

# **FREEDOM OF EXPRESSION AND DEMOCRACY IN THE DIGITAL AGE – OPPORTUNITIES, RIGHTS, RESPONSIBILITIES**

## **Second day of the Conference; The session on “Hate Speech On-line”**

### **Statement**

**by**

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Dear Ministers, Distinguished Delegates, Ladies and Gentlemen,

It is my honor and pleasure to represent my country at this ministerial conference on one of the very topical issues of the modern world – Freedom of Expression and Democracy in the Digital Age.

We have listened to very interesting keynote speeches and ideas during yesterday and today's discussions about how to tackle the issues that are arising in the modern age of ICTs (internet communication technologies).

As the theme of the present session is tackling hate speech online – issue that is becoming increasingly challenging for governments – let me share our views in response to the questions for our discussion:

- When does information or ideas that offend shock or disturb become hate speech? and
- How to tackle hate-speech online at the national and international level?

### ***As regards freedom of information vs. hate speech***

In its landmark judgment *Handyside v. The United Kingdom* the ECtHR noted that 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. As the Court said, such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society".

In trying to answer the first question “when does information or ideas that offend, shock or disturb become hate speech”, first of all, let me modify this question into another one: Does any language which might appear to an average civilized and reasonable observer to be “offending”, “shocking”, or “disturbing” in ordinary sense of these words constitute “hate speech”? I think the answer should be no. If the answer was yes, then the ECtHR's quoted words about freedom of expression would amount to nothing.

Next step is to define “hate speech” itself. Yet the international law does not recognize such a concept. Even if numerous volumes have been written about hate speech, it is nothing more than subject matter of academic discussion.

What we have instead is, for example, the notion of *“racist and xenophobic material”* defined in Article 2 Paragraph 1 of the Council of Europe Additional Protocol to the Convention on Cybercrime. The reason why we chose this Additional Protocol is very simple: unlike other more extensive and inclusive international instruments it deals specifically with the racist and xenophobic material disseminated by means of computer systems. For the purposes of discussions around the first question I would like to use the term *“racist and xenophobic material”* instead of “hate speech”.

Pursuant to the said Article 2 Paragraph 1, *“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.”*

If we split this provision into the constituent elements, we will get the following structure: Racist and xenophobic material is:

1. Any written material, any image or any other representation of ideas or theories
2. Which advocates, promotes or incites
3. Hatred, discrimination or violence
4. Against any individual or group of individuals
5. Based on race, colour, descent or national or ethnic origin, as well as religion
6. If used as a pretext for any of these factors

Obviously, each of the above six constituent elements should be present if material is to be considered “racist and xenophobic”. With any element missing, the material, however, shocking, offending or disturbing it may be, will not be considered “racist and xenophobic”. Thus, if material does not advocate, promote or incite hatred, discrimination or violence, it should not be reckoned as “racist and xenophobic”.

Presumably, in the most of the materials that offend, shock or disturb in one way or another items 2 and 3 will be present. What really makes difference between non-racist and non-xenophobic speech, on the one hand, and racist and xenophobic communication on the other, is the existence or non-existence of the combination of items 5 and 6.

For example, using the words “enemy” or “evil” referring to X should not be considered “racist and xenophobic” if those words are not used as a pretext of X’s belonging to certain race, colour, descent or national or ethnic origin, or religion. If these factors are irrelevant, the statement might be shocking, offending or disturbing, but still will not be

racist and xenophobic. However, the same words will turn into a racist and xenophobic speech if X was “praised” this way because of his or her belonging to certain race, colour, descent, national or ethnic group or religion.

Admittedly, the grounds enlisted in item 5 are not the same as those contained, for instance, in Article 1 of Protocol No. 12 to the ECHR or the International Convention on the Elimination of All Forms of Racial Discrimination. This means that the scope of “racist and xenophobic material” in the meaning of the Additional Protocol is narrower than any other international instruments of similar purpose. And there should be the reason for this narrower attitude. After all, what is at the stake is freedom of expression. And the last thing the drafters might want should be the greater interference with this very important freedom.

### ***As regards the question of tackling hate speech online***

It is true that internet makes hate speech go faster and further. World Wide Web makes “action at a distance” possible and the fact that the victim of hate speech is not in the same physical space as the perpetrator, who may moreover be anonymised, results in dehumanization in general.

Traditional measures against hate speech online would be the following:

1. Monitoring and research;
2. Legislative Measures;
3. Education, training and awareness raising;
4. International cooperation.

Because of limited time available I would refrain from discussing each of the above measures and will turn to two ***innovative measures how to tackle hate speech online***. The first one is **limiting anonymity and moving to “real-name” policies to identify speakers**. And the second is - **a premium placement for registered commenters**.

In any respect, **anonymous online speech** certainly facilitates spreading hate speech online. As Abraham Foxman and Christopher Wolf explain it in their new book *Viral Hate: Containing Its Spread on the Internet*: “people who are able to post anonymously (or pseudonymously) are far more likely to say awful things, sometimes with awful effects”.

The solution to this problem could be to put restrictions on anonymous speech online, of course, with a sense of balance here. Foxman and Wolf note that “a real-name policy as an Internet norm leads to accountability and promotes civility”. An example of this can be a decision of the Paris Court of Appeal, when it ordered Twitter to produce the names of the people behind anti-Semitic tweets that appeared on the site last year. The

case stemmed from several tweets that contained anti-Semitic words and hashtags. Twitter removed the tweets from view in France based on a request from the Union of Jewish French Students (UEJF) and other anti-racism groups in the country. Based on the appeals court ruling, Twitter must now provide the UEJF and other groups with the names of those behind the tweets in question.

As I mentioned before, another innovative way to fight with hate speech online could be **a premium placement for registered commenters**. According to this method, users, which are registered on the site under their real name, have their comments pushed up in the queue while other comments appear down below them. A premium placement for registered commenters is already used by The New York Times and some other major content providers.

Lastly, it is important to join our forces and engage in wide and mutually beneficial cooperation with governments to address the issue of hate speech online.

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