

Workshop 8: Radicalisation on the Internet – The criminal justice perspective

Protocol to the Budapest on Xenophobia and Racism committed through Computer Systems

ADDITIONAL PROTOCOL TO THE CONVENTION ON CYBERCRIME,
CONCERNING THE CRIMINALISATION OF ACTS OF A RACIST AND XENOPHOBIC NATURE COMMITTED
THROUGH COMPUTER SYSTEMS (ETS 189)

Strasbourg, 18 June 2015



Alexander Seger
Council of Europe

www.coe.int/cybercrime

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Action Plan

The fight against violent extremism and radicalisation leading to terrorism

(Adopted by the Committee of Ministers, Brussels, 19 May 2015)

- ▶ **Reinforcing international legal framework against terrorism and violent extremism, including implementation of:**
 - **Convention on the Prevention of Terrorism**
 - **Additional Protocol on Foreign Terrorist Fighters [NEW]**
 - **Protocol to Budapest Convention on Xenophobia and Racism**
- ▶ **Education**
- ▶ **Addressing radicalisation in prisons**
- ▶ **Internet: No Hate Speech**

Radicalisation and Internet

- ▶ **The Internet creates more opportunities to become radicalised**
- ▶ **The Internet acts as a echo chamber**
- ▶ **The Internet facilitates the process of radicalisation**

(RAND Europe 2013: Radicalisation in the digital era)

“Hate speech”:

“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...”.

[\(Recommendation No. R \(97\) 20](#) adopted by the Committee of Ministers on 30 October 1997)

“Extremism”:

Vocal or active opposition to fundamental ... values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs”

(UK Government, Prevent Strategy, Home Office 2011)

“Radicalisation”:

“Radicalisation is the process by which a person comes to support terrorism and forms of extremism leading to terrorism”

(UK Government, Prevent Strategy, Home Office 2011)

“Online radicalisation”:

“A process whereby individuals through their online interactions and exposures to various types of internet context, come to view violence as a legitimate method of solving social and political conflicts”

(RAND Europe 2013: Radicalisation in the digital era)



Protocol on Xenophobia and Racism: Background

ECHR Case law

- Case of *Aleksey Ovchinnikov v. Russia*, no. 24061/04, 16 December 2010
- Case of *Balsytė-Lideikienė v. Lithuania*, no. 72596/01, 4 November 2008
- Case of *Bladet Tromsø and Stensaas v. Norway*, [GC], no. 21980/93, 20 May 1999
- Case of *Fatullayev v. Azerbaijan*, no. 40984/07, 2 April 2010
- Case of *Fére v. Belgium*, no 15615/07, 16 July 2009.
- Cases of *Erbakan v. Turkey*, no 59405/00, 6 July 2006
- Case of *Garaudy v. France*, no 65831/01, 24 June 2003
- Case of *Gündüz v. Turkey*, no. 35071/97, 4 December 2003.
- Case of *Jersild v. Denmark*, no. 15890/89, 23 September 1994.
- Case of *Lehideux and Isorni v. France*, no. 24662/94, 23 September 1998
- Case of *Leroy v. France*, no. 36109/03, 2 October 2008
- Case of *Norwood v. the United Kingdom*, no. 23131/03, 15 November 2004
- Case of *Observer and Guardian v. the United Kingdom*, no. 13585/88, 26 November 1991
- Case of *Pavel Ivanov v. Russia*, no. 35222/04, 20 February 2007
- Case of *Purcell and others v. Ireland*, no. 15404/89, 16 April 1991
- Case of *Renaud v. France*, no. 13290/07, 25 February 2010
- Case of *Stoll v. Switzerland*, [GC], no. 69698/01, 10 December 2007
- Case of *Sürek v. Turkey*, [GC], no. 26682/95, 8 July 1999
- Case of *Thoma v. Luxembourg*, no. 38432/97, 29 March 2001
- Case of *Times Newspapers Ltd v. the United Kingdom* (nos. 1 and 2), nos. 3002/03 and 23676/03, 10 March 2009
- Case of *Timpul Info-Magazin and Anghel v. Moldova*, no. 42864/05, 27 November 2007
- Case of *Vejdeland and others v. Sweden*, no. 1813/07, 9 February 2012
- Case of *Willem v. France*, no. 10883/05, 16 July 2009



