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Lancaster University  
Law School

# Tackling hate speech in the European Union

*The measurable and unmeasurable  
harms of hate speech*

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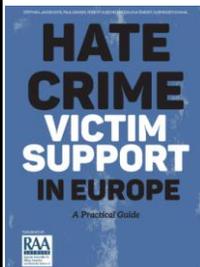
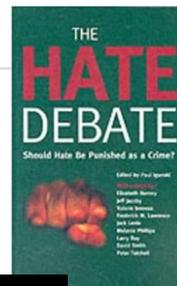
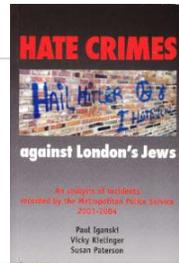
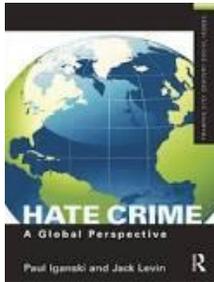
## Some fundamental questions

- How is hate speech defined?
- What types of legal instruments address hate speech?
- What justification is there for the right to freedom of expression to be quashed by criminal sanction against hate speech?



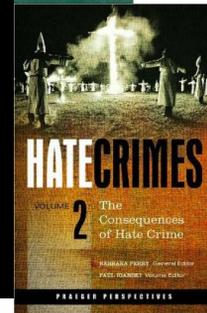
Go to [www.menti.com](http://www.menti.com) and use the code 84 39 25

# Methodology



## Fundamental questions applied to:

- European Union legal framework on hate speech
- Selection of case law from the European Court of Human Rights
- Prosecutions for racially and religiously aggravated public order offences in England & Wales



# Freedom of expression

## ARTICLE 10

### Freedom of expression

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.

*European Convention on Human Rights*

# Defining hate speech



The screenshot shows the Council of Europe website. At the top, there is a navigation bar with 'WWW.COE.INT', 'HUMAN RIGHTS', 'DEMOCRACY', 'RULE OF LAW', 'EXPLORE', 'EN', and 'CONTACT'. Below this is a blue header with the Council of Europe logo and 'Freedom of Expression'. A secondary navigation bar includes 'Home', 'Media', 'Internet', 'Co-operation activities', and 'Committees'. The main content area is titled 'Hate Speech' and features a word cloud graphic. A quote is highlighted in a large blue speech bubble. At the bottom right of the screenshot, it says 'Council of Europe Committee of Ministers Recommendation (97[20] 30<sup>th</sup> October 1997)'.

**Council  
of  
Europe**

**“...the term ‘hate speech’ shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.”**

Council of Europe Committee of Ministers  
Recommendation (97[20] 30<sup>th</sup> October 1997)

