Written submission to the thematic report of the Special Rapporteur on Freedom of Expression in Challenging Times

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1. Trends, challenges and problems

Well before the 7th of October 2023, the 'Working Definition of Antisemitism', endorsed by the International Holocaust Remembrance Alliance (IHRA), was already effectively used as a strategic tool to silence public critics against the State of Israel and Zionism, violating freedom of opinion and expression by public authorities in different European states.[1] In fact, the State of Israel and its defenders in Europe use the IHRA definition of antisemitism as their main tool to silence public debate in Europe about Palestinian rights, notably against the Boycott, Disinvestment and Sanctions (BDS) movement in civil society across Europe.[2]

The political instrumentalization of antisemitism is an important part of the Israel's diplomacy and lobbying efforts in Europe, a powerful tool to silence and intimidate groups and individuals who advocate for Palestinian rights, creating an effective chilling effect in the public debate around Palestinians' rights. By conflating any criticism of the State of Israel, its policies towards the Palestinians and Zionism as illegitimate hate speech against Jews and the Jewish people, the fight against anti-Jewish racism or Judeophobia was hijacked for political reasons.[3] In practice, the result of this instrumentalization of antisemitism is that any speech in support of Palestinians' rights or against the State of Israel or Zionism can be forbidden or sanctioned by public authorities as racist speech targeting Jews as a particular ethnic or racial group - and therefore not considered a protected speech.

Against this general background and context, this already existing silencing strategy and chilling effect amounts, since the 7th of October 2023, in some European countries, to repression by public authorities and to violation of the freedom of expression and information and freedom of assembly and of association (Article 11 and 12 of the Charter of fundamental rights of the EU).

Here are a few concrete cases of this phenomenon since the 7th of October 2023 in France, and in particular in the city of Strasbourg as a case-study. While these cases are all from France, they are not particular to the French context and they illustrate the general trends and challenges described above.

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[1] European Legal Support Center (2023) *Suppressing Palestinian Rights Advocacy through the IHRA Working Definition of Antisemitism. Violating the rights to freedom of expression and assembly in the European Union and the UK.*

[2] Neve Gordon (2024) 'Antisemitism and Zionism: The Internal Operations of the IHRA Definition', *Middle East Critique*.

[3] Antony Lerman (2022) *Whatever Happened to Antisemitism? Redefinition and the Myth of the 'Collective Jew',* London: Pluto Press.

2. Policies and practices

French Government's Ministry of the Interior

a. On the 12th of October 2023, the French Ministry of Interior (in charge of the Eastern region) had decided that the demonstration entitled 'Information on Palestine', planned for the next day in the center of Strasbourg, is forbidden (see letter of decision in annex). While the main reason to justify this decision was 'risk to public order and of public peace', the governmental authority's letter also mentions 'high risk of antisemitic calls and gests' and a possible feeling of unease among the Jewish community of Strasbourg, explaining that such a demonstration 'could be felt as a provocation or support in favor of terrorism by the Jewish community'. During the forbidden demonstration, the French police arrested 13 persons, including the organizer of the demonstration, who was sitting in a café nearby, accusing her of organizing the illegal demonstration. Her trial took place on the 22nd of January, in which the judges relieved her of all charges.

b. In addition, on the 12th of October 2023, a projection of the documentary film 'Fadayin, the fight of George Abdallah', organized by the French far-left political party, New Anti-capitalist Party (NPA) at the 'House of Associations' of Strasbourg, was forbidden by the French police, which informed the local venue of the film projection of its decision shortly before the event.

Municipality of Paris

c. On the 3rd of December 2023 the Municipality of Paris had cancelled in advance a public event, scheduled to take place on the 6th of December 2023 in Paris, entitled 'Against Antisemitism, its' instrumentalization, and for a revolutionary peace in Palestine', with the presence of the world known philosopher, Mrs. Judith Butler. The Mayor of Paris, Anne Hidalgo, justified this decision to cancel the event by a possible risk for 'public order'. The conference of Mrs. Butler was later rescheduled and finally took place in the City of Pantin, a neighboring city to Paris, on the 3rd of March 2024, with a few hundreds of participants, but without any violation of public order, the official reason given to the decision to cancel the original event.

