

# Tackling hate speech in EU law

Katrin Wladasch

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# Tackling hate speech in EU law

- Definition of hate speech
  - Legislative framework
  - Access to justice
  - Online hate speech
  - Freedom of expression v. hate speech
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## Definition of Hate Speech

- No standardised legal definition
  - EU Acquis tackles cases of **discriminatory harassment**
    - CJEU case law
    - Equality Bodies in charge
  - **Hate speech** rather criminal law sphere
    - Legislative framework stems from obligations imposed by ICERD
    - Focus on racism and related intolerance
    - typically requires commitment in public sphere
    - Check of proportionality in relation to freedom of expression
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## Framework Decision on combating racism and xenophobia

### Urges Member States to

- **penalise public incitement to violence or hatred** on the basis of race, colour, religion, descent or national or ethnic origin;
  - For criminal offences other than those covered by the Framework Decision, EU countries should ensure that **racist and xenophobic motivation**:
    - is considered as an **aggravating circumstance** ; or
    - may be **taken into account in the determination of the penalties.**
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## Definition of Hate Speech

**Hate speech** shall be understood as covering all forms of expressions, 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's Committee of Ministers  
Recommendation 97(20) on 'hate speech'

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## ECRI General Policy Recommendation (GPR) No 15 on combating hate speech

- the **advocacy, promotion or incitement**, in any form, of the denigration, hatred or vilification of a person or a group of persons, as well as
- any **harassment, insult, negative stereotyping, stigmatisation or threat** in respect of such a person or group of persons and
- the **justification** of all the preceding types of expression,

on the grounds of {perceived} 'race', colour, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and **other personal characteristics or status.**

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## Legislative Framework

### National legislation – Criminal Law

- Incitement to hatred
- motivation based on racism, xenophobia or related intolerance as an aggravating circumstance

based on international, CoE and EU standards

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## Legislative Framework

### National legislation – Equality Law

- Harassment
  - unwanted conduct related to any of the grounds protected by equal treatment legislation with the
  - purpose or effect of violating the dignity of a person and of
  - creating an intimidating, hostile, degrading, humiliating or offensive environment

EU Anti-Discrimination Acquis

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## Access to Justice

Protection by criminal law vs. protection by **national equal treatment legislation**

- >Specific procedural guarantees and institutional framework

- **shift of the burden of proof:** in cases, where plaintiffs manage to establish facts, from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.
  - **competence of the Equality Bodies** to handle their cases
  - **wider range of remedies** that is provided by equal treatment legislation in comparison to criminal law
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## Case Law of the CJEU

Publicly demonstrated unwillingness to

- employ Moroccan fitters (CJEU, Feryn, C-54/07)
- ever hire a gay player (CJEU, C-81/12, Asociația Accept)
- ever hire a homosexual person to work at his firm nor wish to use the services of such persons. (CJEU, C-507/17, NH v. Associazione Avvocatura per I Diritti LGBTI)

Qualified as direct discrimination with no clear guidance on definition of harassment

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## Case Law of the ECtHR

- Rich case law of the European Court of Human Rights (ECtHR) on where to draw the lines between **freedom of expression** and **hate speech**,
- on what has to be accepted as a *demand of that pluralism, tolerance and broad mindedness without which there is no 'democratic society'* even if it includes information or ideas that *offend, shock or disturb* and what would have to be considered as an
- **abuse of other rights** (Article 17 ECHR) or require
- restrictions of protection (Article 10 para 2 ECHR).

ECtHR/ 5493/72 (07.12.1976),  
*Handyside v. the United Kingdom*, para 49.

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## Case Law of the ECtHR

### **Vejdeland v Sweden (2012)**

- Distribution leaflets with homophobic content in a school in Sweden. Leaflets emphasized the “morally destructive effect [of homosexuality] on the substance of society” drew a causal link between “homosexuals’...promiscuous lifestyle” and the spreading of HIV and suggested that the “homosexual lobby” was trying to “play down pedophilia.”
  - They were convicted of agitation against a national or ethnic group.
  - Claimed the breach of their freedom of expression under Article 10 of the Convention.
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## Case Law of the ECtHR

### **Vejdeland v Sweden (2012)**

#### **ECtHR judgment:**

- No violation of Article 10 ECHR
  - Statements had constituted “serious and prejudicial statements”, even if they had not been a direct call for hateful acts
  - Discrimination based on sexual orientation is as serious as discrimination based on race, origin or colour
  - Interference in freedom of expression necessary in a democratic society for the protection of the rights of others
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## Case Law of the ECtHR

