

Discrimination in and by religious communities

Recommendation of the Round Table of Religions of the Two Basels

With the adoption of the extended anti-racism penal code on discrimination based on sexual orientation¹ (Art. 261^{bis} StGB and Art. 171c MStG), new questions arise in dealing with certain text passages from religious writings.

This recommendation of the Round Table of Religions of the Two Basels (RTRel)² is aimed at religious supervisors and leaders³ and is intended to help in citing religious passages with (potentially) discriminatory content in order to avoid committing an offense within the framework of the anti-racism penal code.

It is important to note that offenses are investigated and identified on a case-by-case basis. In addition, the case law on the extended anti-racism penal code is still in its infancy.

Therefore, this recommendation **cannot be viewed as an instruction manual** but is merely intended to provide **support**. It gives general information on punishable acts, makes recommendations for dealing with religious quotes and is thus preventive in nature.

Punishable actions

Punishable actions against a person or a group of people because of their “race, ethnicity, religion or sexual orientation” within the meaning of Art. 261^{bis} StGB include:

- Public incitement of hatred or discrimination (para. 1)
- Public dissemination of discriminatory ideologies (para. 2)
- Organization, promotion or participation in propaganda campaigns (para. 3)
- Public discrimination through speech, writing, gestures, violence or any other manner (para. 4)
- Denial, gross belittling or justification of genocide or other crimes against humanity (para. 4)
- Refusal of a service that is intended for the general public (para. 5)

1 With the extension of the penal code, people who are discriminated against on the basis of their homosexuality, heterosexuality or bisexuality are now also protected.

2 In accordance with the guiding principles of December 10, 2018, the RTRel may discuss laws and ordinances and their implementation at the federal and cantonal level “to the extent that they have an impact on religious communities or the performance of religious acts or instructions.”

3 Religious supervisors and leaders are: preachers and all other persons who have an influence on religious communities.

Conditions of punishability

The following conditions make a discriminatory statement punishable by law:

1. Violation of human dignity

Discriminatory behavior is only punishable if it **violates human dignity**. This is the case when people or groups of people are labeled or treated as inferior because of their affiliation

2. Publicity

Discriminatory behavior or statements must be made in **public** in order to be considered punishable. This means in front of a larger group of people between whom there is no personal relationship, i.e., people not in the same family or friends circle or any other close environment with personal relationships or special trust between people.

3. Intent

Discriminatory behavior is only punishable if someone acts **intentionally**. This means that the perpetrator is aware that the behavior disparages/demeans someone but does it regardless or precisely because of

→ If all these conditions are met, a statement is considered an offense under 261^{bis} StGB and may result in criminal consequences: **imprisonment of up to 3 years or a fine**. However, each case will be assessed individually.

Recommendation on how to deal with the citing of religiously discriminatory text passages

Quoting a religious passage with discriminatory content⁴ may also be considered a punishable offense if:

1. the content is directed against people or groups of people based on their “race, ethnicity, religion or sexual orientation” (i.e., violation of human dignity)
2. it takes place during religious ceremonies (i.e., the public)
3. and it is used by the religious leader to incite a discriminatory attitude or hatred against these persons (i.e., intent)

For this reason, the RTRel recommends that religious leaders and support staff do not quote passages with content directed against a particular group of people based on certain characteristics (“race, ethnicity, religion or sexual orientation”) during worship, Friday prayers or devotionals before the religious community **without commentary⁵ as required by law**.

⁴ Three random examples from the Bible: Deuteronomy 7, 16: “You shall destroy all the peoples whom the Lord your God delivers over to you...”; Psalm 139, 19: “Oh, that You would slay the wicked, O God!”; Leviticus 20, 13: “If a man lies with a male as he lies with a woman, both of them have committed an abomination. They shall surely be put to death...”

⁵ The Chief Rabbi of the Commonwealth Ephraim Mirvis wrote an exemplary instruction: <https://www.chiefrabbi.org/wp-content/uploads/2018/09/The-Wellbeing-of-LGBT-Pupils-A-Guide-for-Orthodox-Jewish-Schools.pdf>, accessed online 7 January 2021.

An uncommented quote may be understood by the religious community as a call to corresponding action or hatred toward this group of people. Without commentary from the religious leader, a quotation may be interpreted by the religious community as the will of God or the highest authority of the religion in question and lead to corresponding attitudes and/or actions. This may result in criminal consequences for the religious leader.

→ **Important:** Religious views can and may continue to be expressed and different values can and may be addressed as long as they do not violate the human dignity of others.

RTRel position on discrimination issues

The Round Table is aware that there are other forms of discrimination (including those defined in the Swiss Federal Constitution Art. 8 para. 2 BV)⁶, which may also affect religious communities. In particular, discrimination based on gender is a topic that is repeatedly discussed by the RTRel and is covered in the Cantonal Equality Articles and the Federal Constitution (Art. 8 Abs. 3 BV)⁷. However, since gender discrimination has different legal ramifications, the RTRel reserves the right to exclude this issue from this discussion.

The RTRel is committed to a harmonious coexistence that is completely devoid of discrimination against others and respects different beliefs. However, this coexistence involves acknowledging the discrimination that has always been part of our religious history.

⁶ “No one may be discriminated against specifically because of their origin, race, gender, age, language, social status, way of life, religious, ideological or political convictions or because of a physical, mental or psychological disability.” (Art. 8 para. 2 BV)

⁷ “Men and women have equal rights. The law ensures their legal and effective equality, especially in family, education and work. Men and women are entitled to equal pay for work of equal value.” (Art. 8 para. 3 BV)

Appendix: Articles of Law

Discrimination on the basis of “race, ethnicity, religion or sexual orientation”
Art. 261^{bis} regarding Racial Discrimination of StGB⁸ states:

“Anyone who publicly incites hatred or discrimination against a person or a group of persons because of their race, ethnicity, religion or sexual orientation; publicly disseminates ideologies aimed at the systematic degradation or defamation of these persons or groups of persons; for the same purpose organizes, promotes or participates in propaganda campaigns through speech, writing, images, gestures, actions or otherwise disparages or discriminates against a person or a group of persons on account of their race, ethnicity, religion or sexual orientation in a manner that is contrary to human dignity; or denies genocide or other crimes against humanity on any of these grounds; or anyone who denies a service offered by him or her which is intended for the general public to a person or a group of persons because of their race, ethnicity, religion or sexual orientation shall be punished with imprisonment for up to three years or a fine.”

8 <https://www.admin.ch/opc/de/federal-gazette/2018/7861.pdf> (last accessed on May 25, 2020)