

ECRI General Policy Recommendation No.15 on Combating Hate Speech: key pointsⁱ

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Definition of hate speech

What is considered hate speech?

“**Hate speech**” is the advocacy, promotion or **incitement** of the denigration, hatred or vilification of a person or group of persons, any harassment, insult, negative stereotyping, stigmatization or threat of such person or persons and any justification of all these forms of expression, based on “race”, colour, language, religion or belief, nationality or national or ethnic origin, as well as descent, age, disability, sex, gender, gender identity, sexual orientation and other characteristics or status.

“**Expression**” is understood to cover speech and publications in any form, including through the use of electronic media, as well as their dissemination and storage. Hate speech can take the form of written or spoken words, or other forms such as pictures, signs, symbols, paintings, music, plays or videos. It also embraces the use of particular conduct, such as gestures, to communicate an idea, message or opinion.

Other forms of expression that can be covered by the Recommendation: public denial, trivialisation, justification or condonation of crimes of genocide, crimes against humanity or war crimes which have been found by courts to have occurred and the glorification of persons for having committed such crimes (where this does not extend to positive assessment of any other, unrelated activity by these persons).

What is not considered hate speech?

Satire or objectively based news reporting and analysis that merely offends, hurts or distresses.

However in the case *M’Bala M’Bala v. France* of 20 October 2013 the European Court of Human Rights found that a blatant display of hatred and anti-Semitism disguised as an artistic production was as dangerous as a head-on and sudden attack and so did not deserve protection under Article 10 of the European Convention on Human Rights (freedom of expression) .

What is incitement?

Incitement is either a **clear intention** to bring about the commission of acts of violence, intimidation, hostility or discrimination or **an imminent risk** of such acts occurring as a consequence of the particular hate speech used.

Selected highlights from recommendations

Ratifying treaties

- A number of Council of Europe treaties deal specifically with the use of hate speech. For examples States who have not already done so, should ratify the **Additional Protocol to the Convention on Cybercrime** which requires the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

Research and data gathering

- Data protection guarantees **should not be invoked** to limit or preclude the collection of data;
- It is necessary to **not only collect data on officially filed complaints**, but also seek to capture the experience of those who are reluctant to speak (e.g. through surveys done by NGOs).

Raising awareness and counter-speech

- Combating negative stereotyping: use of profiling by public authorities, including the police must be clearly prohibited;
- Specific educational programmes for children;
- Speedy reactions by public figures that not only condemn, but reinforce values it threatens;
- Encourage perpetrators to renounce the use of hate speech.

Supporting those targeted

- Removing obstacles to complaining: legal fees for handling complaints should be reasonable;
- A specific criminal prohibition of any retaliatory action must be established (e.g. migrants in an irregular situation should be able to complain about hate crime without risking immediate expulsion).

Self-regulation

- In many instances the use of self-regulation can be the most appropriate and most effective approach to tackling hate speech. For examples the adoption of **codes of conduct** (or ethics) accompanied by certain sanctions for non-compliance with their provisions, arrangements for the monitoring of statements and publications to preclude the use of negative stereotyping and misleading information

Using state regulatory power to combat hate speech in mass media

- Any regulatory action must be consistent with the right to freedom of expression;
- Monitoring by NGOs and individual Internet users is essential, but it is only good if results in the timely deletion of hate speech.

Administrative and civil liability

Material compensation

Harm from hate speech may be not only moral, but also material (e.g. denial of an employment opportunity) => the law must define all the details about the **compensation to be paid** (see insert on the case Delfi vs. Estonia below).

Delfi vs. Estonia: the first European Court case on hate speech comments by Internet users

In June 2015, in the Grand Chamber judgment on the case Delfi AS v. Estonia, the European Court of Human Rights has delivered a judgment on offensive comments left by users on a commercial Internet news portal Delfi. The comments were removed only about six weeks after their publication.

The Grand Chamber found that the Estonian courts' finding of liability against Delfi had been a justified and proportionate restriction on the portal's freedom of expression, in particular, because:

- *the comments in question had been extreme and had been posted in reaction to an article published by Delfi on its professionally managed news portal run on a commercial basis;*
- *Delfi did not remove the offensive comments without delay after their publication;*
- *the 320 euro fine had not been excessive for Delfi, one of the largest Internet portals in Estonia.*

Other possible remedies

- Deletion;
- blocking of sites;
- publication of acknowledgements;
- banning dissemination of printed materials, and
- compelling disclosure of identity of those using hate speech.