### **Molnar v Romania (2012)**

- Member of an extreme right group known to Romanian authorities. Posters with racist and homophobic contents (including with messages such as “Stop Romania from becoming a country of gypsies!” and “Romania needs children, not homosexuals!”) were found in his house by the police.
  - He was convicted for “nationalistic-chauvinistic propaganda” and sentenced to six months in prison, which he did not discharge benefiting from a pardon.
  - Complaint about a violation of his right to freedom of expression under Article 10 of the Convention.
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## Case Law of the ECtHR

### Molnar v Romania (2012)

#### ECtHR judgement:

- posters could stoke tensions among the population,
  - messages were susceptible to seriously damage public order and were in breach of the fundamental values underpinning the Convention and democratic society.
  - actions were incompatible with democracy and human rights and consequently, exceeded the scope of Article 10 of the Convention.
  - Dismissal of the complaint by referring to Article 17 of the Convention
  - by applying Article 17, the Court did not have to examine the proportionality of the interference with the applicant's free speech
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## Case Law of the ECtHR

### Günduz v Turkey (2003)

- Member of Islamic sect took part in debate on TV
- very critical statements concerning democracy.
- described contemporary secular institutions as "impious" and openly called for Sharia law.
- convicted for incitement to religious

#### ECtHR judgment:

- public discussion, which sought to present unorthodox views
  - topic of discussion had been the subject of widespread debate in the Turkish media and concerned a problem of general interest
  - *mere fact of defending sharia, without calling for violence to establish it, cannot be regarded as 'hate speech'*
  - Violation of Article 10 ECHR
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## Case Law of the ECtHR

### **Delfi v Estonia (2015)**

- Commercially-run Internet portal published average to 300 articles per day
  - 10.000 reader comments/day, some of which offensive, threatening, and defamatory
  - Automatic filter plus possibility for other readers to report inappropriate comments – and deletion afterwards
  - Company was held liable for non removal of defamatory comments by Estonian courts
  - Complaint referring to Article 10
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## Case Law of the ECtHR

### **Delfi v Estonia (2015)**

#### **ECtHR judgment:**

- Confirmation of liability for offensive comments of readers at the side of Internet portal
  - Proportionality check freedom of expression and right to private life
  - No violation of Article 10
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## Case Law of the ECtHR

### **MTE and Index v Hungary (2016)**

- Website sharing and creating content users could comment on
  - Comments directed at a company that was mentioned in shared content (opinion piece)
  - Court: offensive, insulting comments, liability of the portal
  - Complaint referring to Article 10
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## Case Law of the ECtHR

### **MTE and Index v Hungary (2016)**

#### **ECtHR judgment:**

- Violation of Article 10 ECHR (in contrast to Delfi)
  - Internet new portals not publishers, but expected to assume duties and responsibilities for comments and third party content published on their platforms
  - BUT: Hungarian authorities had not carried out proper balancing of rights- right to freedom of expression and right to private life
- AND: in this case comments had not amounted to hate speech, but were ,just'offensive and vulgar, and vulgar and offensive speech is a common attribute of online comments – as such reduces their impact
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## CJEU C-18/18 Glawischnig v Facebook

- Facebook user shared article from online news magazine
- with photo of Ms. Glawischnig
- Plus comment considered as insult and defamation
- Accessible by each facebook user

### **CJEU judgement**

- Directive on electronic commerce does not preclude a court of a Member State from ordering a host provider:
  - to remove information which it stores, the content of which is **identical** to the content of information which was previously declared to be unlawful,
  - . . . the content of which is **equivalent**,
  - **worldwide**
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## Code of Conduct on countering illegal hate speech online

### **Self-Declaration of collective responsibility of IT companies**

- Clear and effective processes to review notifications regarding hate speech on their services
  - Review of removal notifications
  - Remove or disable access to content
  - Raise awareness about which type of content is not permitted
  - Cooperation with Member States authorities
  - Partnership with NGOs
  - Training of staff
  - Development of counter-narratives
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## New legislative rules

- **Network Enforcement Act – Germany**
  - **Communication Platform Act – Austria**
  - **Digital Services Act – EU/Proposal**
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Thank you!

Contact:  
Katrin Wladasch  
[katrin.wladasch@univie.ac.at](mailto:katrin.wladasch@univie.ac.at)

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