those above, as an instrument with which to criticise openly those in power it sometimes has recourse to polemic. In light of this, blasphemy must be considered as depending upon the case in question. If a minority is deliberately provoked by the ruling majority through blasphemy, then, as an action from above against those below, it is anything but emancipating. Indeed, this is discrimination.

- Wherever there are areas which can be perceived as “double standards”, these should be done away with. This concerns, for example, the legal system, if Muslims, unlike members of the majority, can find no basis that offers decisive protection for their religion. Even if such legal provisions would, ideally, not be applied, they would still give a substantial impetus to raising awareness of religious diversity, in the sense of a desired social consensus.
- Quite apart from the legality of the situation, it would be unfair to expect Muslims to put up with possible abuse of their religion without protest. The insult is doubly hurtful when the paradoxical situation arises that the most coarse offences take place, but the right to protest against them is morally denied. If insults towards the Islamic religion continue without anyone protesting, then as a result the threshold of hostility towards Islam is lowered, often without anyone noticing.
- A knowledge offensive about Islam could help to dispel clichés, simplifications, prejudices and projections (with key issues being the role of women

and the question of the division between the state and religion).

- On the basis of these broadened horizons, a “culture of respect” should be constructively promoted as an additional stage in our concept of tolerance. Already Goethe wrote that toleration is ultimately a kind of insult. In appreciating what the idea of tolerance has achieved in terms of intellectual progress in Europe, it should be remembered that tolerance is rooted in a hierarchical procedure and a patronising approach to the other that begins with an assumption of one’s own intellectual superiority. An honest dialogue can, however, only take place when it is eye to eye, on equal ground, in openness towards that which is new. Moreover, understanding should not be confused with the adoption of the other person’s point of view.
- If one tends to define oneself in terms of the negative demarcation of that which is “foreign”, then this tendency does not only reveal inner weakness; it is almost an invitation to depict this “other” in the worst possible light. This motive for hate speech should be carefully observed. What is problematic about hate speech is that it could be perceived by the recipient as justified and even “true”.
- Absolute claims are exclusive and therefore dangerous. It is precisely religions, with their ideas of prophecy, which are traditionally suspected of arrogantly claiming to be in sole possession of the truth. Missionary zeal and the narrow-mindedness associated with it should however be criticised

just as much when they come from a side that declares itself to be against religion. It is even remarkable that understanding of such a danger often hardly ever exists, because it is easy to consider oneself to be above something that one ascribes to religion alone, in order to claim a superior merit. It is nothing new that radical criticism of religion in Europe should repeatedly choose Islam as a welcome substitute target – think of Voltaire and his play about the Prophet Muhammad.

- Politics and the media, as powerful agents and trend-setters, are called upon to act with special responsibility: to keep their distance from populist slogans, and not to aim to be as easy as possible to understand. The participation of minorities as a living mirror of society must be ensured.
- In the end, the theme of “freedom of speech” should not be considered separately from phenomena that are visible in these times of increasing social pressure and insecurity. In a “dog-eat-dog society”, workplace bullying and aggressive rhetoric are unfortunately part of everyday reality, and they spoil the general climate. A culture of dialogue is therefore not only relevant to the debate on integration: it concerns everybody.

The responsible use of freedom of speech is also linked to the maturity of the individual. It is a major challenge to be ready to think, in response to a globalised world, in terms of networks and with regard to the most diverse impulses. If it is already difficult to come to terms

with Europe’s inner diversity, perhaps this is the key to understanding why it proves all the more difficult to deal with a diversity that is labelled – justifiably or not – as “foreign”?

If we take stock of dealings with diversity throughout European history, the result is not exactly positive. It was precisely religious diversity which people tried for a long time to manage through territorial divisions. This failed.

We shall need patience, combined with the readiness to develop. This is because the tasks which one seeks to impose on Muslims are also one’s own tasks. Integration

once again appears to be a two-way street.

Carla Amina Baghajati is the spokesperson of the Islamic faith community in Austria.

