

Book Review of Alkiviadou Natalie, *Far-right in International and European Law* (Abingdon, New York Routledge 2019) by Judge Akis Hadjihambis (Ret'd)

Dr Natalie Alkiviadou, whose book I am honoured to present, bears in her surname an eminently historic name, that of the most enchanting Athenian statesman and student of Socrates who took his city by storm and showed the Greek world what the Athenian, as opposed to the Spartan, ideal is, establishing its claim to supremacy. Athens, the open, outward and liberal city, the symbol and the essence of cosmopolitanism which negates the prejudice and intolerance that lie at the root of all social extremism as its common denominator. Enmity and wars there certainly were in ancient times as throughout history, but extremism within a society as we have come to know it is a social rather than a political phenomenon that has no place in a truly open and liberal society. Such a society is epitomized by Alexandria, that unique and great amalgam of peoples of varying ethnic, religious and cultural origins living together while maintaining their separate identity, giving and taking from each other through that common respect that negates prejudice and intolerance.

Dr Alkiviadou, reviewing extremism in the form of the far-right, identifies its complex social substratum by reference to its many facets and at the same time indicates the common elements involved in the form of hostility and discrimination towards primarily, but not exclusively, ethnic and other group difference. It is for this reason that the far-right, capitalizing upon social situations and appealing to the baser sentiments of people, constitutes a threat not only to social cohesion but moreover to the very precepts upon which democratic society rests – equality and liberty, encompassing fundamental rights. And it is this threat that not only justifies but obliges democratic society to combat it, on the basis of balancing on the one hand the right of expression, assembly and association of which the far-right avails itself and on the other hand the right of society to protect itself and the rights of its citizens. Presenting this issue in all its extent, Dr Alkiviadou reviews the entire spectrum of the academic and wider debate involved with admirable command of the bibliography and the competing arguments concerning the matter. In so doing and beginning with Plato, she traces the centuries-old views as to the limits of freedom and thus of competing rights in society, the very idea of which rests on equal respect. Once again, we are in the field of the Greek rule of the ‘measure’ that lies behind all balancing processes and finds its modern counterparts in the concepts of reasonableness and proportionality. To say this, however, is only the starting-point. The real task lies in the actual decision as to the drawing of the line, defining the threshold for the limitation of one right for the benefit of another – that process of social engineering that underlies the entire legal and judicial process and as to which we must be constantly reminded of Aristotle’s admonition that in every science one can seek only so much certainty as the nature of the matter allows. It is in this setting that Dr Alkiviadou sets out to consider the dimension of the far-right in

the context of International and European Law, bearing in mind that the institutions involved were primarily established so as to avoid the repetition of the catastrophically destructive consequences of the far-right manifestations witnessed in relation to the Second World War period. In so doing, she pursues a penetratingly critical approach to the operation of the processes involved, analyzing the matter with learned discretion in relation to the three main institutions concerned, that is, the United Nations, the Council of Europe and the European Union.

The United Nations, representing the entire world community, took the lead in promoting the principle of equality and non-discrimination, whose negation lies at the root of all social extremism and particularly the far-right. Dr Alkiviadou examines the operation of this principle through the multiple UN instruments with particular emphasis on racial discrimination but also with reference to all forms of discrimination, showing that, despite the limitations regarding compliance and enforcement due to the generalization involved and the natural tendency towards caution in limiting the freedom of speech, association and assembly, there is a comprehensive and concerted set-up for combating discrimination on the part of the international community. At the same time, of course, the process operates in the field of reforming ideas and consolidating social conceptions regarding equality and non-discrimination. Indeed, it can never be overemphasized that the ultimate extinction of such social evils as discrimination lies in education, leading to that conscious realization of the principles of respect and tolerance that preclude the manifestation of social enmity upon which the far-right feeds. In this context, Dr Alkiviadou extensively reviews the operation of the UN instruments with critical reference to the need for the development of more particular premises in defining thresholds and pursuing the balance to be struck in such a sensitive field involving competing manifestations of fundamental rights with due regard to the understanding that all rights carry corresponding and reciprocal duties. She thereby highlights the significance of a more precise and substantive definition of the concepts involved in the true spirit of the legal tradition, bearing, however, in mind Cardozo's reminder that general principles evolve into concrete legal rules over time through the experiential nature of evolution as particular cases come before tribunals.

