



Hate Speech, Misinformation and the Law

Questions/Objectives

- What is free speech?
- What is hate speech
- Theories of restricting certain types of speech
- What does the Law say?



Article 19 Universal Declaration of Human Rights

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.



Article 19 International Covenant on Civil and Political Rights

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 10 European Convention on Human Rights

1. Everyone has the right to freedom of expression. This right shall include freedom to hold **opinions** and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Freedom of Expression and the European Court of Human Rights

- *Handyside v The United Kingdom* (ECtHR 1976)

‘freedom of expression constitutes one of the essential foundations of [a democratic society], one of the basic conditions for its progress and for the development of every man.’

- *Observer and the Guardian v United Kingdom* (ECtHR 1991)

freedom of expression is applicable not only to information or ideas that are ‘favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb.’

US First Amendment:

- Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.



Hate Speech - Definitions

No universally accepted definition

Problems?



Definition – European Union Agency for Fundamental Rights

The incitement and encouragement of **hate, discrimination** or **hostility** against a person, which are motivated by prejudices against said person because of a certain characteristic.

Comments on this definition?



Definition – Committee of Ministers- Council of Europe

All manners of expression that spread, promote, or legitimize racial **hate, xenophobia, antisemitism** or **other forms of hate** that are based on intolerance, aggressive nationalism or ethnocentrism, discriminations and enmity against minorities and migrants.

Comments on this definition?



European Court of Human Rights – Meaning of Hate Speech

Gündüz v Turkey (2003)

All manners of expression that spread, promote or **justify** hate based on intolerance.

Comments on this definition?



European Court of Human Rights – Meaning of Hate Speech

Vejedland v Sweden (2012)

It is not a necessary element that hate speech directly introduces the hate crimes because, said speech has as a result to **insult, mockery or slander** against certain groups of the populous and those things by themselves constitutes acts of hatred.

European Court of Human Rights – Role of Intermediaries

Delfi v Estonia

MTU v Hungary



Theory

Militant Democracy
Critical Race Theory



Militant Democracy

Doctrine developed by Karl Lowenstein

Pfersmann recognises both the political and legal functionalities of the enforcement of this doctrine by holding that it is a political and legal structure aimed at preserving democracy against those who want to overturn it from within or those who openly want to destroy it from outside by utilizing democratic institutions as well as support within the population.



Critical Race Theory

The theory considers a variety of issues looked at through, for example, the civil rights lens but instead:

‘places them in a broader perspective that includes economics, history, context, group and self-interest, and even feelings and the unconscious ...[and ... questions the very foundations of the liberal order, including equality theory, legal reasoning, enlightenment rationalism, and neutral principles of constitutional law.’





What Does the Law Say?



United Nations Level

International Covenant on Civil and Political Rights (1966)

Article 20

2. Any advocacy of national, racial or religious hatred that constitutes incitement to **discrimination, hostility** or **violence** shall be prohibited by law.



United Nations Level

International Convention on the Elimination of All Forms of Racial Discrimination (1965)

Article 4 (a) Shall declare an offence punishable by law all **dissemination of ideas** based on **racial superiority or hatred, incitement to racial discrimination**, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

The European Court of Human Rights

Féret v Belgium (ECtHR 2009)

Leaflets: 'Stop the Islamization of Belgium' and 'Save our people from the risk posed by Islam, the conqueror.'

The Court: 'political speech that stirred hatred based on religious, ethnic or cultural prejudices was a threat to social peace and political stability in democratic States.'

The European Court of Human Rights

Vejdeland and Others v Sweden (ECtHR, 2012)

‘HIV and AIDS appeared early with the homosexuals and that their promiscuous lifestyle was one of the main reasons for this modern-day plague gaining a foothold’

The Court: ‘although these statements did not directly recommend individuals to commit hateful acts, they are serious and prejudicial allegations,’ and, by applying *Féret*, noted that incitement to hatred does not necessarily entail a call for violence. The Court also underlined that ‘discrimination based on sexual orientation is as serious as discrimination based on race, origin or colour.’



The European Court of Human Rights

Norwood v UK (2004):

Rights

The applicant was a member of the *British National Party (BNP)*, an extreme-right wing political party. He displayed a large poster in the window of his flat, supplied by the BNP, with a photograph of the Twin Towers in flames, the words “Islam out of Britain – Protect the British People” and a symbol of a crescent and star in a prohibition sign.

Here, the Court found that ‘a general, vehement attack against a religious group, linking the group as a whole with a grave act of terrorism, is incompatible with the values proclaimed and guaranteed by the Convention, notably tolerance, social peace and non-discrimination’ and, thereby, fell outside the scope of Article 10.



The European Union



COUNCIL FRAMEWORK DECISION 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law

Article 1

1. Each Member State shall take the measures necessary to ensure that the following intentional conduct is punishable:

(a) **publicly inciting to violence or hatred** directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin;

2. For the purpose of paragraph 1, Member States may choose to punish only conduct which is either carried out in a manner likely to **disturb public order or which is threatening, abusive or insulting.**



Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (2003)

Each Party shall adopt such legislative and other measures as may be necessary to establish as **criminal offences** under its domestic law, when committed intentionally and without right, the following conduct:

“distributing, or otherwise making available, **racist and xenophobic material** to the public through a computer system” (art. 3);

“**insulting publicly**, through a computer system, (i) persons for the reason that they belong to a group distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors; or (ii) a group of persons which is distinguished by any of these characteristics” (art. 5)



Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (2003)

USA not a party

Internet issues – jurisdictional, mirror sites etc

The Internet



‘Solution’ to jurisdictional issues? Social Media Control through Code of Conduct on Illegal Hate Speech (European Commission)

Facebook, Youtube, Microsoft, Twitter (Google Plus, Snapchat and Instagram)

Removal of hate speech in less than 24 hours

Framework Decision is the foundation to what is deemed illegal

User generated

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Problems with supra-national framework?

Variation in threshold

Exclusion of certain groups e.g. LGBT (reflected in Desktop research in CONTACT)

National levels: Cyprus Article 99A Criminal Code (amended in 2015): incorporation of sexual orientation and gender identity in relation to hate speech



National Initiatives

German Network Enforcement Act
(effects on other countries)



AI

AI and hate speech

AI and misinformation

AI and Covid



Conclusions

Hate speech:

Free speech issues (ECtHR case law)

Hierarchy (focus on racism and religious discrimination)

Band aid approach of Commission (a necessity?)

Is regulation the answer?

Effects of regulation?