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THE ANTI-ISRAELI ACADEMIC BOYCOTTS:

An International Human Rights Law Perspective

IJL Position Paper[1]

SUMMARY:

Academic boycotts against Israeli and Jewish scholars, students and other members of the academia violate the essence of academic freedom and free speech, harming both Israeli and Jewish academics and those who are denied the right to collaborate with them academically.

As a result of these boycotts, the individuals and targeted groups experience discrimination, persecution, exclusion and intimidation. The right to personal dignity, academic freedom, private life and even personal safety, may be violated. Frequently, the actions accompanying boycotts amount to hate speech and can easily turn into incitement to hatred, based on ethnic or national origins. These forms of rights and freedoms violations are forbidden under international human rights law.

Anti-Israeli academic boycotts stigmatize, exclude and discriminate against Jewish scholars and students regardless of their personal attitudes or actions. As such, this is an example of attributing group-based responsibility to individuals. This is reminiscent of behavior manifested in the history of antisemitism.

This paper briefly overviews the main international, including European, human rights law standards infringed upon by the anti-Israeli academic boycotts.

Introduction

Free, democratic and pluralist states and societies, as in Europe, Israel, and the U.S., allow individuals to follow their conscience, common sense and free will in making choices. They can refuse to work, communicate, or otherwise interact with anyone they choose. However, when such actions, for example academically boycotting an ethnic or national group is extrapolated into the public sphere and announced by public, state-sponsored institutions, it ceases to be just a question of free individual choice; it becomes an act of discrimination based on nationality, and even (as the case may be) incitement to discrimination, hatred, or violence.

[1] This position paper note has been prepared by Dr. Aleksandra Gliszczyńska-Grabias, member of the Board of Governors of the IJL.

Boycotting Israeli[2] academic institutions and scholars is a blatant manifestation of discriminatory motives. In the widely accepted IHRA Working Definition of Anti-Semitism and its explanatory note, it is explicitly stated that "contemporary examples of antisemitism in public life, the media, schools, the workplace, and in the religious sphere could, taking into account the overall context, include but are not limited to: (…) Holding Jews collectively responsible for actions of the state of Israel". Academic boycotts are nothing else but a form of imposing such collective responsibility.

Anti-Israeli academic boycotts stigmatize, exclude and discriminate against Jewish scholars and students regardless of their personal attitudes or actions. As such, this is an example of attributing group-based responsibility to individuals. This is reminiscent of behavior manifested in the history of antisemitism.

Instead of stimulating discussions and exchanges of opinions and thoughts, the boycotters simply exclude a particular part of the academic community based on its national and ethnic origin. At the same time, a boycott, in the case of academia, targets institutions most often deeply engaged in research on and the protection of human rights – the environment where academic freedom and freedom of speech play a pivotal role. This, undoubtedly, is the case with the current wave of anti-Israeli boycotts in academia but has been applicable also to previously noted cases of anti-Israeli boycotts. As stated by Professor Gert Weisskirchen, former Personal Representative of the Chairman-in-Office of the OSCE on Combating Antisemitism, already in, 2007,

> Anti-Israel boycott motions are a morally reprehensible attack on academic freedom. (…) Actions such as these that stifle critical dialogue are counterproductive to all attempts to seek a peaceful resolution to the conflict in the Middle East. Of all countries in the Middle East, Israel is the leading arena for Jewish and Arab academics to work together in a spirit of cooperation and excellence.

Needless to say, the discriminatory and human rights violating character of boycotts applies to and targets also non-Jewish scholars, students and other members of the Israeli academia.

The unprecedented rise of post-October 7 antisemitism is evident among students and faculty of many boycotting academic institutions in Europe and the U.S. While it should not be assumed that every formal decision of the anti-Israeli boycott has been driven by antisemitism, the question about antisemitic motives related to boycotting

[2] In line with the IHRA Working Definition of Antisemitism, manifestations of antisemitism include „targeting of the state of Israel conceived as a Jewish collectivity." Therefore, the categories "Israeli" and "Jewish" should be understood as synonyms in this case and can be used interchangeably.

remains valid and justified. Moreover, it is undisputed, also in historical experience and perspective, that boycotts fuel the antisemitic atmosphere and can lead to consequences with clear antisemitic overtones. All forms of antisemitism, including those related to anti-Israel hatred and discrimination, are prohibited under international human rights law.

The boycotting academic entities claim the boycotts are undertaken as a response to human rights violations committed by the State of Israel. However, it is the boycotters themselves who violate human rights and freedoms of the boycotts' victims: Israeli and Jewish academics, students, and other members of academia. These infringements upon rights and freedoms include the right to human dignity, protection of private life, and freedom of speech and academic freedom. Also, legal bans on discriminatory treatment as well as incitement to hatred and discrimination may be breached.

