



Working Session 13: Combating hate crimes and ensuring effective protection against discrimination

*As delivered by Robert Clarke¹
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The public statement of Director Link and the leaders of the *European Commission against Racism and Intolerance* and the *EU's Fundamental Rights Agency* in March this year, that "hate speech" must be "confronted and condemned directly by counter-speech..."² is welcomed by ADF International.

This recognition that more speech is the best response to undesirable speech if we are serious about safeguarding freedom of expression is a welcome contribution to the debate which, unchecked, falls into a well-worn and dangerous pattern. Unfortunately, that same statement goes on to indicate that "hate speech is an extreme form of intolerance and contributes to hate crime." This oft-repeated claim is unsubstantiated and yet often advanced as the sole argument in support of criminalizing "hate speech."

The difficulties with criminalizing hate speech are legion but perhaps the easiest example is the less than simple definitional question: What exactly is hate speech? *ILGA-Europe*, which has supported criminalization, defines it as "public expressions which spread, incite, promote or justify hatred, discrimination or hostility towards a specific group." That is incredibly broad, impossible to police and almost entirely subjective.³

ADF International is aware of at least five cases of church leaders⁴ being subject to criminal investigation for daring to say what their religion teaches about marriage, sexuality and the family.

As recently as last month, a Catholic Bishop in Switzerland has been targeted for prosecution for "hate speech" in respect of two verses he read from the bible to a

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² <http://www.osce.org/odihr/145741>

³ <http://www.ilga-europe.org/what-we-do/our-advocacy-work/hate-crime-hate-speech>

⁴ See, P. Coleman, "Censored: How European 'Hate Speech' laws are threatening freedom of speech" (Kairos Publications, Vienna, 2012).

group of Catholics.⁵ A magazine article which reported this suggested the same passages resulted in an attack alleged to have taken place at a Jerusalem pride parade.⁶ Problems with this logic include the fact that the Bishop was 4,500km away at the time and he delivered his address *the day after* the alleged attack. While a butterfly flapping its wings thousands of miles away and causing a storm might make beautiful literature, it is known as “chaos theory” for a reason and makes a terrible policy basis for the enactment of criminal law.

Another example comes to us from Ireland where Police passed a file on a Bishop to the Director of Public Prosecutions. His offence? “Inciting hatred” as alleged by an atheist politician after the Bishop preached a sermon in which he described Ireland as having a “secular and godless culture.” You would have thought the atheist would be pleased; but it’s another clear illustration of the consequences of legislating a heckler’s veto. In warning of the dangers of this approach, ADF International is in unusual company with Britain’s *National Secular Society* issuing a statement in support of the Bishop, noting that “free speech is worth nothing unless it is available to everyone...”⁷

ADF International strongly urges the OSCE to restate the foundational importance of freedom of expression, particularly as applied to undesirable ideas and minority opinions.

ADF International further calls on Participating States to repeal vaguely worded “hate speech” laws to ensure a free exchange in the marketplace of ideas.

⁵ http://www.swissinfo.ch/eng/homophobia_catholic-bishop-in--death-to-gays--storm/41582320

⁶ <http://360.ch/blog/magazine/2015/08/devant-un-public-ravi-leveque-evoque-la-mise-a-mort-des-homos/>

⁷ <http://www.secularism.org.uk/blog/2012/02/bishops-too-are-entitled-to-unpleasant-opinions>