# Defining hate speech

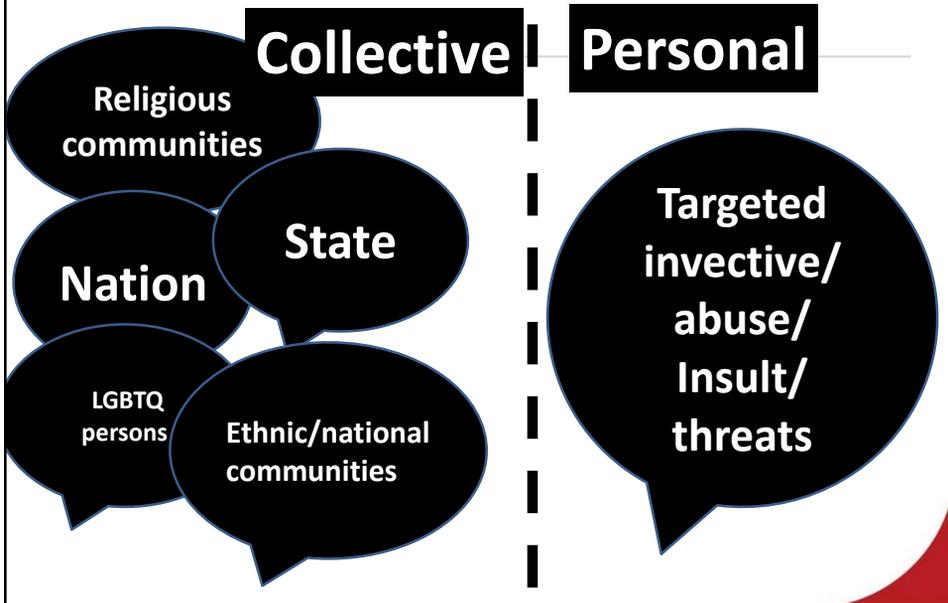


The screenshot shows a dark blue box with white text. It reads: 'ECRI General Policy Recommendation No. 15 on combating Hate Speech Adopted on 8 December 2015'.

**European Commission  
against Racism and  
Intolerance**

**“...the advocacy, promotion or incitement of the denigration, hatred or vilification of a person or group of persons, as well any harassment, insult, negative stereotyping, stigmatization or threat of such person or persons and any justification of all these forms of expression – that is based on a non-exhaustive list of personal characteristics or status that includes ‘race’, colour, language, religion or belief, nationality or national or ethnic origin, as well as descent, age, disability, sex, gender, gender identity and sexual orientation..”**

# Harms of hate speech



## Article 1

### Offences concerning racism and xenophobia

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;
- (b) the commission of an act referred to in point (a) by public dissemination or distribution of tracts, pictures or other material;
- (c) publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court, 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 when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group;
- (d) publicly condoning, denying or grossly trivialising the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945, 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 when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group.

## Council Framework Decision 2008/913/JHA

# Council Framework Decision 2008/913/JHA



## Article 4

### **Racist and xenophobic motivation**

For offences other than those referred to in Articles 1 and 2, Member States shall take the necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance, or, alternatively that such motivation may be taken into consideration by the courts in the determination of the penalties.

# European Court of Human Rights Case law



CONSEIL  COUNCIL  
DE L'EUROPE OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME  
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 23131/03  
by Mark Anthony NORWOOD  
against the United Kingdom

# Limitations on freedom of expression

## ARTICLE 17

### Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

*European Convention on Human Rights*

## Identification criteria

*...guiding judgements by the European Court of Human Rights concerning hate speech to be excluded from the protection afforded to freedom of expression:*

- **Context of the speech**
  - **Intention of the speaker**
  - **Status of the speaker**
  - **Impact of the speech**
- Tulkens, F. (2015) 'When to say is to do. Freedom of expression and hate speech in case-law of the European Court of Human Rights', Strasbourg, 7<sup>th</sup> July 2015.

# Migrants and the media: some newspaper headlines



**Britain Is Country of Choice for Many  
'Feckless' Poles** (Daily Mail Nov 2006)

**Polish Borat Claims Groping Women Is  
Normal in Eastern Europe** (Daily Mail Nov 2006)

**Polish Immigrants Take £1bn out of the UK  
Economy** (Daily Mail June 2007)

**Fears for NHS & Schools as 1,000 Polish  
Children Are Born Every Month** (Daily Mail Nov 2007)

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## Federation of Poles in Great Britain —letter to the Press Complaints Commission



"The Federation of Poles in Great Britain is concerned about newspaper coverage emphasising negative aspects of the Polish presence in the UK . The worst examples have linked Poles with the expressions 'feckless', 'chancers', 'swamping the NHS', 'fears for schools', 'British pushed to the back of the jobs queue', 'killers', 'drug smugglers', 'rapists', etc. This has made Poles living in the UK feel persecuted."

COMPLAINANT NAME:  
Federation of Poles in Great Britain

CLAUSES NOTED: 1, 4, 12

PUBLICATION: Daily Mail

COMPLAINT:

Mr Wiktor Moszczynski, Research Officer, complained that a series of articles on immigration, dating back to 2006, were harassing. The complainant also raised concerns about harassment.

RESOLUTION:

The complaint was resolved when the newspaper which was sorry that its coverage had upset the Federation and wished to emphasise that it was in no way anti-Polish, amended online versions of some of the articles and removed others. It also published the following letter from the complainant, in addition to publishing a

"Poles have felt humiliated by this coverage and vulnerable to numerous acts of hostility, even violence, by a vociferous minority of UK citizens. Hundreds of hate crimes against Poles, some leading to injury or death, have been recorded in this country in the last two years."