Protocol on Xenophobia and Racism: Background

- **Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocol No. 12 concerning the general prohibition of discrimination**
 - **United Nations International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (177 Parties by June 2015)**
 - **the European Union Joint Action of 15 July 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning action to combat racism and xenophobia**
 - **Council of Europe: European Commission against Racism and Intolerance, ECRI, established in 2002 (www.coe.int/ecri)**
 - **The Internet offers new opportunities for acts of xenophobia and racism**
 - **Acts of racism and xenophobia are crimes (not only if speech presents a “clear and present danger”)**
- = Need for Protocol to Budapest Convention**



Protocol on Xenophobia and Racism: Purpose

Preamble

- All human beings are born free and equal in dignity and rights;
- Need to secure a full and effective implementation of all human rights without any discrimination or distinction;
- Acts of a racist and xenophobic nature constitute a violation of human rights and a threat to the rule of law and democratic stability;
- Computer systems offer an unprecedented means of facilitating freedom of expression and communication around the globe;
- Freedom of expression constitutes one of the essential foundations of a democratic society, and is one of the basic conditions for its progress and for the development of every human being;
- Risk of misuse or abuse of such computer systems to disseminate racist and xenophobic propaganda;
- Need to ensure a proper balance between freedom of expression and an effective fight against acts of a racist and xenophobic nature;
- This Protocol is not intended to affect established principles relating to freedom of expression in national legal systems;

Article 2: Definition

***“racist and xenophobic material”* means any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors.**

Article 3 – Dissemination of racist and xenophobic material through computer systems

establish as criminal offences 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.

Article 4 – Racist and xenophobic motivated threat

establish as criminal offence when committed intentionally and without right, the following conduct:

Threatening, through a computer system, with the commission of a serious criminal offence as defined under its domestic law,

- (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) (ii) a group of persons which is distinguished by any of these characteristics.**

Article 5 – Racist and xenophobic motivated insult

establish as criminal offence when committed intentionally and without right, the following conduct:

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.**

Article 6 – Denial, gross minimisation, approval or justification of genocide or crimes against humanity

establish as criminal offence when committed intentionally and without right, the following conduct:

distributing or otherwise making available, through a computer system to the public, material which denies, grossly minimises, approves or justifies acts constituting genocide or crimes against humanity,

as defined by international law and recognised as such by final and binding decisions of the International Military Tribunal, established by the London Agreement of 8 August 1945, or of any other international court established by relevant international instruments and whose jurisdiction is recognised by that Party.



Protocol on Xenophobia and Racism: Implementation

Any Party to the Budapest Convention may also become a Party to the Protocol on Xenophobia and Racism.

Status as at 1 June 2015

► 24 Parties + 14 signatures



Protocol on Xenophobia and Racism: Implementation

Parties		Signatories	
Albania	Luxembourg	Andorra	Canada
Armenia	Montenegro	Austria	South Africa
Bosnia and Herzegovina	Netherlands	Belgium	
Croatia	Norway	Estonia	
Cyprus	Poland	Greece	
Czech Republic	Portugal	Iceland	
Denmark	Romania	Italy	
Finland	Serbia	Liechtenstein	
France	Slovenia	Malta	
Germany	Spain	Moldova	
Latvia	“The former Yugoslav Republic of Macedonia”	Sweden	
Lithuania	Ukraine	Switzerland	



Protocol on Xenophobia and Racism: Implementation

The European Commission Against Racism and Intolerance (ECRI, www.coe.int/ecri) monitors compliance by member States of the Council of Europe with this Protocol.



Protocol on Xenophobia and Racism: Implementation

For discussion:

How to support implementation of the Protocol?

Domestic legislation?

Freedom of expression versus xenophobia and racism. What safeguards?

Training?

Notice and take-down: what procedures?

Cooperation with ISPs?