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What German development co-operation can learn from the incest debate

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Duisburg, 8 October 2014. On 24 September 2014 the German Ethics Council recommended that consensual sexual relations between adult siblings should no longer be illegal, thus decriminalising a taboo that has endured for millennia. A heated debate followed. Conservatives fear ongoing moral deterioration and the disintegration of the family unit. A number of the arguments that they employ are highly similar to those used in the debates regarding the abolition of prosecution for homosexuality. And further parallels exist: homosexuality was also a social taboo, regarded as “unnatural deviancy”. Illegal until 1969, its punishability was deemed constitutional by the Federal Constitutional Court.

Incest as a reflection of shifting values

The subject of incest enables us to witness how values systems and shifts in values occur in a society: as an ongoing process that matures within a society. In the specific case at hand, this is the detachment of a “social conviction rooted in cultural history, which remains in effect” (Federal Constitutional Court, 2008) from the realms of illegality. The Ethics Council has identified the fact that the current penological view sees no legitimate grounds for punishing sibling incest. For example, effective protection of “public health” would require that people with severe hereditary diseases also be prohibited from having sexual relations. Similarly, it could also be argued that “adultery” should be rendered punishable again in order to prevent the breakdown of the family. Thankfully, our society has no desire to see this.

Readers who find themselves regarding the incest debate as essentially different to that regarding homosexuality confirm the fact that our society regards human rights from a cultural and values-based perspective. Just as today we shake our heads in disbelief at the 1957 ruling of the Federal Constitutional Court on the illegality of homosexuality, at some point we will feel the same about the ban on incest. This is only ever apparent with hindsight, as all the time society is trapped in its contemporary moral contexts there is a lack of the necessary insight. The 2012 ruling of the European Court of Human Rights (ECHR) should also be regarded in this way. This noted that there is no uniform minimum standard on this issue across Europe (only 28 of the 44 European states examined stipulate criminal liability). The court consequently saw itself un-

able to assess the current “precise moral requirements” in Germany and granted German courts extensive leeway in their rulings. It has not intervened thus far, as no trend towards a cross-European standard is recognisable.

Implications for development co-operation

It goes without saying that people around the world have no uniformly-applicable moral conception. It is similarly evident that existing moral standards must shift in order for international human rights standards to be achieved. Not just elsewhere, but also here. Development co-operation concepts in the field of constitutional legality and human rights should pay more consideration to personal experience. The objective should be shifted more towards discourse and debate regarding the respective values positions instead of the presentation of human rights catalogues, with capacity building measures employed to integrate them into society. A central element of this will be the specific involvement of local actors under the guise of local ownership, making them the starting point for transition. This applies in particular to countries in which formal and traditional legal systems coexist, with the latter central in reflecting social values. German development co-operation typically only acknowledges traditional rules and legal practices where these do not contradict national and international values systems regarding the protection of human rights. At the least, this results in the confusion of starting point and objectives.

We should know from our own experience that certain human rights can only be realised via a shift in values and are the consequence of social processes. Such processes take time. They seldom fit into the prescribed project cycles of the donor countries. They also require patience, because contrasting moral concepts often meet with incomprehension and are “ditched” at the earliest opportunity. Democratic donor countries are often under pressure from their own population in this respect. Reflecting on the incest debate against this back-ground can help to create greater acceptance for the necessity of these processes, without wholly removing the question of interference or non-interference in cases of acute breaches of human rights.

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