

Motion adopted by the General Assembly of ICHS in Beijing on 17 September, 2007 on the problem of the law and freedom of research

The context :

During its session of 19-20 April 2007, the Council of the European Union adopted a framework decision on the fight against racism and xenophobia (see Appendix: “english text.pdf“, pages 23-25), a decision which threatens to fetter historical research.

This framework decision is the result of an initiative launched at the beginning of January 2007 by the German Justice Minister, Ms Brigitte Zypries, who wished to bring to its conclusion a process which began in 2001, imposing on all Member States of the European Union legislation to criminalize the denial of genocides, notably the Holocaust. This legislation already exists in Germany, Austria, France, Poland, Romania, Lithuania, Slovenia and the Czech Republic. This initiative provoked a great deal of negative responses but *ran its course at the European level, and will be given wider application through this framework decision, which applies not only to racist and xenophobic remarks and the denial of the Holocaust, but also to “publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in the Statute of the International Criminal Court (Articles 6, 7 and 8)”* [page 23]. Within two years after the adoption of this framework decision, each Member State will be required to adopt matching legislation which makes provisions for a penalty of between 1 to 3 years’ imprisonment.

This decision raises many concerns, such as vagueness about which judicial instances will be empowered to decide which historical events will be considered as crimes. The Holocaust is not included, since it has been subjected to the Nuremberg Trials. As for the International Criminal Court, it is only allowed to judge crimes committed after 1 July 2002. Therefore, one assumes that for the other crimes, decisions will be taken by courts set up on an ad hoc basis, as was the case for Rwanda or the former Yugoslavia, by ordinary judges in a given country or else by legislative bodies. In addition, the concept of « grossly trivialising» is very vague and, as a result, can be abused very easily. This framework decision is also concerned with crimes of totalitarian regimes, even if these crimes remain outside of the stated normative framework : the decision considers these crimes to be « deplorable » and envisages extending this norm to them after a « public European hearing» organised by the Commission (page 25). Technically the aim of this hearing remains undefined, though one may speculate that it will consist in drawing up a list of historical events which will form part of a list of enumerated crimes. This decision comes in the wake of the French memorial laws [lois mémorielles]: first the Gayssot Law in 1990, about the denial of the crimes pursued at Nuremberg; then, a law of 2001, which recognised the Armenian genocide during World War I, a law that was revised in 2006 with norms criminalizing denial; the Taubira Law in 2001, on the treatment of African slaves; and the Mekachera Law in 2005, on the subject of French colonialism. These laws stirred up strong protests among French historians, notably the Liberté pour l’Histoire [Freedom for History] petition in 2005, which received 1000 signatures.

All this shows the dangers of such legislation. Although it arises from the necessary and just fight against racism and xenophobia, it ends up - through a series of conceptual shifts – touching on issues which are the proper domain of historical research. Indeed, it is necessary for historians and politicians to keep at arms’ length, each in his own domain. Politicians can decide which use of history best serves their own ends, by instituting official

commemorations, for example ; but they must not interfere - through the judicial system - in the work of historians. This framework decision marks a very dangerous turning point in the delicate and often difficult relations between politicians and historians. It is therefore necessary that historians in Europe and elsewhere in the world address the motives and the consequences of such a framework decision.

Motion of ICHS

Motion on the “Council framework decision on combating racism and xenophobia”
(Council of European Union, April 2007)

Since the decision of the Council can have an impact of the freedom of research, it is moved that,

ICHS is deeply concerned with this complex matter of the possible intrusion of the power of the law into historical research.

ICHS urges all its members to examine more closely this question and initiate discussion among their own members.

ICHS proposes to set up a special session in Amsterdam in 2010, on the theme “Historical research, ethics and law.”

Adopted by the ICHS General Assembly on 17 September 2007.