

Liberté Pour l'Histoire

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Dear Colleagues and Friends,

I do not want the end of January, 2009, to pass without communicating to you an assessment of our activities in the past year. On the whole it is positive.

As you have possibly learned from articles in the press, the mobilization of Liberté pour l'Histoire, today across Europe (cf. *Le Monde* November 28, 2008) and our Appel de Blois (October 11, 2008), have allowed us to score the following decisive points:

1. The Parliamentary Mission of Information on Memorial Questions which had listened to numerous historians and jurists, among them our vice president, Françoise Chandernagor, and myself, decided that the National Assembly should cease enacting laws that designated as “genocide” and “crimes against humanity” (modern terms) events that took place in the past. The Mission, presided over by the President of the National Assembly himself, unanimously (thirty deputies representing all of the parties) reaffirmed that it was not the role of Parliament to write history. From now on, when members of Parliament wish to express their regrets or their compassion concerning an historical event it is recommended that they do so by “resolutions” which do not have the constraining power of law and that cannot result in judicial action. (See the Rapport of the Mission « Rassembler la Nation autour d'une mémoire partagée » www.assemblee-nationale.fr.)

2. The government has decided against sending to the Senate the second proposal of the law concerning the “Armenian Genocide” voted at the end of 2006 by the National Assembly. In light of the arguments presented by our association and the conclusions of the Parliamentary Mission, the government

no longer seeks to apply to the law on the “Armenian Genocide” of 1915 the penal sanctions envisioned by the “loi Gayssot” of 1990 concerning the nazi’s crimes. The law of 2001 on Armenia is retained, but it does not forbid debate.

3. Before the menace of a European framework-decision concerning the “fight against certain forms of racism by means of penal law,” *Liberté pour l’Histoire*, on the occasion of the *Rendez-vous de l’Histoire de Blois*, October 10-11, launched an appeal published by *Le Monde* and echoed by the major European newspapers. As of today, we have received more than 1,100 signatures representing the collectivity of historians. We have published the list in the form of a full-page advertisement in *Le Monde* on November 28. On the same day this framework-decision was signed in Brussels. However, France has *opted* for a minimalist approach suggested by *Liberté pour l’Histoire*: the new crime, very general, established by this framework-decision (crime of “banalization” and of “complicity in banalization” of all war crimes, crimes against humanity and genocides”) only concerns those crimes previously qualified as such by an international tribunal. This allows, in practice:

a) To reserve the application of this new charge to contemporary crimes, the only ones susceptible, in fact, to being adjudicated either by an *ad hoc* international tribunal or by the new International Criminal Court.

b) To avoid retroactive and automatic penalization of all “historical laws” already adopted by our Parliament.

Certainly it would have been even more preferable, both for scholars of the contemporary period and for future historians, to avoid any further criminalization of opinions or in the canonization of any judgement, but this framework-decision, proposed by the French government since 2001, had already been adopted by the Counsel of Ministers of the European Union and voted by the Parliament of Strasbourg when we became aware of it. At least, by prompting them to make the issues more precise, we have avoided the worst case scenario, that a historian, for example, could be brought before a court for having “minimized” and “contextualized” the massacre of the Angevins in the Sicilian Vespers of 1282...

4. Concerning the intervention of Parliament in educational programs, a

public exchange of letters took place between Xavier Darcos, Minister of National Education, and myself (see the letter on the Web site of Liberté pour l'Histoire.) The report of the Accoyer Parliamentary Mission clearly confirmed the decision that had been taken by the Constitutional Council on January 31, 2006, removing article 4 of the law of February 23, 2005 concerning the recognition by educational programs of the positive role of the French Presence in the Outre-mer. "It must be clear for all," the Accoyer report affirmed, "that the Parliament must not exceed the realm of law by prescribing the content of history syllabi."

Notwithstanding these successes we must remain vigilant:

— First, because we must carefully follow the elaboration of future texts (the European framework-decision must be "transposed" by our Parliament within two years) as well as the evolution of the jurisprudence of courts.