University of Strasbourg

d. On November 2023, a students' association of Science-Po Institute of Strasbourg, Stras'Diplomacy, organized a public debate about the situation in Israel-Palestine, with two speakers: Member of the European Parliament, Mrs. Maria Arena (Belgium, S&D) and the author. The event was scheduled for 21 November 2023. However, the institute's administration decided that the conference was not allowed, considered as 'too risky' in view of the recent events. The students' association did not challenge the decision. Since this public event was cancelled by the university administration well before the event was even communicated, there was no public trace of this administrative decision or any public outcry against it. The event itself and its cancellation by the university's administration was only known to the author because

he was one of the confirmed speakers. This particular case illustrates that, in fact, much of the pushback against freedom of expression on Palestinian rights goes under the radar, invisible, as a result of seemingly bureaucratic and administrative decisions, largely unchallenged and unknown to the public.

e. On May 2024, at the University of Strasbourg, a peaceful encampment took place in front of the main administration building, demanding a meeting with the President of the University in order to discuss the students' demand to freeze institutional relations between the university and Israeli academic institutions. The President refused to meet the students and instead allowed the French police to intervene on the campus' premises three times. The security agents of the university of Strasbourg confiscated the students' camping equipment.

Recommendations and good practices

Public authorities such as governments, local authorities or public academic institutions should not restrict freedom of expression and freedom of assembly simply because the topic of the political debate is advocacy for Palestinians' rights or solidarity with the Palestinian people. The systematic cancelling in advance of various public events such as conferences, debates, film screenings and demonstrations in advocacy for Palestine and Palestinians' rights, with the justification of 'risk to public order' or 'risk for hate speech' is an authoritative restriction which violates the fundamental democratic principle of freedom of expression. Such restrictions and limitations are neither necessary nor proportional to the evoked estimated risk. In a democratic society, public authorities should enable such public events to take place, while taking the necessary measures to face the possible eventual risks to public order or possible expressions of unprotected speech such as 'hate speech', 'incitement' or 'support to terrorism', and sanction them according to the law if they occur. The citizens' liberty to express and exchange information and ideas, without interference by public authority, is a fundamental freedom in a democratic society, even and especially when such expressed opinions and ideas may be unpleasant to some or even considered controversial.

This policy, since the 7th of October 2023, of blanket interdiction and restriction, silencing the public debate on Palestine, are not necessary and not proportional, and consists of excessive limitation on freedom of expression. This can and should be different. For instance, on 21 February 2024, Mr. Salah Hammouri gave a public conference in Strasbourg, in a public venue which belongs to the city's municipality. Mr. Hammouri is a renowned Palestinian-French human rights lawyer, advocating for Palestinian prisoners' rights, who was deported from Jerusalem to France on 2022.[4] Before the conference, local lobby groups had put heavy pressure on the Mayor of Strasbourg to cancel the scheduled conference of Mr. Hammouri. Despite this heavy pressure to cancel the event, the Mayor of Strasbourg decided to allow the public event to take place as scheduled, defending the democratic fundamental principle of freedom of expression. If indeed there were 'unprotected speech' during that conference, such as 'hate speech' against Jews, 'incitement', 'support to terrorism', or 'trouble

[4] See UN Office of the High Commissioner for Human Rights' (OHCHR) Press Conference of 2 December 2022, 'Israeli deportation order against French-Palestinian activist Salah Hammouri could constitute war crime: UN expert'.

to public order', these violations of the law could have been prosecuted by the relevant authorities according to the law. This was apparently not the case since the conference took place without any particular issues or problems.

Conclusion

France's public authorities, at different levels – local governments, national government, or public academic institutions – restricted freedom of expression and freedom of assembly of various events since the 7th of October 2023, when these events were an expression of solidarity with the Palestinian people and advocacy for Palestinian rights. The authorities justified their decisions to restrict freedom of expression by certain legitimate aims such as preservation of public order or public interest, and defending vulnerable groups such as the Jewish community from possible hate speech against them.

However, as we have seen in different cases, the cancelled events that were later rescheduled, such as the conference of Mrs. Judith Butler in Paris, or the conference of Mr. Salah Hammouri in Strasbourg that took place despite the pressure to cancel it, were simply public debates with no particular disruption of public order or expression of unprotected speech. In addition, peaceful demonstrations and students encampments were forbidden and oppressed by the French police, with no apparent legitimate reason, in an excessive and unproportionable manner.

The overall picture is that by using police force, accusations and intimidations, harassments and administrative burdens, various French public authorities, at different levels of governance and decision-making, create an effective chilling effect against the expression of a very particular political message, opinion and idea - solidarity with the Palestinians and advocacy for Palestinian rights. It is this particular political speech which is targeted and restricted by the authorities.

Author's Bio

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