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Equity, Diversity & Community Commission
مفوضية المساواة، التعددية والشؤون المجتمعية



Tel Aviv University | جامعة تل ابيب | אוניברסיטת תל אביב



Limits of freedom of expression during wartime

Guide for the Tel Aviv University Community

A. Background

Since the Oct. 7 massacre in southern Israel, in which 1400 Israelis were murdered and hundreds kidnapped, with hundreds more still missing, Israel is at war with the Palestinian terrorist organization Hamas. In addition to causing great suffering and loss of life, the war is also exacerbating rifts within Israeli society, especially between the country's Jewish and Arab citizens. This is manifested in a sharp rise in extreme, harsh statements appearing on different platforms. Alongside (very few) cases of support for Hamas and its horrifying acts, we also see statements bordering on incitement against Arabs or anyone expressing any sympathy for the suffering of civilians in Gaza. Extremist statements of this kind are incompatible with the spirit of Tel Aviv University and can be detrimental to the unity of the TAU community, the welfare and sense of security of its members, and their ability to conduct educational and research activities. In a handful of cases TAU has taken disciplinary steps against students who expressed support for Hamas and terrorism. In other instances, following complaints about inappropriate statements, steps involving discussions and conversations were preferred.

In response to numerous questions and complaints regarding views expressed in both the social networks and the TAU environment, we are now posting this Guide. Here you will find explanations and information about the limits of freedom of expression: the principles and how they should be implemented.

B. What is Freedom of Expression?

Freedom of Expression is one of the major values of any liberal democracy, ensuring the right of individuals to freely express their views and opinions. This right – which is especially critical in the academic environment - is recognized by Israel's legal system as one of the fundamental rights in Israeli society. Limitations, if any, must be placed upon it with great caution, and only under special circumstances – when the opinions expressed conflict substantially with another protected value.

The principle of freedom of expression is especially important when it comes to statements that are controversial, hard to listen to, enraging, or even offensive. The underlying rationale is that even severe controversies should be settled through the 'market of ideas', where conflicting ideas compete with one another, and not through silencing opinions by those who have the power to determine what can or cannot be said.

At the same time, freedom of expression is not unlimited. It cannot be applied as a 'magic wand' that overrides all other interests.

At this time, a special focus must be placed on two specific limitations to the freedom of expression.

The first is the limitation on expressing support for terrorism, defined in Clause 24(a)(1) of Israel's Law of Combatting Terrorism, 2016, as follows:

Anyone committing an act of identifying with a terrorist organization, including by way of publicizing expressions of praise, support, or sympathy, raising a flag, presenting or posting an emblem, or presenting, voicing or publicizing a slogan or anthem, in one of the following, will be sentenced to three years of imprisonment:

(1) In public, with the intention of identifying with a terrorist organization;

The second is the prohibition against incitement to racism defined in Clause 144b of the Penalty Law 1977, as follows:

(a) Anyone publicizing anything with the purpose of incitement to racism will be sentenced to five years of imprisonment.

(b) With regard to this clause, it does not matter whether the published item actually led to racism or not, or whether it was truthful or not.

A similar rule prohibiting incitement to racism is included in the disciplinary bylaws for TAU students, as follows:

"Behavior that is incompatible with the honor of the university or a student's status, whether carried out within or outside the university, due to or in connection with a student's status or with an activity on campus, directly or indirectly. For the purpose of this clause incitement to racism against TAU employees, teachers, or students, will be considered behavior that is incompatible with the honor of the university or a student's status."

The prohibition against incitement to racism is defined in the Penalty Law as follows:

Persecution, humiliation, debasement, expressions of animosity, hostility, or violence, or causing confrontation with any community or part of the population, all because of color or belonging to a certain race or national-ethnic origin.