All these measures **risk violating freedom of expression** and should be used **ONLY** in situations where:

- hate speech is intended or can reasonably be expected to **incite** acts of violence, intimidation, hostility or discrimination;
- this measure will not have an overly broad effect.

Does the court need to approve such measures before their application?

Usually, any exercise of regulatory powers by the State must be **subject to judicial authorization**. However, there are **urgent situations** when it is not appropriate to wait to seek such approval before acting, and so judicial control can only occur **after the measure was taken**.

Who should be able to bring the case to the court?

Those **directly targeted**, but also equality bodies, national human rights **institutions** and interested NGOs that sometimes have more resources and knowledge, and can make sure the theoretical remedies turn into effective measures taken in practice.

Sanctions against parties and organizations

Two-fold **response** possible in response to usage of hate speech should be foreseen:

- **Withdrawal** of financial and other forms of **support** (grants, loans, premises, staff, etc.) – this measure should always be open to challenge in an independent court;
- **Prohibition or dissolution** of political parties and other organizations in **more serious situations**, where hate speech is intended or can reasonably be expected to **incite** acts of violence, intimidation, hostility or discrimination – this should **only be ordered by a court**, and should be subject to prompt appeal.

These measures **risk violating freedom of association**, but this right can be subject to **limitations** where these are necessary and proportionate, notably, for the **protection of rights and freedoms of others**.

Criminal liability and sanctions

When can criminal sanctions be imposed?

- Only in **limited circumstances**, when no other, less restrictive measure would be effective;
- Only when hate speech is used in **public context**;
- Only in cases of **direct incitement** to violence, intimidation, hostility and discrimination, with serious consequences or when such consequences can be reasonably expected.

How should they be imposed?

- Legislation must be **clear and precise**;
- Sanctions should cover both **legal and natural persons**;
- Without extra requirements (e.g. disruption of public order, the extent of its dissemination), as these can **create obstacles** in securing convictions for hate speech;

What sanctions can be imposed?

The sanctions should be **effective and dissuasive**, so that to reflect the damage already done, and to **discourage its recurrence**. These can be:

- Imprisonment;
- Imposition of fines;
- Seizure and forfeiture of publications involved;
- Temporary loss of political rights.

How to ensure effective investigation?

- **Currently**, very few complaints make it to the court, actual conviction rate is low, and the penalties imposed are not always commensurate with the use of hate speech concerned.
- **Shortcomings** include:
 - Police officers don't take offences seriously;
 - They lack competence in gathering and assessing evidence;
 - Politicians' immunity;
 - Overly expansive view of the protection afforded by the right to freedom of expression.
- **Ways to improve investigations** include:
 - Introduction of online reporting tool;
 - Creation of specialist units to investigate and prosecute hate speech cases;
 - Lifting any immunity for politicians for using hate speech;
- Those **targeted** should effectively participate in criminal proceedings.

Hate speech v. freedom of expression/association v. political pressure: fundamental concerns

- Imposing administrative and especially criminal sanctions may **raise concerns** about possible restrictions on freedoms of speech and assembly.
- Such restrictions can be unjustifiably used to **silence minorities**, and to **suppress criticism, political opposition and religious beliefs**.
- **Solutions:**
 - Defining what is hate speech, and making **clear distinction** between:
 - expression that constitutes a criminal offence,
 - expression that is not criminally punishable, but may justify a civil suit or administrative sanctions and

- expression that does not give rise to any of these sanctions but still raises concern in terms of tolerance, civility and respect for the rights of others
- For hate expressions to be considered as criminal offences a particular account should be taken of factors such as: context, speaker, intent, content and form, extent of the speech act and likelihood (including imminence) of the threat.
- **Judicial authorisation** for measures taken (in most administrative cases, in all criminal ones).
- **Possibility to appeal the measures** in an independent court should be foreseen.

Useful links

- ECRI General Policy Recommendations on Combatting Hate Speech
- Explanatory Memorandum to General Policy Recommendation No. 15 on combatting Hate Speech
- [Factsheet](#) on the hate speech-related case law of the European Court of Human Rights
- Council of Europe's [No Hate Speech](#) campaign

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ⁱ *This factsheet is a document produced by the Directorate of Communication of the Council of Europe, it is not part of ECRI General Policy Recommendations No. 15 on combating hate speech and does not necessarily strictly reflect ECRI's official position.*