



Intervention on behalf of the Gustav Stresemann Stiftung e.V.

## Combating intolerance and discrimination of Muslims

Combating intolerance and discrimination of minorities is an important challenge within the OSCE human rights dimension. But recently a lot of participating States have criminalized criticism or intolerance against ideologies or religions as well. This is not compatible with the fundamental principles of the constitutional state and democracy as human rights apply only to human beings and in no way to a god, prophet or religion.

### Recommendations

Therefor the STRESEMANN FOUNDATION recommends that the OSCE urge the participating States that:

- 1) Human rights apply only to individuals, but do not protect a god, a religion or a prophet; only intolerance against human beings should thus be banned.
- 2) Politicians of a constitutional state should not decide which opinions are allowed and which ones are forbidden; only an independent court can make a judgment on this.

### Background

Limitations of the freedom of expression come into effect exclusively when the rights of other *individuals* were violated. The UN human rights declarations refer explicitly to the ensured basic rights of people. In no way do these human rights protect a *god*, a *religion* or a *prophet*. Neither a god nor a religion's founder, let alone a religion, could be a legal entity entitled to fundamental rights because the constitutional state does not include the realm of transcendence. The "dignity" of a god, prophet or religion can thus not be a legally protected right and consequently cannot be violated.

If a believer feels insulted by an "insult" of his god, prophet or religion, a court can thus not evaluate these hurt feelings due to the lack of objective criteria. Ultimately in a court of law, it is not a matter of whether someone subjectively feels insulted rather whether an objective offensive action exists. An insult/offense—and thereby a

possible violation of human dignity—is, according to this interpretation, only present when it was carried out intentionally and in the presence of or in connection with individual believers. Additionally, the insulting/offensive character must also be recognizable for outsiders.

Should such a conflict case occur, the rule-of-law principle applies: everyone is equal before the law. If it comes to a two-party conflict, whether exercising the right to freedom of expression infringed on a human right must be decided by a court as an independent instance. This court then has to judge whether, in this case, the legally protected right to human dignity or the freedom of expression is of greater value.

The principle of the separation of power is decisive here; such a weighting may only be carried out by the courts (the judiciary). The judiciary does this merely by utilizing existing laws, but in principle, it does not create a new law. Moreover, the judiciary is independent because it cannot take advantage of different legal decisions for itself. Thus, the judiciary follows the functional logic of right and wrong.

Politics (legislative) on the contrary adheres to the functional logic of gaining and maintaining power. This branch is additionally entitled to create new laws. Therefore, from a human-rights perspective, politics or the government of a state should not be allowed to determine which opinions may be expressed or not. Ultimately the government would establish which right is the higher legally protected right; since politics are predominantly concerned with maintaining power, here, in principle, governments would put their opposition at a disadvantage. In this way, for example, it was stipulated in National Socialism that the “dignity” of the “Arian race” and that of the “community of the German people” (deutsche Volksgemeinschaft) be a higher legally protected right than the freedom of expression, not to mention the human dignity and physical integrity of Jews or people with disabilities.

Such a determination via politics would thus always be dependent on the respective system, culture and ruling elite. However, freedom of expression always means being allowed to challenge the idea of a “higher good,” and also a government or religion.

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*You will find the detailed discussion online:*

- [\*Felix Strüning \(2013\): Menschenrecht Meinungsfreiheit. Wie islamische Akteure unsere Grundrechte bedrohen.\*](#)
- [\*Felix Strüning \(2013\): Freedom of Speech is a Human Right. How Islamic Organizations Are Threatening Our Basic Rights.\*](#)