



Not all is well in the State of Denmark:

Freedom of expression versus "Hate Speech" and Defamation

While Denmark is frequently considered "Best in class" when it comes to freedom of expression, due in great part to its solid stance against Islamist pressure during the "Muhammad Cartoon Crisis" in 2006, not all is well in the state of Denmark. Several distinct issues have emerged which undermine fundamental citizens' rights to freedom of expression, freedom of assembly and more. While other countries, not least the United Kingdom, may be worse off, it is worth paying attention to the problems that exist in Denmark, where the principles, as well as the pitfalls, are abundantly clear. Other OSCE participating States and NGOs are encouraged to compare to the situations elsewhere.

First of all, there is the infamous Article 266b of the Danish Penalty law, which protects a variety of minority groups from criticism, relevant or not. Item 1 of the article reads:

Any person who publicly or with the intention of dissemination to a wide circle of people makes a statement or imparts other information threatening, insulting or degrading a group of persons on account of their race, colour, national or ethnic origin, belief or sexual orientation, shall be liable to a fine, simple detention or imprisonment for a term not exceeding two years.

Note that the article does not distinguish between true and false statements. Thus, any statement about a minority group that could be considered "degrading" is, in principle, punishable under Danish law, be it true or not. Thus, when Danish MP Jesper Langballe was punished under this article for mentioning the problems of "honour killings" and inter-family rape in Muslim communities, he investigated the law, found that no defense was possible against the charges against him, and publicly declared himself guilty of violating the article. The chilling effect against debating a topic as severe as inter-family rape should be obvious.

Curiously, this article has roots in the 1930s, when the National Socialist-orchestrated libelous campaigns against all Jews caused the Danish parliament to implement an early form of it, wherein propagating "false and derogatory" statements against minority groups was made a criminal offense. That remained so until 1971, when the implementation of the International Covenant on Civil and Political Rights (ICCPR) curiously omitted the requirement of falsehood.

This is an ongoing concern, for as the Annotated Agenda states:

[f]reedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights

Limiting the scope of "Hate speech" laws by making it clear that telling the truth can never constitute hate speech would appear a minimum requirement for living up to this standard.

The Danish article 266b was further expanded in 1987 and 1995, aggravating the problem that speaking the truth, or opinions based on factual events, may be punishable under Danish law. Stating for instance that "*Pedophile Belgian Catholic men are evil*" might constitute a quadruple violation of article 266b – an obviously meaningless restriction on freedom of expression.

Danish politicians have argued that while the law may be problematic from a point of view of constitutional principles of freedom of expression, it still serves a purpose in protecting immigrants and/or Muslims from the effects of negative opinions expressed by native Danes. This position is now challenged, as even Danes with immigrant background such as the popular poet Yahyah Hassan (Danish-Palestinian) and the artist Firoozeh Bazrafkan (Danish-Iranian) are currently being persecuted and punished for speaking about the culture in immigrant/Muslims societies.

Abolishing or strongly restricting such laws would protect freedom and human rights.

As a related issue, government restrictions of expression and exchange of information are matters of concern. Freedom of expression is primary; limitations must not only be as few as absolutely possible – any such limitations must be clear and legally well-defined. The Constitution of Denmark states:

Article 77

Any person shall be at liberty to publish his ideas in print, in writing, and in speech, subject to his being held responsible in a court of law. Censorship and other preventive measures shall never again be introduced.

Unfortunately, Danish lawmakers have not felt limited by this clause and have introduced not only the aforementioned draconic ICCPR-inspired version of article 266b, but also preventive measures on communication (blocking at the DNS level) of web sites with contents considered unfit for the citizens of Denmark. While not nearly as outrageous as the massive Internet blockades recently enacted by the government of Turkey, these measures remain at odds with fundamental principles of free expression, as well as the related freedom to exchange information. Governments throughout the OSCE region must limit any such measure to target only clearly criminal activities.

Taking this approach to the extreme, Turkey has recently been blocking the Internet services Twitter and YouTube on the pretext of "national security concerns", an euphemism for "relevant criticism of government activities and/or corruption". Turkish Prime Minister Recep Tayyip Erdogan showed the importance of fighting these communication platforms in several statements, including this one, as quoted by the British newspaper Daily Mail:

'The international community can say this, can say that. I don't care at all. Everyone will see how powerful the Republic of Turkey is,' Mr Erdogan said.

It may be expected that the government of Turkey will continue to apply such practices, ensuring that Turkey will remain in the bottom 15 % of the Press Freedom Index published by Reporters Without Borders. While the blocks were later overturned as being unconstitutional, they demonstrate very clearly the way in which any legal loophole can be exploited by authoritarian governments as tools for attacking citizens' rights that should be considered inalienable.

Also related, a problematic "Right to Reputation" has appeared in human rights discourse in recent times. It must be noted that "reputation" as such has absolutely no material form. It is wholly intangible and cannot be measured by any method known to man. Defamation laws intended to protect "reputation" are problematic at best, leading to severe risks for fundamental principles of the Rule of Law, due to such laws' being open to arbitrary interpretation and enforcement. Thus, the OSCE rightly calls for decriminalizing defamation – as stated recently by OSCE representative Dunja Mijatović:

“I am especially pleased that the [Lithuanian] amendments propose abolishing imprisonment as a punishment for libel as it represents a disproportionate interference with the right to freedom of expression in a democratic state,” Mijatović said.

However, Mijatović also noted that the proposed amendments still contain provisions providing special protection for the reputation of public figures.

“These remaining provisions should be abolished to avoid a chilling effect on free expression.

Any ”Right to Reputation” is bound to be at odds with freedom of expression and with the repeated calls by OSCE to decriminalize defamation. While powerful political and religious authorities resist such calls in order to protect their power and authority, it is the opinion of BPE that any legitimate political and religious authority should have no need for any such laws – and that the advantages they are said to introduce are more than outweighed by the dangers they pose to free societies.

Decriminalizing defamation is of massive benefit for freedom and transparency worldwide.

Yet another threat to freedom of expression may be found in the so-called ”Blasphemy Laws”, a variety of which is on the books in Denmark and other OSCE participating States. Such laws seek to protect various beliefs and belief systems from criticism and ridicule. Since any such beliefs are private matters, not matters of the state, there should be no need for any such laws. And while Denmark and other countries rarely enforce such clauses, they could usefully be entirely abolished.

A contributing reason for abolishing blasphemy laws is that their mere existence provides justification for Islamic countries to uphold and enforce much more brutal, sharia-compliant versions of blasphemy laws, along with draconic punishments for violating them. Sharia-compliant blasphemy law stipulates that any expression or action that puts Islam or Muslims in a negative light constitutes blasphemy, for which the punishment, in the worst of cases, is death. This is clearly incompatible with Western ideals of freedom, democracy and human rights.

Abolishing blasphemy laws would constitute a major gain for freedom on a global scale.

Recommendations:

1) Denmark, as well as other OSCE participating States, must reform the wording of ”hate speech” clauses, to facilitate free discussion and ensure that speaking the truth can never be punishable.

2) Denmark, as well as other OSCE participating states, should decriminalize defamation. Failing that, reforming the laws to cover only actual material losses would also strengthen the Rule of Law.

3) Denmark, as well as other OSCE participating States, should abolish the blasphemy laws, also in order to delegitimize the radical misuse of such laws in repressive states outside the OSCE area.

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