At the European level, Dr Alkiviadou reviews the functioning of the Council of Europe instruments, making extensive and comparative analysis of the jurisprudence of the ECHR and the Commission with particular regard to hate speech, as to which they have taken a strong stand in the direction of readiness to adopt a relatively low limitation threshold. She critically points out, however, the uncertainty and ambiguity resulting from the lack of coherence in the judgments, consequent upon the variety of cases considered and the inevitable generality of the interests balancing process. As she points out, 'Establishing the meaning of hate speech, and distinguishing it from controversial yet acceptable speech, is central to any adequate legal analysis. It is a job rendered even more complicated for the

ECtHR given the margin of appreciation and the resulting discretion enjoyed by Contracting Parties under certain circumstances. However, the Court has not set out a coherent test to be employed when seeking to determine whether a particular case is of hate speech.’ Extending her research into the limitations upon the freedom of association, Dr Alkiviadou indicates the close analogy of the approach of the ECHR to that of the UN instruments, with particular emphasis upon the leading cases which establish the Court’s principles more generally than the far-right. She thereby highlights the core of the concept of democratic society and government in relation both to its right to self-defence, even preventively, and to its obligation to ensure respect for the rights of its members. At the same time, she points out the inherent need of care in not surpassing the legitimate objective through overzealousness in pursuing it. This is why she constantly stresses the need for greater particularization as to the thresholds and the balancing process involved on the basis of a more academic consideration on the part of the Court. The Court’s jurisprudence as to the limitations upon the freedom of assembly, resting upon analogous principles, also comes under close scrutiny and criticism directed particularly at, as she puts it, the Court’s ‘lack of conceptual extrapolation of democracy and the doctrine of militant democracy’ as well as of ‘any analysis of what constitutes a “sufficiently imminent threat” which can give rise to the militant protection of a democracy’. Once again, of course, the varying and distinctive features of each case, so characteristic of the common law approach, together with the Court’s ‘margin of appreciation’ doctrine which allows for relative discretion on the part of the state involved, must also be taken into account.

The other European context considered is, of course, that of the European Union. The edifice here is built upon that great general notion of the Rule of Law, which Dr Alkiviadou traces back to ancient Greece and follows through its stages of its medieval latent survival and subsequent re-emergence in modern Europe. It is by reference to the defense of the Rule of Law and fundamental rights, lying at the core of the EU values, that Article 7 of the TEU rests the Union’s obligation to act accordingly. Analysing the premises of Article 7, Dr Alkiviadou proceeds to consider the cases, particularly those concerning Hungary and Poland, which concern its application to the far-right. In so doing, she reveals the practical ineffectiveness of the Union’s capabilities in this respect, despite the potentially drastic scope of Article 7. We are, once again, in the field of politics more than law, hence her concluding comment that ‘We are far from calling the EU an institution which seriously and systematically confronts threats from anti-democratic phenomena, such as the far-right, notwithstanding the plethora of hard and soft tools it possesses to confront them effectively and efficiently’. Even so, the EU is making significant efforts in the direction of shaping values and reforming ways of thinking, which is, one might say, a stronger foundation than any binding law – alas, however, this process, though of greater permanence, takes a long time to lead to fruition.

And yet, when one turns to the other side of the ocean, as Dr Alkiviadou does in conclusion, there is cause for contentment with the achievements of the European and international institutions. For, in the USA, the steadfast attachment to the full implications as to freedom of speech and assembly and, by extension, also the freedom of association, under the First Amendment, present an altogether different setting and approach. The American Supreme Court has been extremely reluctant to allow limitations of these freedoms, effectively seen as sacrosanct, setting such a high and complicated threshold by reference to the imminence of effects as to be a far cry from the European experience.

The worthy academic engagement of Dr Alkiviadou with the Far-Right reveals, in the approaches of the international and European institutions, the realities that always lie behind social problems. The Far-Right, like all extremism, does not operate in a vacuum. If an entire world war was needed to combat its worst ever face, Europe and the world must realize more consciously the need to tackle all those inequalities that lead to the discrimination upon which extremism feeds.

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