

Tel Aviv University collating all laws of the world against racism

Two out of four volumes have been published to help jurists, legislators and diplomats understand countries' laws on racism and discrimination.

By Ofer Aderet | Dec. 15, 2013 | 5:39 PM | 4

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Much has changed since the 2001 Durban Conference in South Africa turned into a platform for anti-Semitism. European countries have enacted ambitious anti-discrimination legislation, as well as laws governing incitement to racism, xenophobia, Holocaust denial, anti-Semitism and genocide.

Israelis have now taken the effort forward: Tel Aviv University's Kantor Center for the Study of Contemporary European Jewry has published two of four volumes collecting the world's laws against discrimination and racism. The effort began in 2010.

Last week the university marked the publication of the first two volumes of "Legislating for Equality: A Multinational Collection of Non-Discrimination Norms." Dutch company Martinus Nijhoff is the publisher. The volumes on Europe and the Americas have come out, and the Kantor Center expects to complete the parts on Africa, Asia and Australia next year.

To collect the vast amount of material, five senior Kantor Center researchers and two law students examined reports by governments and human rights groups in multiple languages, as well as computerized databases of government authorities. There was also information released by embassies and research institutions, along with interviews with experts.

The result can assist jurists, legislators and diplomats around the world understand different countries' laws on racism and discrimination. The books, for example, tell the story of the rise of nationalism in Hungary, which in 2011 passed laws limiting civil rights and freedom of speech.

By contrast, Germany and France have used legal tools to cope with the difficulty in enforcing bans on hate speech on the Internet. In central and eastern Europe, the law considers Nazi crimes on par with Communist crimes, something the Israeli researchers see as relativizing the Holocaust and diminishing its importance.

France, Belgium and the Netherlands have all passed laws banning women from wearing the burka in public, and Switzerland has banned the construction of minarets. The tensions between European countries and the Muslims who have immigrated to them appear to have increased in recent years.

"We're certainly witnessing the beginning of an anti-Muslim trend led by Christians, including the desecration of mosques," said Israeli historian Dina Porat, who heads the Kantor Center and is chief historian at the Yad Vashem Holocaust museum. "For the first time in 20 years a report on anti-Muslim activity has landed on my desk."

Talia Naamat, a lawyer who coordinated the Kantor Center project and is editing the books with Porat and Nina Osin, also a lawyer, said Germany was the country most focused on passing laws against racism. "The prohibitions there are very strict," she said. "A very low threshold is needed for an action to be considered incitement to racism. That's not a consistent thing on the rest of the continent."

For instance, Germany's 16 states have initiated a plan to make the neo-Nazi NPD party illegal. The states addressed the issue in a petition to the constitutional court; they criticized the party for encouraging racism, anti-Semitism, xenophobia and anti-democratic ideology. In the country's September election, the NPD won 1.3 percent of the vote, too little to win representation in the Bundestag. But some party members belong to local parliaments across the country.

The cruelty-to-animals issue

An interesting case of alleged incitement in Germany reached the European Court of Human Rights last year. It began in 2004, when People for the Ethical Treatment of Animals launched a campaign equating the Holocaust to the murder of animals. Campaign ads showed prisoners in death camps standing next to caged animals, below the words "Holocaust on your plate."

The Jewish community in Germany asked the courts to ban the campaign. Their request was accepted; the constitutional court ruled that PETA's efforts were insulting to Holocaust survivors and must be stopped, even though this limited the animal rights activists' freedom of speech.

The judges ruled that mentioning the Holocaust in an ad campaign "means deflating the importance of the Holocaust and turning the cries of Holocaust survivors into something routine, as well as impinging on the honor of Jews who survived the Holocaust and live in Germany."

The European court, which was pulled into the matter, upheld the German ban and addressed a similar case in Austria. There too, the Jewish community had asked the courts to stop the campaign, but the Austrian courts refused, saying animal rights and free speech were important values. The European court did not compel Austria to overturn its ruling.

"This is an example of an identical situation in two countries that led to opposite results," said Naamat. "Despite Europe's attempt to create harmony and set uniform standards on the matter, there are nuances between the countries, in keeping with their historic past."

The United States and Canada have a totally different approach to hate speech because their history is different from the aggressors' of World War II, "so their attitude to legislation on the matter is totally different," said Porat. While in Europe the trend is to act against racist comments, not just racist actions, North American law sanctifies freedom of speech. "Holocaust denial is not outlawed there," said Porat. "There is a whole empire of denial."

Porat said the law does not always reflect the reality in any given country. "The constitution can have these wonderful words," she said. "The nicest constitutions are those of Libya and the worst countries in terms of their attitude toward human rights If you examine Iran's constitution you'll feel like you're in heaven. But in practical terms, the day to day, the situation is reversed. The constitution is wonderful, but the day-to-day life – I wouldn't wish it on anyone."

The series' final volume, on Asia, will include a chapter on Israel. "Israel's legal system is similar to the one in Europe – it has laws banning discrimination in the civil realm, like access to services or public places, and has a law banning incitement to racism," said Naamat. Her team will soon be taking a deeper look at anti-discrimination legislation in Israel.

Porat recalled that it wasn't until 1986 that the Knesset passed a law banning incitement and racism. "Before then, they didn't think such a law was needed," she said.

So what prompted the change? It was Meir Kahane, the ultra-nationalist leader of the Kach party who joined the Knesset in 1984, not long before his party was banned under the new law.