This paper briefly overviews the main international, including European, human rights law standards infringed upon by the anti-Israel academic boycotts.

Applicable legal framework

Human dignity

Human dignity is not only a fundamental right in itself but constitutes the real basis of other human rights and freedoms. The 1948 Universal Declaration of Human Rights enshrined human dignity in its preamble: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." This right is also explicitly enshrined in Article 1 of the Charter of Fundamental Rights of the European Union, stating that human dignity is inviolable and must be respected and protected.

As the concept of human dignity has not been clearly defined under international human rights law and is strongly context-related, it can be claimed that it relates also to treatment that undermines and damages the very core of national, ethnic, or religious identity and belonging to a given community. In its well-established case law on antisemitism, the European Court of Human Rights has repeatedly confirmed that contributing to an atmosphere of intimidation and exclusion of a particular national or ethnic group constitutes a blatant violation of the rights and freedom of members of this group, including their dignity (see *Garaudy v. France*, App. No. 65831/01; *M'Bala M'Bala v. France,* App. no 25239/13). This collective dimension of the harm caused by antisemitic discourse has been recently emphasized in the Court's judgment in *Behar and Gutman v. Bulgaria* (see App. no 29335/13).

Anti-discrimination

Discrimination on the grounds of national, ethnic, or racial origin is generally forbidden under international human rights law. The European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 14) states that the enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground, including race, political or other opinion, national origin, association with a national minority, or other status. Moreover, Additional Protocol No. 12 to the Convention provides for a general prohibition of discrimination, stating that no person shall be discriminated against on any grounds by any public authority. This obligation also encompasses the positive duty of the state to guarantee protection against discrimination, resulting, for example, from the actions of a private entity. Importantly, as stated by the European Court of Human Rights in the case *Willem v. France* (App. no 10883/05), that concerned an announcement of boycott targeting Israeli products by a Major of one of the municipalities in France, individuals or entities managing public funds are not allowed to discriminate based on any ground and must abide by a duty of neutrality. Similarly, Article 26 of the International Covenant of Civil and Political Rights prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Therefore, Article 26 concerns the obligations imposed on States Parties regarding their legislation and the application thereof. Thus, when legislation is adopted by a State, it must comply with the Article 26 requirement that content should not be discriminatory. The non-discrimination provisions are also enshrined in all other major international human rights protection systems. In the context of anti-Israeli academic boycotts, the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination are especially important. Its scope also embraces discrimination based on the national and ethnic origin of the victims of violations of the rights set forth in the Convention and it covers not only direct discrimination but also indirect discrimination, when the effect of a given action is of a discriminatory nature. Article 2 para.1 of the Convention states that States party to the Convention undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization (…)

This provision of the CERD Convention may have particular importance in the case of academic boycotts introduced by public academic institutions. Even if one rejects the assumption that all anti-Israeli academic boycotts are antisemitic, there is little doubt that their results should be considered as such. This alone should lead States to refrain from allowing boycotting activities that discriminate based on national and ethnic origin. Additionally, Article 6 of the CERD Convention is of importance. It states that a State Party shall assure that everyone within its jurisdiction benefits from effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate human rights and fundamental freedoms. This obligation can be understood to apply also to the academic boycotts against Israeli scholars.

EU law also forbids discrimination based on ethnic, national, or racial origin (Article 21 of the Charter of Fundamental Rights of the European Union). Additionally, protection can be based on the provisions of the Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. The Directive is based on the principle of equal treatment between persons. It forbids all direct or indirect discrimination based on race or ethnic origin, as well as harassment and any behavior which makes one person discriminate against another person. It also lays down minimum requirements for implementing the principle of equal treatment between persons in the EU. The Directive applies to all persons and to all sectors of activity, regarding, among other things: access to employment and to unpaid activities, specifically during recruitment; working conditions, including hierarchical promotion, pay and dismissals; involvement in workers' or employers' organizations, and in any professional organization; and education.

In the context of anti-Israeli academic boycotts, the Directive can be invoked as a tool of legal protection in cases where boycott actions result in discrimination in the workplace of a person of Israeli or Jewish origin. The violation of the Directive can be claimed when an Israeli or a Jew experiences discrimination as a result of a boycott policy by an employer and the State fails to offer effective protection from such

discrimination. In this context, the Court of Justice of the European Union judgment of 10 July 2008 in the *Feryn* case (C-54/07 *Centrum voor gelijkheid van kansen en voor racismebestrijding v Feryn NV)* should be invoked. The Feryn company had sought to recruit fitters to install doors in its customers' houses. In an interview with a newspaper, the director of the firm stated that only Moroccans responded to the advertisement, but that he would not want to employ any Moroccans as the company's customers would not want them. The Court of Justice made clear that the fact that an employer states publicly that it will not recruit employees of a certain nationality, ethnic, or racial origin constitutes direct discrimination. In respect of recruitment, such statements are likely to strongly dissuade certain candidates from submitting their application and, accordingly, hinder their access to the labor market. In case a similar discriminatory behavior occurred against candidates "of Israeli origin," for a job within academia in one of the EU member states, the same pattern as in the *Feryn* judgment should be followed. Under such circumstances, it is not necessary to prove any antisemitic motivation behind the "non-employment policy" by a given company, as the exclusion based solely on the place of origin is sufficient to indicate illegal discrimination.

