



Schweizerisch-Türkische Anwalts- und Juristenvereinigung
Swiss-Turkish Lawyers' and Jurists' Association
Association suisse-turque des avocats et juristes
İsviçre-Türk Avukatlar ve Hukukçular Derneği

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Rechtsanwalt Yetkin Geçer, president of STAJ Swiss-Turkish Lawyers' and Jurists' Association, Fribourg, Switzerland

As an association of lawyers with judicial interests in the relation between Switzerland and Turkey, our core issue is, and will always be, the independence of the judiciary. Nevertheless our association bears in mind the limits of law in combating racism, xenophobia and intolerance, although we accept the absolute legal necessity in creating enforceable, effective and proportional laws aiming as a social framework against racism, xenophobia and intolerance. Our members are convinced, and agree with an essay of Prof. Daniel Thürer from the University of Zurich (*published in the NZZ 2007 hintergründe der wirtschaft n. 3719*), that racism, xenophobia and intolerance remain mainly a social issue in which the understanding of legal principles allows

1. determining basic moral and justice issues,
2. finding reasonable and balanced solutions in the case of moral dispute and
3. a workout of convincing practical solutions without indoctrination of dogmatic ideologies to the matter of dispute.

Pointed out that racism, xenophobia and intolerance as social issues effecting core legal principles, our association would like to underline to the OSCE members states that political agendas should be treated always with an eye kept on balanced political discussions without defamation of any social group. Minorities were in the past, and are actually, very vulnerable to polemics within political agendas.

Like in most other OSCE countries, Switzerland faces an increase of political dispute leaded by extremist groups focusing in issues like migration and refugees. Several referendums targeting Muslims and South-East Europeans had been initiated by these groups, aiming to gain attention in the political rally for votes.

A symptomatic example for this, is the so called Anti-Minaret-Referendum scheduled for voting in November 2009. This referendum aims an addition of a third paragraph to article 75 of the Swiss constitution which rigidly prohibits unexceptionally the constructions of all minarets in Switzerland. It has to be pointed out that only four out of assumingly 136 mosques in Switzerland are build with a minaret. And these four minarets are absolutely complaint with Swiss public construction law.

It is a vicious part of the Swiss state understatement that its citizens do not only participate in politics through elections but through referendums in all sorts of issues of daily life. A characteristic of this idea is the possibility for political minorities to initiate out of the public, compared to other OSCE member states quite easily, a referendum to all sorts of issues. The referendum is in these cases not only a process of decision making but more a political process in agenda setting. According to Swiss constitutional law a referendum can be even irrelevant, but it is void if it violates "*ius cogens*".

In his published statement from the 27th of August 2008 to the federal assembly the Federal Council declared the Anti-Minaret-Referendum complaint with "*ius cogens*", although serious legal opinions in Switzerland see the content of the referendum as a clear breach of fundamental legal rights, i. e. article 9 and 14 of the European Human Rights Convention.

In fact only few Muslim representatives and migrant groups opposed publicly with the help and support of the Churches, the Jewish Communities and some law professors, against the radicalisms of the referendum campaigners.

The attempt of the campaigners to exclude by referendum Switzerland's Muslim population from basic human rights, can be irritating to the Swiss relations with other Muslim countries and could lead to rising tensions within the Swiss society.

This latent social tension might explain the reason for opposition of very few Muslim representatives and migrant groups.

The Federal Swiss government is to be questioned to its commitments of preventing its citizens of such referendums which are denying human rights and could be, according to the jurisdiction of the European Court for Human Rights in Strasbourg, impossible to be executed.