

Freedom of expression versus xenophobia, racism and incitement to crime and terrorism: where are the boundaries?

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***Handyside*-judgment: tolerance and democratic society**

"[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, para. 49.

Is there a right not to be offended on account of one's 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.

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.

“Hate speech” ... or not?

- *Jersild v. Denmark* (1994) – “Green jackets” – role/freedom of media
- *Garaudy v. France* (2003) – Holocaust denial
- *Seurot v. France* (2004) – article by teacher in school newspaper about immigrants
- *Norwood v. United Kingdom* (2004) – member of extreme right-wing party, poster in window very offensive for Muslims
- *Féret v. België* (2009) – Member of Parliament, anti-immigrant pamphlets in election period
- *Vejdeland v. Zweden* (2012) – homophobic pamphlets distributed in school

- These judgments can be found via the HUDOC database of the ECtHRs:
<http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database/>

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No ECHR protection for:

- Racism
- Nazism
- Neo-Nazism
- Holocaust denial
- “Hate speech”

The Council of Europe versus “hate speech”

- ECHR/ECtHRs
- Committee of Ministers
- Framework Convention for the Protection of National Minorities
- European Commission against Racism and Intolerance (ECRI)
- European Convention on Transfrontier Television
- Additional Protocol to the Cybercrime Convention
- Convention on Prevention of Terrorism
- Parliamentary Assembly

Standard-setting by the 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.”

Standard-setting by the Committee of Ministers (II)

Recommendation (97) 20 on “Hate Speech”

Recommendation (97) 21 on the media and the promotion of a culture of tolerance

“As concerns the propagation of racism and intolerance there is, in principle, scope for imposing legally binding standards without violating freedom of expression and the principle of editorial independence. However, as concerns the promotion of a positive contribution by the media, great care needs to be taken so as not to interfere with these principles. This area calls for measures of encouragement rather than legal measures.”

- Explanatory Memorandum to Recommendation No. R (97) 20, para. 12 en zie ook *Jersild*-arrest

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Additional Protocol to Cybercrime Convention

- the dissemination of racist and xenophobic material via computer systems (Article 3);
- racist and xenophobic motivated threat (Article 4) and insult (Article 5);
- the denial, gross minimisation, approval or justification of genocide or crimes against humanity (Article 6), and
- aiding or abetting in the above (Article 7)

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Convention on Prevention of Terrorism

- Public provocation to commit a terrorist offence (Article 5)
- Recruitment for terrorism (Article 6)
- Training for terrorism (Article 7)
- Ancillary offences (Article 9)
- Liability of legal entities (Article 10)

New online manifestations of hate speech/radicalisation?

- 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.

Contact

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