

26 September 2016

THE CHURCH OF
JESUS CHRIST
OF LATTER-DAY SAINTS

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**OSCE Human Dimension Meeting – Warsaw, Poland, September 26, 2016
Working Session 11.**

**Statement read by Francesco Di Lillo, Head of the European Union Office of
The Church of Jesus Christ of Latter-day Saints**

Madame/Mister Moderator,

The Church of Jesus Christ of Latter-day Saints recognises and commends efforts made by civil society to address the troubling issues of discrimination and expressions of hate. It understands that lacunae in reported official data deny OSCE and constituent bodies from utilising empirical evidence. That such evidence is not readily found as to the extent and actual impact of this kind of conduct means that policy makers work in a blind.

However, it is respectfully submitted that resort to legislative steps to criminalise such conduct is not necessarily the appropriate response in all instances. A more graduated and nuanced approach seems to be required. It is submitted that education is the more efficient and effective long term solution; civil sanctions and remedies should be available for actual damage to reputation; and criminal those cases of incitement to violence or social disturbance.

The starting point must be the Covenants by which states are bound.

Education in these principles is essential; that adherence to them is the price of being a part of a free and democratic Europe. Resort should be had to reconciliation wherever possible. For extreme cases of breach of these principles, there should be quick and economic personal remedies, such as injunctions, correction orders and damages, available to those whose reputations are injured. In the event of cases that actually threaten public safety, public order, health or morals, or the rights and freedoms of others, a state should

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supplement personal remedies with state-based sanctions, remedies and penalties, which are criminal in nature.

For the EU, the essential principles are set forth clearly in Articles 9 and 10 of the *European Convention for the Protection of Human Rights and Freedoms, First Protocol*.

As is plain from the Preamble, not only is the Convention inspired by the *Universal Declaration of Human Rights*, but the Convention is a reaffirmation of a “profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained ... by effective political democracy and ... observance of the Human Rights upon which they depend; ...”

Article 9 provides, relevantly, as follows:

Freedom of thought, conscience and religion

1 *Everyone has the right to freedom of thought, conscience and religion; ...*

2 *Freedom to manifest one’s religion or beliefs shall be subject **only** to such limitations as are prescribed by law **and are necessary** in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. [Emphasis added]*

While the emphasis in Article 9 is upon freedom of conscience, religion and belief and their manifestation, the freedom of thought mentioned in that Article is further protected by Article 10, which relevantly provides:

Freedom of expression

1. *Everyone has the right to freedom of expression. This right **shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...***

2. *The exercise of these freedoms, since it **carries with it duties and responsibilities**, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are **necessary** in a democratic society, in the interests of national security, territorial integrity or public safety, **for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, ...** [Emphasis added]*

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From this Article, read in conjunction with Article 9, it is clear that thoughts and ideas are to be protected in their being held, received and imparted. It is also clear that while there is the potential for restriction, those restrictions are imposed for the purpose of reminding one that the freedoms carry duties and responsibilities. They are also imposed for reasons of *“national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others ...”*

There should be a distinction between those cases where the offence is comparatively minor and those in which it is the cause of serious harm.

By distinguishing serious instances of hatred, racism and xenophobia from occasions when nothing more than subjective offence is occasioned, the law attracts more respect and society overall is more respectful. Freedom of thought and expression are encouraged rather than suppressed. Cohesion becomes more possible.

In order to maximise enjoyment of freedoms guaranteed by Covenants, states should criminalise only the most extreme cases. Causing offence to an individual or group, without more, is insufficient reason for criminal sanctions or penalties. If every instance of offence is criminalised or made the subject of serious penalties, then there is no method by which the trivial and the serious can be distinguished. That has an effect of breeding a contempt for the law which leads to its eventual trivialisation in the public mind.

The more highly a society is regulated, the greater the lack of trust that is shown in those who are governed. Only such laws as are necessary *society* in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others should exist.

Society is not held together just by law and its enforcement, but most importantly by voluntary obedience to the unenforceable and by widespread adherence to unwritten norms. Education in right and wrong is a vital influence to advocate and persuade such voluntary compliance by a large proportion of our citizens. One source of such education in the past, and remains so today, is the teaching and passing on of religious principles. This is a reason that Article 9 is so important. So too are the home and family, each protected by Articles 8 and 12. Schools and universities also have a major role to play. What is acceptable

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behaviour is also taught by rules of social etiquette and acculturation in a society. These are enforced by social acceptance and rejection. The law, though also a normative teacher, is an unbending instrument and poor teacher of socially acceptable norms and behaviours.

The terms hatred, extremism, racism and xenophobia are inherently uncertain in their content. They are all open to interpretation by the alleged offender, the alleged victim, the state enforcer and the court. Each is amenable to manipulation by which to suppress any unpopular opinions. Utmost care in the regulation of thought must be exercised to ensure that none of these descriptions is used to suppress the rights of free thought or expression.

A nuanced and graduated approach is necessary in keeping with the gradation of expressions:

- Those that merely offend – no legal action
- Those that are injure reputation – personal civil remedies
- Those that incite violence or cause social disruption – civil and criminal sanctions.

Thank you.