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HUMAN RIGHTS COUNCIL
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Oral statement submitted by the European Centre for Law and Justice (ECLJ), a non-governmental organization in special consultative status

Item 9: Report on Defamation of Religions by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Mr. President,

The Issue of Defamation of Religion properly belongs under the mandate of the Special Rapporteur on Religion or Belief.

As the Special Rapporteur on Freedom of Religion or Belief has pointed out in her report to this Council:

Defamation of religions may offend people and hurt their religious feelings but it does not necessarily or at least directly result in a violation of their rights, including their right to freedom of religion. Freedom of religion primarily confers a right to act in accordance with one's religion but does not bestow a right for believers to have their religion itself protected from all adverse comment.¹

The chief purpose of the UDHR, the international covenants and other international instruments that protect religious freedom is to ensure the freedom of religious practice or belief of individuals, as well as protecting individuals from being subject to hatred or violence from others on the basis of their beliefs. Under international law, the standard for determining incitement to

¹ A/HRC/2/3, para. 38

hatred or violence has been an objective one, as it looks to the intent of the actor making the speech.

Many supporters of the concept of defamation of religion have presented a much different conception of this issue, whereby it is the religion and not the individual believer that merits the greatest attention and protection, and the standard of incitement becomes a purely subjective one, where the listener or object of the speech determines whether they are offended and whether incitement has occurred. This has even led at times to the dubious claim that speech has violated religious freedom, not because it has incited violence *towards* a targeted group, but because violence has resulted *from* the targeted group.

It must be emphasized that violence from *any* group, whether or not they are the target of offensive speech or art, is never justified and is in grave contradiction to the guiding principles of the UN Charter and UDHR. NO state, law, religion, or group is ever justified in condoning violence as a solution or response to offensive speech. On the other hand, state and non-state actors must closely examine the legal, social, and cultural framework in their societies and ensure that they do not create a climate of completely unrestricted freedom of speech and expression. In evaluating this issue, distinctions must be drawn between sincere yet critical assessments of religions or beliefs on the one side, and shallow speech or art that lacks any significant discussion or assessment of the religion or belief in question. States should take particular care that they do not endorse or subsidize speech or art that lacks the requisite critical assessment and has no real value other than offending a religion or belief or its followers.

Recommendations

In light of the foregoing, we recommend that this Council transfer the issue of Defamation of Religions to the proper thematic mandate under the Special Rapporteur on Religion or Belief, and address this issue within the framework of the relevant international law on religious freedom.

Thank You, Mr. President.