** In Islam, Jihad means the individual striving to lead a life that is pleasing to God, for example by not cheating or lying, or by not indulging in vice. In order to distinguish between peaceful Jihad and armed Jihad, nowadays the terms greater and lesser Jihad are used. According to the current definition, the greater Jihad is an individual or collective striving which has nothing to do with war. Only in the case of self-defence is the lesser Jihad warlike.*

Distorted. Inflammatory. The image of African people in the media

A critical review of the treatment of overt
and concealed racism at local level

By Dieter Schindlauer

African people as a group are seldom mentioned in the European debate on the freedom of speech and opinion. The issue arises mainly in connection with the following question: is there a right to balanced, non-pejorative reporting about an ethnic group or a group defined by skin colour?

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It is only in the last few years that Africans, and indeed dark-skinned people in general, have come to be a visible and permanent element of the population of large European cities –

not only in the traditional multiethnic metropolises of London, Paris and Amsterdam, but also in Rome, Berlin, Lisbon and Vienna, as well as, slowly but surely, in Prague and Warsaw too. Encounters with people of African origin are increasingly becoming a matter of daily experience in public spaces. Yet there is as yet hardly any sense, among the major-

ity white population, that these encounters are a part of normal life. This is borne out by the images of 'blacks' conveyed by the mainstream media. There is no question of normality here. 'Normal' Europeans remain white and continue to belong to the majority community, while dark-skinned people are still perceived as 'abnormal'. In general, persons whose skin colour is black are assigned, or conceded, one of two places by the media. On the one hand, they feature – predominantly – in the context of criminal activity or of other negative-sounding manifestations, as embodied in the dangerous newly coined phrase 'abuse of asylum'; while, on the other, they are portrayed in exotic terms stemming from stereotypes about African people – involving, for instance, untamed 'savagery', carefree exuberance and unbridled sexuality.

The stereotype of the African as criminal – a media construct

Again and again, for example, general articles about drug-related crime are illustrated with pictures of African people, thus reinforcing the misconception that drugs and black skin are indissolubly linked. There are only a small number of more sensitive media organs that refrain, in their crime reporting, from mentioning the origin and, in the case of black perpetrators, the skin colour of the suspects. As a result, skin colour is mentioned in the media only if it is 'different' – that is, black. Hence black-skinned people feature almost exclusively in connection with crime. Inevitably, then, media consumers cannot fail to gain the impression that all Africans do is commit crimes. Reports about black

criminals convey messages such as "It wasn't one of us", or suggest that the crime rate would fall if there were no more Africans in the country. In this way, Africans come to be seen as an ongoing problem, the corollary being the constant question of whether one might perhaps be better off without them (the others).

The connections between these manifestations are sufficiently familiar from studies conducted by communication specialists. But what are their legal consequences? Is there a right to balanced, non-pejorative reporting about an ethnic group or a group defined by skin colour? Such a right cannot readily be deduced from the present state of

regard to the private media sector there can be no right to reports about the concerns of people of African origin.

However, the situation is different in the case of State-owned or State-controlled media. If it is realised and acknowledged that existing racist stereotypes are being reproduced by one-sided reporting and that the division into 'us' and 'them' (the 'others') is being maintained by consistent disregard of the black population in the media, it is perfectly possible for the State to impose an obligation to counteract these phenomena, based for example on the United Nations convention on the elimination of racial dis-



Racist Graffiti: "Nigger go home you drugdealing monkeys"

Photo: Copyright: ZARA

international law or indeed of various national legislations. It is hardly possible to compel private media entities by law to abstain from using the mechanisms described above and to work actively to encourage 'normalisation' in relation to persons whose skin colour is black. At any rate, the fundamental right to freedom of expression after all includes the right not to say something. For this reason, at least with

crimination. Television stations operated under public law have a general educational remit and are in addition required to provide for ethnic-minority programming. Yet the relevant slots are not very significant. The State also has a duty to influence the private media sector in this direction by non-legal means, for instance by awareness-raising campaigns or the provision of training for journalists.

The mechanisms described above are far removed from being susceptible to legal interpretation as ‘incitement to racial hatred’ or prohibited forms of ‘hate speech’. Nevertheless, it seems to me that – precisely because of their subtle and pervasive action – they are often even more dangerous than crude, direct hostility. They also demonstrate the limits of the law as a means of combating racism. So creative efforts using other approaches will need to be made and reinforced.