# Holocaust denial



QUATRIÈME SECTION  
DÉCISION  
SUR LA RECEVABILITÉ  
de la requête n° [65831/01](#)  
présentée par Roger GARAUDY  
contre la France  
2003

# Legislating historical memory

## THE CONVERSATION

Academic rigour, journalistic flair

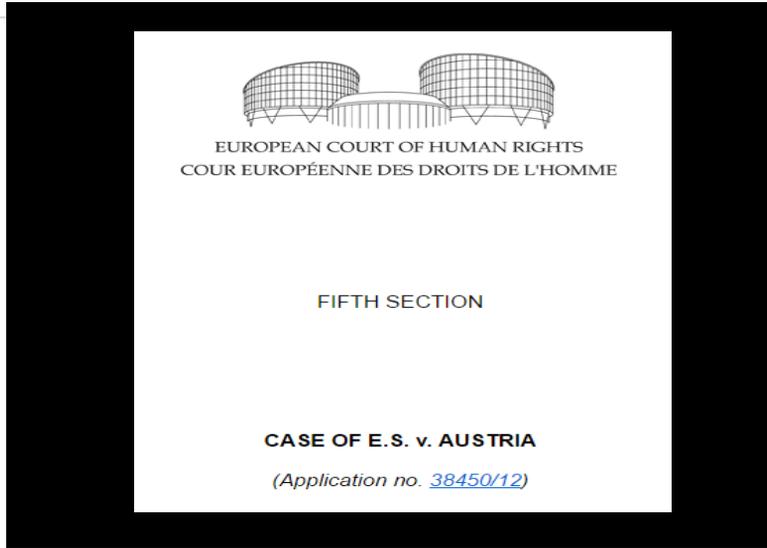
Arts + Culture Business + Economy Cities Education Environment + Energy Health + Medicine **Politics + Society** Science + Technology

## Poland is trying to rewrite history with this controversial new holocaust law

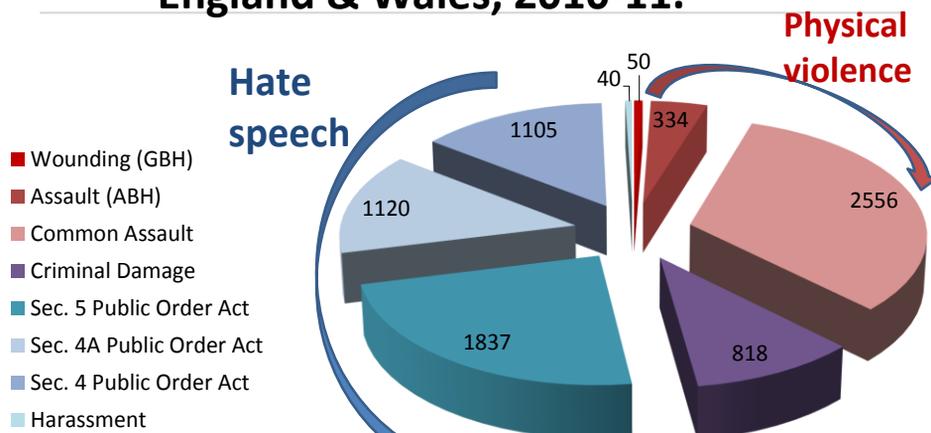
February 16, 2016 2:23pm GMT



# Disparagement of religious precepts



# Prosecutions for racially & religiously aggravated offences, England & Wales, 2010-11.



Public Order Act 1986: Section 4A Intentional harassment, alarm or distress.  
(1)A person is guilty of an offence if, with intent to cause a person harassment, alarm or distress, he—  
(a)uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or  
(b)displays any writing, sign or other visible representation which is threatening, abusive or insulting, thereby causing that or another person harassment, alarm or distress.