Freedom of speech and academic freedom

Freedom of expression, as well as freedom to conduct and publish the results of scientific research, is an elementary and fundamental right for the functioning of a democratic legal order. Academic freedom should be defined broadly, encompassing freedom from unreasonable and arbitrary interference in decisions regarding the initiation and conduct of research, the choice of the subject of research, the choice of the place where scientific research is conducted, the determination of the research methods, the publication of the results, and the dissemination of information and knowledge obtained in the course of the research. Any restriction should be exceptional and strictly substantive.

The protection of the freedom to conduct scientific result and publish results is explicitly stated in Article 13 of the EU Charter of Fundamental Rights, which says that scientific research shall be free from restrictions and academic freedom shall be respected. Specific guarantees are also found in the International Covenant on Economic, Social and Cultural Rights, which stipulates in Article 15 that States party to this treaty are obligated to take the steps necessary for the protection, development and dissemination of science and undertakes to respect the freedom necessary for scientific research.

The essence of freedom of scientific research has also been repeatedly commented on by the European Court of Human Rights in its case law, emphasizing that there is no democratic society without free science and free scholars. This independence is particularly strong in the context of the social sciences and law, where scientific discourse shapes public discourse about issues important for the state and society, including those directly related to government and politics (*Erdogan and others v. Turkey*, App. nos. 346/04 and 39779/04). Academic freedom includes the freedom of scientists and scholars to express their opinions about the institution or system in which they work, and "the freedom to disseminate knowledge and truth without restriction" (*Kula v. Turkey*, App. no 20233/06). Thus, the academic boycotts against Israeli or Jewish scholars violate the essence of academic freedom and free speech of scholars by targeting Israeli or Jewish academics and those who are denied the right to collaborate with them academically.

Incitement to hatred and discrimination

Boycotts can lead to incitement to hatred and discrimination. The link between discrimination and hatred towards particular groups is recognized in the case law of human rights protection monitoring bodies. Their case law strictly excludes hate speech from the scope of protection of free speech. Article 20 para. 2 of the International Covenant of Civil and Political Rights explicitly forbids any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence. Israeli and Jewish scholars potentially suffer from condemnation and stigmatization resulting from boycotts that trickle down because they are perceived as personally responsible for human rights violations.

All States that are party to the Covenant are obliged to introduce and effectively implement relevant provisions protecting individuals and groups from, among others, nationality-based hatred that constitutes incitement to discrimination, hostility, or violence. Thus, boycotting Israeli/Jewish scholars by academic institutions that results in hatred toward them, based on their national origin, falls within the scope of Article 20 para. 2 of the Covenant.

It is also worth invoking a dictum of the European Court of Human Rights in a case concerning antisemitic hatred and discrimination based on ethnic origin (*Pavel Ivanov v. Russia*, Appl. no 35222/04). The applicant was convicted of public incitement to antisemitic hatred through the media. He published a series of articles portraying Jews as the source of evil, calling for their exclusion from social life. He accused an entire group of plotting a conspiracy and ascribed Fascist ideology to the Jewish leadership. Both in his publications and in his oral submissions at the trial, he consistently denied Jews the right to national dignity, claiming that they did not form a nation. The Court declared the application inadmissible *ratione materiae*, clearly stating that the

markedly antisemitic tenor of the applicant's views sought to incite hatred toward the Jewish people. Such a general, vehement attack on one ethnic or national group is contrary to the European Convention of Human Rights' underlying values, notably tolerance, social peace and non-discrimination.

Conclusion:

In the case of the anti-Israeli boycotts, both the historical and most recent contexts, antisemitic factors should play a decisive role in their legal evaluation. Historically, boycotts were one of the glaring manifestations of antisemitic attitudes. Today, the accompanying consequences of the boycotts also take the form of antisemitism: they increase hostility towards, exclusion, of and negative perceptions of Jews, introduce typically antisemitic segregation mechanisms, and intensify the antisemitic narrative and hate speech. Thus, academic boycotts of Israeli scholars, students and other members of academia should be considered from the perspective of violations of the international standards of human rights protection.