— Next, because nothing prevents our Parliament, which has for the moment returned to its senses, to come back at any time to its earlier errors.

— Finally, because, in light of the recent reform of the Constitution, the Constitutional Council might have to pronounce, in the months to come, on the memorial laws that have already been enacted.

Liberté pour l'Histoire must, more than ever, remain an active interlocutor with the public authorities. In this spirit a meeting has already been set for January with Claude Guéant, (General Secretary of the Elysée), Henri Guaino (Special Counselor for the President of the Republic) and Jean-Louis Debré (President of the Constitutional Counsel).

We urge you thus to join, to rejoin, and to encourage others to join.

*For our international friends who belong to the
European Union*

France established that, for the framework-decision adopted November 28, 2008 concerning the "fight against certain forms of racism and xenophobia"

the *option deadline* offered to title 1 paragraph 4 remains, contrary to the project of the initial text, open for two years.

This certainly means that the 27 countries of the European Union that are signatories to the framework-decision are already obligated to have in their laws the equivalent to our “loi Gayssot” of 1990 concerning nazi’s crimes (or of the similar German law), and even a bit more: penal sanctions extended to three years in prison for all attempts at “banalization” or “complicity in banalization” of war crimes and crimes against humanity adjudicated up to 1945 by the Nuremberg Tribunal (article one, paragraph one, line d).

On the other hand, it remains possible, thanks to the *option*, to limit, for all other collective crimes committed in the course of history, penal sanctions incurred by possible commentators to only those “war crimes, crimes against humanity and genocides” recognized as such by an international criminal court (in other words, “contemporary crimes”).

It is necessary and sufficient that a government requires to exercise the *option* envisioned by article 1, paragraph 4, of the framework-decision, an option that the French government, alerted by Liberté pour l’Histoire, has exercised at our request and that, as of the present, is the only government to have so acted.

Since this *option* remains open to all states until November, 2010, it would be good if you would encourage your government (Minister of Foreign or European affairs and Parliament) to exercise this option with the Brussels authorities. The option is exercised in the form of a *declaration*, the text of which is as follows: “[*this country*] declares, in conformity with article 1, paragraph 4, that it will not make punishable the negation or gross banalization of the crimes addressed in paragraph 1, points c) and d) unless these crimes have been established by a definitive decision issued by a national court and an international court.”

It is true that the “residual” penalization which remains, even after the exercise of the *option*, may trouble future historians, who will not be allowed to criticize either judgments of various international *ad hoc* tribunals created during the past fifty years or those of the International Criminal Court that has

recently been established. Any reconsideration of the facts that these courts have considered as proven could result in the criminal sanctions envisioned by the European text. However, contemporary historians will not be hindered in the pursuit of their research and in the expression of their opinions on the more distant past (the Crusades, for example): this is the lesser evil.

The future will require great vigilance because if the framework-decision which has just been adopted only concerns the “banalization” of collective crimes committed for reasons of racism, xenophobia, or religion (when these latter are focused on an ethnic minority), certain states of the European Union have again requested similar legislation condemning the “banalization” of collective crimes committed for political reasons by totalitarian regimes; in particular this is aimed at crimes of communist regimes in certain countries of the Union (especially the Baltic states). The Council of European Ministers has already invited the Commission to hold public hearings on these crimes and to examine, within two years, the possibility of the adoption of a second framework-decision.

In the intermediate term one cannot thus exclude:

— On the one hand, an extension of the European law to crimes committed for religious reasons without any “ethnic” connotation (the European wars of religion in the sixteenth and seventeenth centuries or the Irish problems could be included).

— On the other hand, an extension to political crimes committed in the past (without statute of limitations) by a totalitarian regime.

If one is not careful, what margin of discussion and evaluation will remain to the historian who will soon be accused, concerning any crime that our contemporary society condemns, of “relativism,” “contextualization,” “comparativism,” or “complicity in banalization”?

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In the name of the Association Liberté pour l’Histoire, I send you my best wishes for the new year.

Pierre Nora, President of Liberté pour l'Histoire, January 12, 2009.