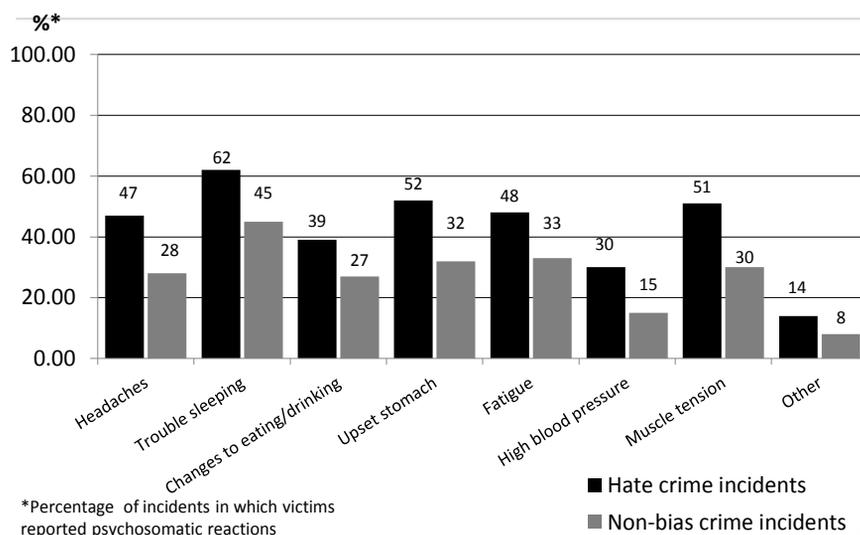
Source: Freedom of Information request to Crown Prosecution Service, England & Wales.

# Hate crimes hurt more

Crime surveys in the UK and US show that on average hate crime victims report greater levels of post-victimization distress compared with victims of comparable, but otherwise motivated crimes.

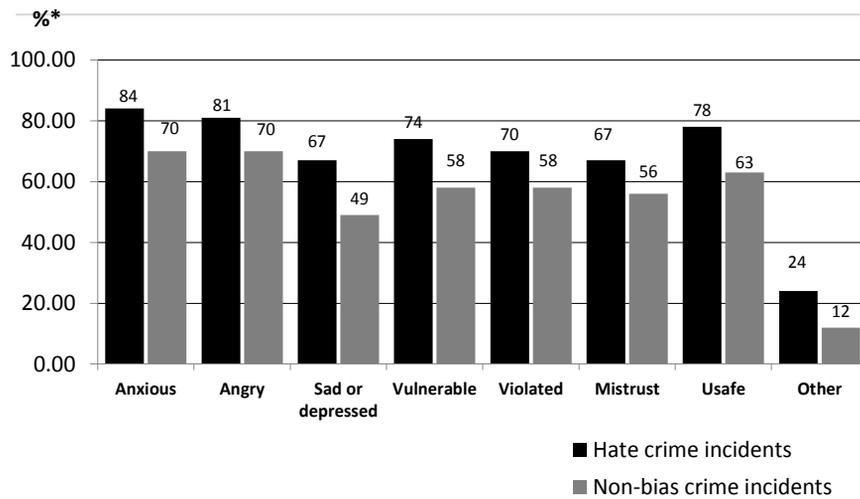
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## Post-victimization psychosomatic reaction to violent crime



Source: Bureau of Justice Statistics, National Crime Victimization Survey 2010, 2011, 2012, 2013

# Post-victimization psychological reaction to violent crime



\*Percentage of incidents in which reactions reported

Source: Bureau of Justice Statistics, National Crime Victimization Survey 2010, 2011, 2012, 2013

# Transmission and ritual models of communication

**Transmission model**

**Ritual model**

See: Clay Calvert (1997) 'Hate speech and its harms: A communication theory perspective', *Journal of Communication*, 47(1): 4-19.

**Direct impact of communication – mental, emotional and behavioural changes caused and the harms consequently inflicted**

***Direct violence***

**Reinforcement of attitudes which create a social reality that results in disparate and discriminatory treatment**

***Structural violence***

# QUESTIONS?

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# THANK YOU!

Contact me at:

**p.iganski@lancaster.ac.uk**

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