Racist graffiti: concrete experience at local level

A different picture is presented by the widespread phenomenon of racist graffiti in the public environment. I should like to give a brief account of relevant experience in Austria. Racist graffiti are so widely disseminated in Austrian cities – especially Vienna – and hence so conspicuous a fact of everyday life that NGOs are devoting more and more attention to them. Countless examples can be found throughout the city, especially on walls and on parts of the public transport infrastructure. A high proportion of these daubings are aimed directly and extremely crudely at persons of African origin. They range from ‘Fuck nigger’ via ‘Niggers go home’ to ‘Kill niggers’. Although such venomous phrases constitute the criminal offence of ‘incitement’ and can give rise to prosecution, the city is full of them. And it seems virtually impossible to track down the perpetrators.

This is certainly not merely an Austrian but a Europe-wide phenomenon. Although it is often clear that the protection of freedom of opinion does not extend to such manifestations and that a criminal act has been

committed (usually damage to property or incitement), many graffiti nevertheless persist in the urban landscape for very long periods. Public institutions and public transport operators do their best to get rid of these daubings promptly, whereas most private householders are not prepared to pay for their removal. Unlike, say, Berliners, Austrian residents are under no legal obligation to do so. The City Council of Leicester, in the

“If inflammatory graffiti are not removed as quickly as possible, their baleful effect persists untrammelled and the breaking of the law is perpetuated.”

United Kingdom, has adopted an interesting approach to this problem: it removes racist and sexist graffiti free of charge. In the Zurich model, on the other hand, homeowners remain responsible for removal but can insure against graffiti on favourable terms. It ought, however, to be clear that the removal of inflammatory graffiti is incumbent on the State. Such mani-

festations constitute criminal acts both in their commission and in their results. If inflammatory graffiti are not removed as quickly as possible, their baleful effect persists untrammelled and the breaking of the law is perpetuated. Yet all States party to the United Nations convention on the elimination of racial discrimination are required actively to eliminate such tokens of racial hatred. This is all the more necessary because the effect of such pervasive public incitement is to create an extremely hostile and humiliating climate for members of the targeted minority, while at the same time inevitably arousing the impression among the majority population that even totally unacceptable and in fact illegal statements can be left openly on display and go uncontradicted.

Austrian NGOs are currently observing with great concern the trials of certain individuals who attempted to paint over racist graffiti and were then prosecuted for causing damage to property. Ought an area of undamaged concrete really to be more important in law than protection from incitement and exclusion?

Mag. Dieter Schindlauer is a lawyer and Chair of ZARA [the Austrian Centre for Civil Courage and Anti-Racism] and President of the Austrian Legal Action Association for Enforcing the Rights of Victims of Discrimination. Consultant to the Ludwig Boltzmann Institute of Human Rights. Austrian member of the European Commission’s independent expert monitoring group on the transposition of anti-discrimination directives. Adviser to international organisations and European governmental and non-governmental organisations. Diversity trainer.

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EUMC Noticeboard Meetings and Conferences

- "Decade of Roma Inclusion 2005-2015", under the auspices of the World Bank and others
- European Commission's: Communication on the Fundamental Rights Agency. Website: http://ec.europa.eu/justice_home/fsj/rights/fsj_rights_agency_en.htm
- 2007 - European Year of Equal Opportunities for All
- EUMC presentation in the European Parliament (on invitation of the Socialist Group): "Racism and xenophobia in the EU". Brussels, 30 August 2006.
- Inter-Agency Meeting (EUMC, ECRI, OSCE/ODIHR, UN CERD, UN OHCHR): "Combating Racism, Racial Discrimination, Xenophobia and Related Intolerance". Vienna, 11 September 2006.
- Meeting of Government Liaison Contacts of the EUMC. Vienna, 14-15 September.
- EUMC & EU Presidency side-event at OSCE Human Dimension Implementation Meeting: "Combating Islamophobia - Experiences of the EU and its Member States". Warsaw, 12 October 2006

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