

Hate Speech – Old Enemy, New Battles



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IVR

Article 4, ICERD

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

- (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;

[...]

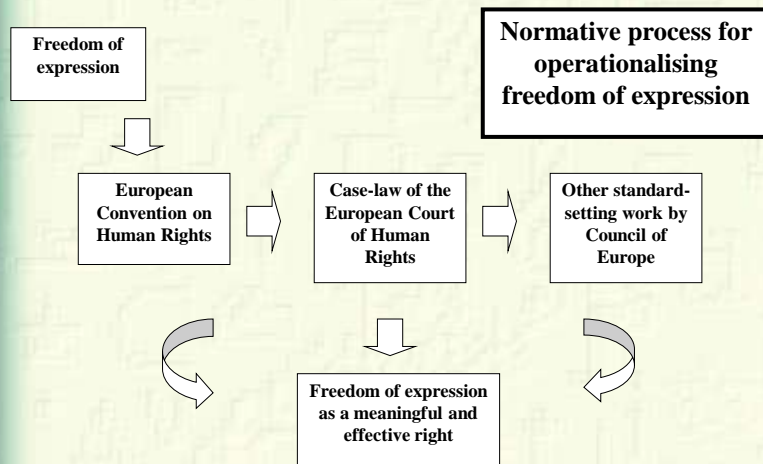
Article 4(a), ICERD – offences punishable by law:

- all dissemination of ideas based on racial superiority;
- all dissemination of ideas based on racial hatred;
 - incitement to racial discrimination;
- all acts of violence against any race or group of persons of another colour or ethnic origin;
 - incitement to such acts;
- the provision of any assistance to racist activities, including the financing thereof.

Brief panorama of UN treaties

- The Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention) (esp. Article III(c) - direct and public incitement to commit genocide);
- The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (esp. Articles 4 and 5 – all dissemination of ideas based on racial superiority or racial hatred, incitement to racial discrimination, with due regard to the right to freedom of expression);
- The International Covenant on Civil and Political Rights (ICCPR) (esp. Articles 19 and 20 – respectively, freedom of expression (including permissible grounds for restricting the right) and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence).

From theory to practice



Panorama of Council of Europe standards

Treaty-based standards

- European Convention on Human Rights
- Framework Convention for the Protection of National Minorities
- European Convention on Transfrontier Television
- Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems

Non-treaty-based standards

- Committee of Ministers
- Parliamentary Assembly
- European Commission against Racism and Intolerance

Article 10, ECHR

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.

***Handyside* case: conflicting opinions are part of democratic life**

“[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 the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society’.”

Handyside v. United Kingdom, Judgment of the European Court of Human Rights, 7 December 1976,

Series A, No. 24, para. 49.

Is there a right not to be offended on the basis of religious beliefs?

“[...] an obligation to avoid as far as possible expressions that are gratuitously offensive to others and thus an infringement of their rights, and which therefore do not contribute to any form of public debate capable of furthering progress in human affairs.”

- Otto-Preminger-Institut, r.o. 49.

Popper's "Paradox of tolerance"



Artikel 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.

No ECHR protection for:

- * Racism
- * Nazism
- * Neo-Nazism
- * Anti-Semitism
- * Holocaust denial
- * “Hate speech”
- * Homophobia

Standard-setting by Council of Europe Committee of Ministers

For the purposes of Recommendation (97) 20 on “Hate Speech”:

“[...] the term "hate speech" shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, antisemitism 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.”

The Council of Europe’s two-pronged approach as applied by ECRI

State authorities should:

- “impress on the media, without encroaching on their editorial independence, the need to ensure that reporting does not contribute to creating an atmosphere of hostility and rejection towards members of any minority groups”
- “engage in a debate with the media and members of other relevant civil society groups on how this could best be achieved”

Two-pronged approach

- Applied consistently by relevant organs of the Council of Europe (i.e., Court of Human Rights, Committee of Ministers, Parliamentary Assembly, ECRI, Advisory Committee on the Framework Convention for the Protection of National Minorities, etc.)
- Can be traced to the *Jersild* case and the Committee of Ministers' Recommendations (97) 20 on "Hate Speech" and (97) 21 on the media and the promotion of a culture of tolerance



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New technologies & new instrumentalities

- dissemination of propaganda, other types of (mis-)information, conspiracy theories and hate spam;
- exchange of information and ideas, e.g. via social media networks, discussion groups, listservs and communities of interest;
- search engine optimisation techniques, such as hyperlinking strategies designed to generate better search results;
- attracting inadvertent users by “usurping domain names” and “using misleading meta-tags”;
- organisational purposes such as the coordination of activities, planning of events, training, recruitment drives;
- commercial ends such as fund-raising, the sale of publications, videos, memorabilia and paraphernalia;
- trolling and other such disruptive practices;
- pursuit of various offences against the person and other criminal or invasive behaviour, e.g. the targeting of (potential) victims, cyber-bullying, cyber-stalking.

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Challenges of dot-joining and validation



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