C. How should these rules be implemented with regard to statements posted during wartime?

Social networks

Social networks and other public online platforms are the arenas in which many of us, especially students, actually 'live our lives' today. This is where we obtain information, develop awareness, and form groups we can support and identify with. However, these platforms also expose us to considerable amounts of fake news and psychological warfare. In fact, the impact of social networks is just as great as (if not greater than) the influence of physical forums on campus or even online platforms identified specifically with the university. Consequently, TAU regards social networks as an integral part of the university environment, in which freedom of expression must be protected, but at the same time, statements that conflict with other protected interests must be avoided.

Following are several principles and examples of appropriate/inappropriate behavior in the social networks during wartime, ensuring protection of freedom of expression while also safeguarding the values protected by TAU:

- 1 Use respectful language.** Remember that the written word is very powerful. Avoid expressions of hatred and racism or profanities against whole communities and populations – both in your own posts and in your responses to others. Always remember that every message you post impacts others. **Forbidden: All Jews/Arabs should be damned and drowned in the sea!**
- 2 Do not spread false information that might place lives in danger.** Large quantities of fake news are currently being circulated, meant to exacerbate rifts in the nation, and worse - to encourage vengeance and attacks on innocent persons. Check your sources and their validity very carefully.
- 3 Do not post unlawful messages.** Sharing videos about events is allowed and even desirable within the limitations of free expression, but you must make sure that they contain no expressions of racism, violence, or incitement, or any support for terrorist activities. **Forbidden: Sharing contents that praise the Hamas terrorist organization. Permitted: Sharing information about the war's progression.**
- 4 Pay attention to symbols and visual language.** Expressing political opinions in the social networks often involves using symbols and various visual means. You must pay close attention to the symbols and visual language in your posts, and make sure that they are not incompatible with Israeli law or TAU regulations. For example: **Using and displaying the flag of the Palestinian Authority is not in itself an expression of support for a terrorist organization. However, posts about the conflict that glorify the flag of the Hamas terrorist organization, presenting it as a legitimate symbol, can be regarded under certain circumstances as support for a terrorist organization.** In addition, make sure that you do not share contents that humiliate and disgrace certain groups, and might lead to incitement to racism against them.
- 5 Distinguish between legitimate freedom of expression and support for a terrorist organization or incitement.** There is a difference between supporting the Hamas terrorist organization, which is prohibited by law, and supporting or identifying with the Palestinian people, which is permitted.
- 6 Conduct constructive discourse.** The social networks are an arena for discourse, dispute, and sharing opinions. We recommend conducting constructive, respectful discourse, even if the other side's opinions seem unbearable. Avoid hurling generalizations or one-sided statements that do not provide an opening for mutually respectful dialog or disputes, such as: **"All you Arabs should be thrown into the sea"; or "You Jewish oppressors deserve everything that is happening to you", etc.**

- 7 No bullying, shaming, or labeling.** At this time, many students might be subjected to bullying, shaming, or labeling just because they belong to a certain group, especially when the person posting the message does not exercise sufficient discretion. Posts of this kind, focusing on concrete individuals, expose them to severe disgrace, and possibly even violence and threats. **Note that personal attacks on students can lead to legal action, including libel lawsuits filed by the offended students.**
- 8 Act with discretion, stay alert, and report posts suspected as inappropriate.** Viewers are also responsible for deciding whether a certain post is inappropriate. If you have encountered a harsh post which you feel might be illegal, after carefully considering its severity, report it and save screenshots and other evidence for possible inquiry procedures.

Conclusion: TAU assumes that most members of the campus community oppose terrorism and racist incitement. We all share the pain over the numerous losses and call for a calmer exchange of feelings and opinions. At this time, when sensitivities run high, in case of doubt it is advisable to refrain from posting highly charged statements, even if in normal times they do belong in the arena of acceptable free expression. Avoid expressions which at present might ignite volatile emotions, increase controversy, or cause sorrow and pain.

Stay safe and express yourselves in a responsible manner, remembering that on the day after the war, we must begin to heal our community.